



State of Utah

Department of Natural Resources

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March 3, 2005

Henry Maddux, Field Supervisor
U. S. Fish and Wildlife Service
2369 West Orton Circle
West Valley City, Utah 84119

Subject: USFWS 1996 Biological Opinion Coordinated Review on Replacement of Volume 11, Energy West Mining Inc., PacifiCorp, Deer Creek Mine, C/015/0018, Task ID #2093, Outgoing File

Dear Mr. Maddux:

The Permittee submitted a mine plan modification on December 21, 2004, entitled, "Deer Creek Mine North Rilda Canyon Portal Facilities". The project proposal is located approximately 12 miles up Huntington Canyon. The proposed project area is in SW1/4NE1/4, Section 29, T.16S. R.7E (Refer to Rilda Canyon 7.5 Minute Quadrangle map). The Permittee's primary goal for this facility area is to develop two new portals that will provide necessary ventilation and a man entryway to reduce travel distance to the mine workings for the Mill Fork lease.

The proposed project will not increase the permit area, but will disturb approximately 13.1 acres for facilities and operations. Facilities include two portals, a sediment pond, storage areas, approximate 157 stall parking lot, bathhouse, warehouse, parking garage, and other small facilities.

The Division, acting through authority of the Office of Surface Mining (DOI), is initiating the 1996 Biological Opinion informal consultation for the permitting of this amendment. The Division requests concurrence from USFWS with our determination for the Rilda Canyon project. The following paragraphs may provide pertinent information that may be useful during the consultation process.

The MRP includes current TES lists and an overview of habitat and occurrence data for all the TE species in Emery County, the Manti-Lasal National Forest sensitive species, and other state listed sensitive species. The list includes the bald eagle, Mexican spotted owl, black-footed ferret, Canada lynx, southwestern willow flycatcher, western yellow-billed cuckoo, bonytail chub, humpback chub,

and razor back sucker. The Utah Conservation Data Center (DWR) has no record of occurrence for Federally listed threatened or endangered species within the proposed project area.

There are raptor nests within the Deer Creek permit area including golden eagles. There are no known bald eagle nests. There is a raptor nest within the 0.5-mile buffer zone to one of the topsoil stockpiles. The Permittee plans to adhere to exclusionary periods, during construction and reclamation, if birds are tending or nesting at this nest site. The Permittee commits to conduct annual raptor surveys and establish reduced speed limits for the Rilda mine access road. The Permittee also plans to cooperate with CW Mining to fund a proposed prey base study.

Mel Coonrod (October 2004) evaluated the 1997 and 2000 models and conducted a ground-truthing survey for the Rilda facilities project. The results of the ground-truthing survey support the models that there is suitable habitat within the canyon. Mr. Coonrod, however, states that previous calling survey results from other locations within the Manti-Lasal Forest were negative, and considers that the MSO habitat in this area is marginal. He, therefore, concludes that the project does not warrant a MSO calling survey.

One of the concerns of the Division is the level of disturbance from subsidence to MSO habitat. The Permittee considers that there will be no impact to MSO habitat as a result of mining operations for the Mill Fork lease. Expected disturbance for the proposed project does not include surface facilities, but includes subsidence. The USFWS and USFS previously supported that subsidence in the Mill Fork lease area will have negligible impact to MSO foraging habitat.

The proposed Rilda Canyon facilities area borders portions of the Rilda Creek riparian area. Migratory songbirds may use this area as a “fueling” area as they pass through, while others may use the area for nesting and breeding. The Permittee plans to adhere to exclusionary periods, during construction and reclamation. The Permittee commits to enhance the riparian corridor along the Rilda Creek, which should improve the habitat for these birds.

Craig Walker (2004; DWR) conducted an electrofishing survey from the Rilda and Huntington confluence to about 100’ below the right fork of Rilda Creek. The results were positive for brown and cutthroat trout. The Permittee plans to minimize sedimentation and limit reductions in water quality. Protection of Rilda Creek will include grading, installing a sediment pond, installing barriers along the southern edge of the Rilda facilities area, and installing bufferzone signage. Although the 2004 fish surveys showed observations of cutthroat, DWR considers that the observed fish were most likely Yellowstone and not the Colorado River cutthroat.

The Permittee provided derivations and values of consumption and

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addition of water to the Colorado River at the time of the Mill Fork Lease extension review. The net total was estimated at an annual net gain of 2,453 acre-feet. The Division requested an update of the consumption values to include the proposed project, but does not consider the project will markedly change the value.

The Permittee conducted bat surveys within certain sites of the proposed area. This 2004 survey shows Rilda and Huntington Canyons provide quality bat habitat, but the survey was conducted too late in the season to observe individuals.

The Utah Natural Heritage program identified Carrington daisy, a USFS sensitive species, occurring within the permit area. The Division does not consider that this species or habitat is likely to occur within the Rilda project area. The Utah Natural Heritage program also identified the Link Canyon columbine and Canyon sweetvetch, USFS sensitive species, occurring adjacent to the permit area in Little Bear Canyon. Dr. Collins (2004) did not observe these plant species or their ideal habitats within the proposed facilities area.

The Division considers that the project will likely have no affect on TES species or their habitat. Final decisions concerning the proposed project will come after the Division receives a response from USFWS.

The Permittee plans to start construction sometime in 2005. We would appreciate your response by April 8, 2005 so we may proceed with the review process. If we have not heard from your office by the set date, we will consider that USFWS concurs with the Division's findings. If you have any questions about this project, please call me at (801) 538-5268 or Jerriann Ernsten at (801) 538-5214.

Sincerely,

D. Wayne Hedberg
Permit Supervisor

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cc: Price Field Office
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