

atch #1

WildLaw

A Non-profit Environmental Law Firm

December 29th, 2005

Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114

RE: Pacificorp Deer Creek Mine Permit Renewal Application Request for Informal Conference

To Whom It May Concern:

This request for an informal conference is being filed on behalf of Utah Environmental Congress for the above permit renewal. Utah Admin. Code R645-300-123. It is being filed concurrently with UEC's formal objection that will form the basis of issues to be discussed during informal conference. These issues are outlined in UEC's objection and include but is not limited to the issue of Forest Service authority to authorize measures designed to protect the surface environment and the points raised in UEC's appeal filed to the U.S. Forest Service. It is attached to UEC's objection. UEC hopes to discuss several of the terms of the agreement that the UEC signed with the U.S. Forest Service.

UEC would prefer to have the conference located in Salt Lake City as opposed to the locale of the coal mine in question. However, UEC would request that the U.S. Forest Service and Alice Carlton attend the conference. UEC does not oppose the conference being held in Price since this is where the Manti La Sal National Forest is located and is proximate to the mine in question.

Sincerely,



Joel Ban
Wildlaw (on behalf of UEC)

RECEIVED
DEC 29 2005
DIVISION OF OIL, GAS AND MINING

1817 S. Main Street; Suite 10
Salt Lake City, UT 84115
801-474-2626

Mine # C/1015/0018
File # UEC obj
Record # 0009
Doc. Date 1-27-06
Recd. Date 1-27-06

Attachments

Letter from Alice Carlton to Mary Ann Wright 12/1/05

Appeal Resolution between UEC and the Manti La Sal National Forest 11/4/05

UEC Administrative Appeal to the Manti La Sal National Forest

December 29th, 2005

Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114

RE: Pacificorp Deer Creek Mine Permit Renewal Application Objection

To Whom It May Concern:

This objection is being filed on behalf of the Utah Environmental Congress (UEC) for the above referenced project located on the Manti-La Sal National Forest. Utah Admin. Code R645-300-122. We are concurrently filing a notice for request of an informal conference. Utah Admin. Code R645-300-123. It is our hope that UEC's objection to the currently proposed project can be resolved through such a conference. Our objection mainly pertains to the points raised in the negotiated agreement UEC reached with the Manti-la Sal National Forest, by and through its Forest Supervisor Alice Carlton. Attached. However, there are a number of other violations that the UEC has identified associated with this project. UEC also believes that UDOGM and some other federal agencies misinterpret applicable statutes and regulations related to this project, and it is our sincere hope that all parties can resolve these disputes through an informal conference.

Some preliminary interpretations of the extent of UDOGM's authority to implement NEPA are at issue. Within the Deer Creek EA it states that OSM has delegated the preparation of the EA to DOGM with OSM assistance where appropriate. EA, p. 4. The regulations allow UDOGM authority to prepare an EA, but explicitly state that OSM will continue to be responsible for NEPA responsibilities in the following areas:

- i. Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;
- ii. Making the determination of whether or not the preparation of an environmental impact statement is required.
- iii. Notifying and soliciting views of other state and federal agencies, as appropriate, on the environmental effects of the proposed action;
- iv. Publishing and distributing draft and final NEPA compliance documents;
- v. making policy responses to comments on draft NEPA compliance documents;
- vi. independently evaluating NEPA compliance documents; and
- vii. Adopting NEPA compliance documents and determining federal actions to be taken on alternatives presented in such documents. 30 C.F.R. §740.4(c)(7).

It appears that the responsible agencies were not in compliance with this particular provision. With respects to the 1st point from the above regulation UEC received scoping notices from the Forest Service and UDOGM for this project, but never from OSM as the regulation requires. For the 2nd point above the decision to not prepare an EIS appears to have been made by the Forest Service, but not UDOGM or OSM. This would seem to violate the above regulation. The fourth requirement from the above regulation would seem to require OSM to circulate the draft NEPA document, however this was never done. For the other requirements pursuant to the above regulation it is unclear whether OSM complied with these provisions as UEC does not sufficient information to evaluate compliance. This is not an authoritative analysis of UDOGM'S role in the NEPA process vis a vis other agencies. If other statutes/regulations clarify this issue please provide the relevant citations so this issue can be resolved for future projects.

On page 4 of the EA it also states that based on section 523(c) of SMCRA UDOGM is permitted to regulate surface coal mining operations and surface effects of underground mining. It is UEC's belief that the primary agency charged with protection of surface resources is the Forest Service since they are the federal land management agency in this case. Furthermore, this section of SMCRA does not charge UDOGM with authority to regulate activities pertaining to surface effects on Forest Service land.

Under section 523(c) of SMCRA, a State with an approved State program may enter into a cooperative agreement with the Secretary of the Interior (hereinafter referred to as the Secretary) to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

If UEC is incorrect in this interpretation of this section of SMCRA please provide the specific portion of SMCRA or the Mineral Leasing Act (MLA) that allows state regulators like UDOGM to regulate surface effects on lands managed by the U.S. Forest Service. Regulations under the (MLA) require that leases be issued only with the consent of the agency that has jurisdiction over the lands that contain the coal deposits. 43 C.F.R. §3400.3-1. These leases are also subject to certain conditions that the federal land management agency may prescribe for the protection of those lands. Id.

The federal land management agency, in this case the U.S. Forest Service is responsible for:

1. Determining post-mining land uses;
2. Protection of non-mineral resources. 30 C.F.R. §740.4(e).

The rights of the U.S. Forest Service were affirmed in a letter dated December 1st, 2005 from Alice Carlton, Forest Supervisor of the Manti-La Sal National Forest to Mary Ann Wright, Associate Director of Mining at UDOGM. A copy of this letter is attached for easy reference to the letter's main points. UEC and the Manti-La Sal National Forest made fruitful efforts to work together and agreed to take certain measures to protect the surface environment in November of this year. The parties agreed to protect the surface environment through macroinvertebrates monitoring and maintenance of a BCI level for macroinvertebrates. In addition, the parties agreed that the 200 acres of timber would not be harvested. It is our understanding that based on objections from UDOGM and the permittee the agreement was breached by Alice Carlton on

November 28th. It is UEC's belief that its appeal raised several viable appeal points, and that the Forest Service was well within its authority to take these reasonable measures to protect the environment. If UDOGM disagrees that the Forest Service was within its authority in reaching this agreement please provide explanation based on applicable statutes and regulations. UEC was willing in the past to make further concessions in this agreement; however these attempts were apparently rejected by some interested parties. It is our hope that this objection process will allow the relevant parties to resolve some of these unresolved points.

Of course UEC's attempts to resolve this appeal are based on apparent violations of law outlined in its appeal. Some of violations of law are based on the National Environmental Policy Act (NEPA), and I would refer you to the attached appeal for a detailed discussion of those violations. Needless to say it appears that the Forest Service's Finding of No Significant Impact (FONSI) is not based on sufficient evidence.¹ Many federal courts have held that an agency must produce a convincing and well-supported document that supports a FONSI.² The EA failed to do this. Impacts from the road, road construction, and water and aquatic habitat quality suggest there will be significant impacts to the environment.

The EA states there will be impacts to the Management Indicator Species (MIS) and Forest Service Sensitive species Golden Eagle. The EA notes on page 34 how the project could cause the eagle to abandon its territory. The Manti La Sal National Forest Plan prohibits activities that could cause abandonment of active nests. Plan, III-20. How the impacts to big game MIS such as deer and elk are insignificant is unknown as well. Elk will incur direct/indirect effects for 30 years, and are also like to suffer due to the cumulative effects of future management activities.

Additionally, it appears that the EA failed to analyze the impacts from the change in right of way, additional traffic on highway U-31, and the other projects associated with water drilling in Rilda Canyon. These actions, left analyzed, leave the agencies unable to determine whether there will be significant impacts to the environment.

The applicable agencies clearly violated NFMA and the Manti-La Sal National Forest Plan by failing to monitor the population trends of MIS goshawk, elk, mule deer, macroinvertebrates, and golden eagle. Please see UEC's appeal on this issue located on page 11 of the appeal. Additionally, Forest Plan standards for macroinvertebrates are not being met and will not be met for the diversity index (DAT) or Biotic Condition Index (BCI).

The EA does not mention or discuss the direct and indirect effects of the proposed "mitigation" to log 200 acres as a part of this project. Under NEPA the direct and indirect effects of a project must be analyzed. 40 C.F.R. §1508.7 §1508.8. It is hard to understand how such an activity will mitigate environmental damage as opposed to being the cause of environmental damage. An EA must provide a detailed analysis of proposed mitigation measures. O'Reilly v. U.S. Army Corps of Engineers, 2004 WL 1794531 (E.D.La.,2004). This is a fundamental flaw and should be dropped as a component of the project.

¹ It is unclear if UDOGM also intends to issue a FONSI as the Forest Service did.

² See Pac. Marine Conservation Council v. Evans, 200 F. Supp. 2d 1194, (D. Cal. 2002); Sierra Club v. United States DOT, 243 U.S. App. D.C. 302, (D.C. Cir., 1985) Makua v. Rumsfeld, 136 F. Supp. 2d 1155, (D. Haw., 2001).

Please consider these issues carefully so that the informal conference is as constructive as possible. Also please don't hesitate to contact me with any questions. Thank you and please consider the attachments to this objection as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Ban", written in a cursive style.

Joel Ban

Wildlaw (on behalf of UEC)

BEFORE THE REGIONAL FORESTER OF REGION
FOUR OF THE UNITED STATES FOREST SERVICE

In Re: Appeal of Decision Notice/)
Finding Of No Significant Impact and)
Environmental Assessment for the)
Deer Creek Coal Mine Plan)
Modification, Fed. Coal Leases U-06309)
U-2810, SL-050862, SL-051221 on the)
Manti-La Sal National Forest)

UTAH ENVIRONMENTAL CONGRESS
1817 South Main, Suite 10
Salt Lake City, UT 84115

APPELLANT

APPEAL NO. _____

INTRODUCTION

STATEMENT OF FACTS

ARGUMENTS

REQUEST FOR RELIEF

DATED this 13 day of October, 2005

By _____

Kevin Mueller, Executive Director,
Utah Environmental Congress
1817 South Main, Suite #10
Salt Lake City, UT 84115
(801) 466-4055
on behalf of appellant

Introduction

NOTICE IS HEREBY GIVEN that the Utah Environmental Congress (UEC) appeals pursuant to 36 CFR § 215.7 to the Regional Forester of Region Four from the Decision Notice/Finding Of No Significant Impact (DN/FONSI) and Environmental Assessment (EA) for the Deer Creek Coal Mine Plan Modification, Fed. Coal Leases U-06309, U-2810, SL-050862, SL-051221 signed by Rod Player for Forest Supervisor Alice B. Carlton on August 25, 2005. This decision was noticed in the Sun Advocate (newspaper of record) on August 30, 2005.

The UEC is a non-profit organization dedicated to maintaining, protecting, and restoring the native ecosystems of Utah. The UEC has an organizational interest in the proper and lawful management of National Forests in Utah, including the Manti-La Sal National Forest. The UEC's members, staff, and board of directors participate in a wide range of recreational activities on the Manti-La Sal National Forest, including the area in and surrounding the action approved in the Rida/Huntington Canyon area.

The UEC represents 265 individual members, 37 organizations, and 59 businesses representing approximately 30,000 people, many of whom frequently use, recreate, hunt, fish, visit and otherwise enjoy this project area on the Manti-La Sal National Forest, and have a direct interest in its management.

The UEC claims standing to participate in the public land decision-making process on the grounds that it has been involved in forest management issues since its founding. Our members have hiked, fished, hunted deer and elk, recreated, enjoyed, and photographed the Manti-La Sal National Forest, including the project area. Our collective membership includes professional photography businesses and freelance photographers who make their living in part by photographing Utah's National Forests, including the Wasatch Plateau portion of the Manti-La Sal National Forest. The direct and indirect impacts associated with this decision detract from the rugged, natural splendor, biodiversity, fishing/hunting values and wilderness values in the affected watersheds that make these lands appealing to both professional photographers and our members who find enjoyment from and recreate in this project area.

In addition, the UEC's members are taxpayers that are required to pay for the activities approved. The irretrievable commitments of financial resources associated with this project are also borne by the American people as a whole. The UEC claims partial ownership of the public lands covered by this decision and consequently has legal standing to participate in the process and challenge those decisions it finds legally unacceptable.

The appellant is appealing the August DN/FONSI and EA on the grounds the decision and environmental documentation is legally indefensible. The appellant argues that the Manti-La Sal National Forest (MLSNF) has violated the National Environmental Policy

Act (NEPA), the National Forest Management Act (NFMA), well as the Administrative Procedures Act (APA).

The appellant desires and will request relief in the form of a remand of the decision made in the DN/FONSI signed by Rod Player for Forest Supervisor Alice B. Carlton on August 25, 2005 that was noticed on August 30, 2005 in the newspaper of record.

Statement of Facts

The action proposed and approved is described as follows:

The new facilities would be located in Rilda Canyon, in Section 28, Township 16 South, Range 7 East, Salt Lake Baseline and Meridian, Emery County, Utah, about 8 miles west of the town of Huntington. The proposed mining plan modification calls for the construction of new surface facilities in Rilda Canyon, down-canyon from the existing facilities in Left Fork.

The proposed facilities would cover a long, slender area approximately 4,000 feet long by 200 feet wide covering 13.1 acres on the canyon floor. Of this area, the support facilities (portals, shop, office, etc.) would cover an area approximately 2,000 feet long by 120 to 250 feet wide (9.0 acres) at the west (up-canyon) end of the site. The remainder of the site to the east of the mine yard area would have hydrologic controls, two topsoil stockpiles, and a road turnaround. All facilities would be entirely on the north side of Rilda Canyon Creek except for one topsoil stockpile. The proposal would use the existing county road and 25 kv power line that run through the site. The county road would be paved. See Appendix E, Map 4 (Layout of Proposed Surface Facilities) for a complete description of the proposed facilities. Proposed facilities would include:

Structures: Office/bathhouse/warehouse building; four (4) vertical retaining walls constructed of 12-inch thick concrete; two (2) other retaining walls in the yard area; water treatment building; mine ventilation fan; 168-stall parking lot; underground vehicle parking garage; steel frame building to house fan motors; steel framed storage sheds to house bagged rock dust, ready-mix concrete, and other dry products; oil shed; fueling dock with 4,000 gallon above-ground diesel fuel storage tank; steel shed for storage of cans of oil and lubricant; rock dust silo; pneumatic pipeline for rock dust; and a sediment pond with supporting drainage structures.

Power: An existing 25 kv power line already provides power at the Left Fork Portal Facility. A transformer would be installed to supply power to the Rilda Canyon portal facility and there would be diesel generator backups for the ventilation fan.

Water related facilities:

Culinary system: 10,000-gallon steel water storage tank for treated culinary water.

Sewage system: Waste water from office/bathhouse/warehouse would be separated into gray water and black water. A 20,000-gallon temporary storage tank would hold black water (sewage) until it can be transported by truck to an approved disposal facility. Gray water (discharge from boot wash, showers, floor drains, etc) would be stored before being pumped into an abandoned portion of the underground mine workings. Permits from the U.S. Mine Safety and Health Administration (MSHA) and Utah Department of Environmental Quality, Division of Drinking Water Quality would be obtained.

Runoff system: a two compartmented runoff collection tank with 1) a 7,540 gallon compartment for gray water, and 2) an 18,500 gallon

compartment for temporary storage of surface runoff water. Surface runoff would spill over into the gray water compartment of the tank. This system would also include an emergency spillway connected by pipe to the sediment pond; pump station to move surface runoff into collection tank.

Drainage system: two systems, 1) for collection of "undisturbed" or overland runoff water from above the portal site and from adjacent side slopes that bypasses the developed area and moves this runoff into the natural channel, and 2) for collection of runoff and all non-sewage waste water from the disturbed portal area, parking lots, storage areas, bathhouse/office/ warehouse, and fan area to convey it to the runoff collection tank for discharge into the mine. Culverts would direct any overflow to the sediment pond.

Storage: Mining and snow removal material and equipment would be stored on asphalt and gravel surface areas on the cut or embankment fills. A primary covered storage area would be constructed west of the parking garage to store non-coal waste, coal waste, oil, fuel facilities and bulk rock dust. Secondary covered storage areas would be constructed to store crib blocks, roof bolts, conveyor hardware, conveyor belting, beams, and other associated construction/repair materials. Another covered non-coal waste/sand/rock waste storage area would be constructed on the north side of the mine yard between the fan and access portal. Sand and salt for winter road maintenance would also be stored here. Coal and non-coal wastes would be hauled away.

Soil Stockpile Storage Areas: Two topsoil and subsoil stockpile areas not contiguous to the main facilities and on previously disturbed land (approximately 800 feet by 300 feet, 3.0 acres, and 320 feet by 220 feet, 1.1 acres) would be created. The smaller stockpile would be on the south side of Rilda Canyon Creek and accessed via the existing bridge.

County Road: The existing gravel road would be paved and widened. The road would be realigned to make curves less acute. The design speed would be increased. A trailhead parking lot would be installed to the east of the limited access mine yard to provide public access to Forest Service recreation areas west of the proposed facility.

The projected active life of the facilities is 15-20 years. When the mine shuts down, the site would be reclaimed. Structures would be removed, the site regraded to its original topography, topsoil from the stockpiles redistributed over the site, and all disturbed areas revegetated. The county road would be returned to a gravel surface. Reclamation would take approximately twelve years, two years for the actual demolition and site restoration work and the balance of the time for vegetation to become established before final bond release.

The OSM usage analyzes the magnitude of impacts in terms of their intensity or severity and their duration. The following table from EA table 4.1 defines important terminology:

| | |
|-------------------------------------------|-----------------------------------------------------------------------------|
| Table 4.1 OSM Analysis Terminology | |
| CONTEXT: routine action for OSM | |
| INTENSITY OF IMPACTS | |
| Negligible | ranging from immeasurable and undetectable to lower levels of detection |
| Minor | detectable, but slight |
| Moderate | readily apparent environmental effects |
| Potential to become major | potentially severe adverse or exceptional beneficial environmental impacts |
| Major | severe adverse or exceptional beneficial environmental impacts |
| DURATION OF IMPACTS | |
| Short term | life of the mine, including the reclamation period (approximately 30 years) |
| Long term | after bond release |

Note that short term impact means for 30 years, and also note definitions of intensity of impacts.

The Proposed Action would occur in phases over a period of approximately 30 years. The type of activity occurring and thus the environmental effects would vary with each phase. The initial construction of the facilities would occur for 0-2 years. Active mining operations would take place for approximately 15 years. Active reclamation (demolition and removal of facilities, restoration of topography, topsoil replacement, revegetation) would take about 2 years. This would be followed by a SMCRA-mandated 10-year bond release period to establish vegetation. PacifiCorp's management responsibility for the site lasts until bond release, or approximately 30 years. Active mining and reclamation would last about 20 years. The balance of the time would consist of custodial management (monitoring and maintenance).

The appellant has participated in the public comment and involvement process at all points in this process. All of the issues raised in this appeal were raised in comments. All comments submitted by and on behalf of appellant are hereby incorporated by reference, as well as the Forest Plan and associated ROD and FEIS.

Arguments

The ensuing arguments will demonstrate the Manti-La Sal National Forest (MLSNF) has violated National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Forest Plan, as well as the Administrative Procedures Act (APA).

I. The Manti-La Sal National Forest violated the NEPA by failing to prepare an adequate analysis of the cumulative impacts, compartmentalization of related actions and their impacts, and because the EA does not support a Finding Of No Significant Impacts (FONSI).

"Cumulative impact" is defined in NEPA as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future action regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."¹

In deciding whether an agency's decision not to prepare an EIS is appropriate, the "responsible agency must have 'reasonably concluded' that the project will have no significant adverse environmental consequences." *San Francisco v. United States*, 615 F.2d 498, 500 (9th Cir. 1980). An agency's decision not to prepare an EIS is impermissible if the agency fails to "supply a convincing statement of reasons why potential effects are insignificant." *The Steamboaters v. FERC*, 759 F.2d 1382, 1383 (9th Cir. 1985). "[T]he statement of reasons is "crucial" to determining whether the agency took a "hard look" at the potential environmental impact of a project. *The Steamboaters v. FERC*, 759 F.2d at 1393; *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976).

"To support an EA/FONSI, an agency must produce 'a convincing statement of reasons to explain why a project's impacts are insignificant.'" *Pacific Marine Conservation Council, Inc., v. Evans*, 200 F.Supp.2d 1194, 1204(N.D.Cal. 2002).

"Significant", "effects", and "human environment" are all defined in detail by the Council on Environmental Quality regulations implementing NEPA. 40 C.F.R. 1508.27, 1508.8, 1508.14. In particular, "effects" include indirect effects, "related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R., 1508(b). In addition, effects include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative."

¹ 40 CFR 1508.7

A federal agency's Environmental Assessment "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum."
Grand Canyon Trust v. Federal Aviation Administration, 290 F.3d 339, 342 (D.C.Cir. 2002).

Many parts of the EA disclose significant direct/indirect impacts from the action approved. For example:

"Road construction activity would primarily be confined to the disturbed corridor along each side of the existing road right-of-way. Widening and realigning the road would cause a temporary (less than 2 months), *major* increase in noise, fugitive dust, and sediment during the construction period. After that the effect would be *minor and short term*, and would eliminate or drastically reduce noise, fugitive dust and sediment runoff for the life of operations." EA page 48.

In light of above and the terminology table for effects presented supra in the statement of facts the action approved will involve severe adverse environmental impacts ("major") during road construction work in the form of noise, fugitive dust, and sediment impacts. This will be followed by detectible but slight impacts ("minor") for approximately 30 years ("short term"). In light of the fact that the EA discloses severe adverse temporary sedimentation impacts followed by lesser detectible impacts for 30 years impacts to aquatic habitat and macroinvertebrates MIS is significant. To top it off EA page 36 (footnote) discloses that the mitigation for this that consists primarily of buffer zones along the stream "would be as narrow as 25-30 feet in three locations where the active channel meanders north." In light of this, appellant notes that EA page 21 discloses that the current aquatic community MIS (macroinvertebrates) BCI "does not meet the Forest Plan standard of 75." The total significant temporary and additional lesser 30 year long impacts to the aquatic community in combination with the disclosure that this resource is already below Forest Plan standard underlines the substantive and procedural problems and legal failures resulting from the issuance of this FONSI when the evidence indicates significant impacts.

Furthermore, this one road construction component in Rilda Canyon is but one component of the much larger action approved that results in additional significant impacts in context and intensity to NEPA's human environment. Because the EA also compartmentalizes the larger action required and its total impacts there are additional impacts not accounted for. This illegal compartmentalization includes: (1) the change in the right-of-way to make it 80 feet wide that is said to be needed on the bottom of EA page 47, (2) due to traffic congestion and safety issues on highway U-31 resulting from the 20-fold increase in traffic coming off the highway onto the new paved road up Rilda Canyon (EA page 48), the company has already begun construction of a new left hand turn land on U-31 and (3) other actions such as the proposed drilling for water in Rilda Canyon necessitated by the action approved with this project (see attached comments). The FONSI is not supported by evidence before the agency and the need for an EIS is obviated. Furthermore, because actions needed such as the new left hand turn lane on

highway 31 are already committed to, under construction, and not analyzed as a component of this action, and because the new ROW needed is not incorporated or analyzed with this action, and the new water wells required by the action (see attached comments) are compartmentalized into other decisions and analyses, some of which are already being constructed, this EA and DN/FONSI is legally inadequate under NEPA not simply because of disclosed significant impacts, but also because the compartmentalization of the larger action required and its impacts additionally compounds the inadequacy of the EA and DN/FONSI.

Other direct/indirect effects of other components of the approved action add to the sum total significant direct/indirect impacts not accounted for above, where significant impacts are already indicated. One example is the other impacts from the action approved to MIS such as Golden eagle, macroinvertebrates, and Deer and elk MIS.

“The proposed facilities and related activities would interfere with the eagles’ typical foraging flight path (down the side canyon to the main trunk of Rilda Canyon) and reduce the value of the foraging area in the canyon. The Forest Service estimates that 747 acres of foraging habitat would be reduced in value by the operations (USDA-FS 2005b). Additionally, fan noise could disturb the nesting birds. As discussed in part 4.2.1.6, Noise Resources,

fan noise attenuates with distance. The history of the nest shows a degree of tolerance for the existing fan noise and mine activity in the left fork of Rilda Canyon, but the proposed facilities would be closer and busier. Golden eagle behavioral responses to the proposed facilities could result in reduced foraging activity, interrupted nesting and breeding, reduced nest productivity, or territory abandonment (USDA-FS 2005b).” EA page 34

Here, the fan noise, road use and other parts of the approved action will cause impacts for a 30 year (short term) period that could result in territory abandonment. Page 35 of the EA indicates that there may also be other detectible minor impacts to MIS wildlife for 30 years

“Under the proposed action, there would be moderate effects on non-game/non-special status wildlife (depending on species) because of indirect habitat loss due to noise and activity-related avoidance/disturbance effects. These moderate effects would be short term. They would last for the projected life of the active mining and reclamation operations in Rilda Canyon (15-20 years) and would cease when the site entered the custodial reclamation phase (approximately 10 years).” EA page 35

This shows additional readily apparent environmental effects/impacts (“moderate”) that may last about 30 years to additional wildlife.

Compounding the above is the inadequate cumulative effects analysis. Page 53 of the EA notes that big game MIS such as elk and its critical winter range in Rilda canyon will incur not just direct/indirect impacts for about 30 years from this action, but proposed coalbed methane exploration will add cumulative impacts, as will indirect impacts from “the proposed timber sale site.” However, it is never said what proposed timber sale

would add to cumulative impacts to the elk MIS. EA page 95 and 96 displays the reasonably foreseeable actions and their residual effects that would add to the total cumulative impacts of this action, and the only timber sale mentioned is the SITLA timber sale. Because the residual effects of this timber sale are said to include only increased soil compaction, increased erosion, and road access to a roadless area, but NO impacts to the critical elk MIS winter range are disclosed, it is unknown what timber sale site would add to the cumulative impacts of the critical elk MIS winter range in the area. Finally, while EA page 53-54 notes private economic loss to agricultural areas resulting from the elk MIS being displaced onto hay fields, damaging fences and irrigation fields, there is no attempt to disclose the resulting cumulative impacts to the elk MIS or its population trends resulting from those off-Forest conflicts with private interests.

The EA and FONSI are additionally adequate because the action includes includes uncertain effects and application of an experimental procedure or practice.

“This experimental practice would test the feasibility of storing of existing topsoil materials in place in areas where: 1) original, pre-existing soil structure was disturbed by historical coal mining; 2) native soils lie on steep slopes.” EA page 25.

This contradicts with finding of no significant impact point 4 of the DN/FONSI. Finally, as indicated in the attached FAX from the Forest Service, it has long been suspected even by the Forest that the proposed facilities may result in significant impacts. While the EA indicates that there are significant impacts and the cumulative effects analysis is not complete, the need for an EIS is obviated even when there may be significant impacts.

“[E]ven a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant. One more factory ... may represent the straw that breaks the back of the environmental camel.”
Grand Canyon Trust v. Federal Aviation Administration, 290 F.3d 339, 343 (D.C.Cir. 2002). “To support an EA/FONSI, an agency must produce ‘a convincing statement of reasons to explain why a project’s impacts are insignificant.’”
Pacific Marine Conservation Council, Inc., v. Evans, 200 F.Supp.2d 1194, 1204 (N.D.Cal. 2002). The government “is not required to find a proposed project insignificant in the absence of readily available information to the contrary; rather, it is required to create an EIS for any project which may significantly affect the environment. Under NEPA, it cannot use the lack of existing information as a basis for acting without preparing an EIS....” Sierra Club v. Norton, 207 F.Supp.2d 1310, 1336 (S.D.Ala. 2002). Adequate Research Must Be Done. “NEPA requires each agency to undertake research needed adequately to expose environmental harms.” Sierra Club v. Norton, 207 F.Supp.2d 1310, 1335 (S.D.Ala. 2002). “An agency must generally prepare an EIS if the environmental effects of a proposed agency action are highly uncertain.” ... “Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data, or where the collection of data may prevent speculation on potential effects.” ... “The purpose of an EIS is to obviate the need for speculation by insuring that available data are

gathered and analyzed prior to the implementation of the proposed action.” Makua v. Rumsfeld, 163 F.Supp.2d 1202, 1216-17 (D.Hawaii 2001).

In light of all of the above the DN/FONSI is arbitrary and capricious and in violation of the NEPA and the APA because the FONSI is contradicted by the evidence before the agency and because the cumulative effects analysis is not complete, and because components of the larger action required to complete this project have been illegally compartmentalized outside of this environmental document.

II. The Manti-La Sal National Forest violated
-the Forest Plan and National Forest Management Act (NFMA) requirements for
Management Indicator Species and Diversity monitoring and standards
-and NEPA regulations at 40 CFR part 1505.2 - 1505.3.

Page 5 of the Record Of Decision (ROD) (incorporated by reference) that approves the current Forest Plan states, “During implementation, when various projects are designed, site-specific analysis will be required. Analyses may take the form of Environmental Assessments [40 CFR 1508.9], environmental Impact Statements [40 CFR 1508.11], or categorical exclusions [40 CFR 1508.4]. The Supervisor may amend the Forest Plan in accordance with 36 CFR 219.10(f) [1982]. Any resulting documents will be tiered to the FEIS, pursuant to 40 CFR 1508.28 [1982].” This EA is therefore tiered to the Forest Plan FEIS and no Forest Plan amendments are proposed, analyzed, or contemplated at this time. Page 14 of the Forest Plan ROD states, “Maintaining visual quality objectives, viable populations of wildlife management indicator species” ...”are all examples of standards and guidelines which act as mitigation measures.” It goes on to state, “Mitigating measures, stated as standards and guidelines, are intended to be adopted and enforced in project level activities”

The Manti-La Sal National Forest 1986 Forest Plan, as amended, identifies these 6 MIS:

- Northern goshawk
- Elk
- Mule deer
- Macroinvertebrates
- Golden Eagle
- Aberts squirrel

All but the last of the above MIS are selected and used for this analysis. However there is a failure to monitor these MIS population trends. Oddly, even for some of the most important MIS for this project area (such as macroinvertebrates), there is no functional project area presentation or analysis of its population trends. The recent 10th Circuit Court of Appeals rulings inform these issues:

The Forest Service must gather quantitative data on actual MIS populations that allows it to estimate the effects of any forest management activities on the animal population trends, and determine the relationship between management activities and population trend changes.” Utah Environmental Congress v. Bosworth, 2004 U.S. App. LEXIS 12441 (10th Cir. 2004).

*Under a plain reading of § 219.19 and UEC I, we conclude that the Forest Service must select an MIS with some evidence that it is “present in the [project] area.” The Forest Service must then collect “actual, quantitative population data,” id. at 1226, to monitor population trends and to determine relationships to habitat changes. See 36 C.F.R. § 219.19(a)(6).” ... “Selecting only one or two (or a few) acceptable MIS actually present in a project area cannot satisfy the overall monitoring obligations of § 219.19. See Martin, 168 F.3d at 7 (concluding that the Forest Service violated §§ 219.19 and 219.26 because it “ha[d] no population data for half of the MIS in the Forest and thus [could not] reliably gauge the impact of the timber projects on these species”). Utah Env’tl. Cong. v. Bosworth, No. 03-4251, 2005 U.S. App. LEXIS 17619, at *1 (10th Cir. Aug. 19, 2005).*

As this Circuit Court has ruled, the Forest is entitled deference in the MIS it selects for projects implementing the Forest Plan, but in order to meet the requirements of §219.19, that MIS selection must include sufficient MIS actually in the project area and gather population trend data so that the effects of the project implementing the Forest Plan on the MIS population trends can be determined and analyzed to meet the NFMA and Forest Plan requirements. This needs to be done in the analysis of this project, and evidence in the EA indicates that the Forest has not met its MIS selection or monitoring requirements. Details on the selected MIS are below.

The MLSNF Forest Plan page IV-6 identifies macroinvertebrates as a Management Indicator Species (MIS), and the WRR for this project selects and considers this MIS for the analysis of this proposed action. Forest Plan FEIS page III-34 states that the macroinvertebrates MIS, “are ecological indicator species in aquatic habitats and the ability of that habitat to support fisheries” ... “Aquatic habitat on the Forest consists of 680 miles of stream fisheries and 1,765 acres of lakes and reservoirs. Macroinvertebrates are found in these areas” ... “Changes in aquatic habitats, resulting from activities in the terrestrial habitat, are rapidly seen through changes in the species composition and biomass of macroinvertebrates.” A list of five aquatic insects is identified as what is minimally needed to accomplish any meaningful assessment of impacts from a project on the aquatic ecosystem. The Forest Plan and its FEIS state that the chosen list of macroinvertebrates would be treated as one MIS.² The same page of the Forest Plan and its FEIS state, “These habitats can be **monitored for macroinvertebrates on a priority**

² Forest Plan FEIS page III-34, and Forest Plan page II-34

basis as needed to determine the specific effects of any one project or activity, as well as the effects of general Forest land management, on the aquatic resources.” The Forest has simply not met this obligation. The macroinvertebrates MIS monitoring standards state, “Improve and maintain a good or above Diversity Index (DAT) of 11-17, a standing crop of 1.6 – 4.0, and a Biotic Condition Index (BCI) or 75 or above.” Forest Plan page III-20. The Forest Plan Chapter 4 monitoring table for macroinvertebrates states, “for baseline stations or **as needed for select project activities**” include a minimum of gathering of data using the R4 GAWS, BCI and HCI macroinvertebrates indices. The Forest Plan expects the macroinvertebrates trend data to be collected “For baseline stations or as needed for select project activities.”

Aquatic macroinvertebrates monitoring is well established to be a good aquatic management indicator species, as is explained in the introduction to the Data Analysis and Interpretation section of the Aquatic Macroinvertebrates Monitoring Reports you receive from the National Aquatic Monitoring Center, which does your macroinvertebrates monitoring. The Forest’s 1999 macroinvertebrates MIS monitoring report from this Utah State lab is enclosed to provide an example (CD). Reading the report makes is overwhelmingly clear that the National Aquatic Monitoring Center sees strong value in monitoring aquatic macroinvertebrates because changes in their indices quickly reflect changes in aquatic habitats – even within one year of management activities in the affected watershed.

This analysis uses the Forest Plan and also applies the 1982 NFMA MIS regulations:

“Management Indicator Species (MIS) are species identified by the USDA-FS to fulfill requirements of 36 CFR Chapter II - 219.19. MIS are used as proxies to monitor habitat conditions. For the MLSNF, there are the following MIS:

Mule deer (*Odocoileus hemionus*)

Northern goshawk (*Accipiter gentilis*)

Golden eagle (*Aquila chrysaetos*)

Aquatic macroinvertebrates (several phyla)

Elk and mule deer are discussed in part 3.3.1.1.1 above. The northern goshawk is discussed in part 3.3.1.1.2, Special Status Animal Species, above.” EA page 19-20

No other NFMA regulations are cited or relied upon. The only NFMA regulations cited and used are the 1982 NFMA regulations, including 36 CFR part 219.19. This is consistent with the Forest Plan and its FEIS and ROD that this decision has been tiered to.

Page 35 and other parts of the EA discloses smaller but measurable impacts to terrestrial MIS for the “short term” 30 year duration of the action approved. EA page 34 notes that the golden eagle MIS effects could result in territory abandonment. Sedimentation is an impact on the aquatic community and its macroinvertebrates MIS. As disclosed earlier and on page 48 of the ea there will be temporary major impacts (defined as severe adverse impacts in the EA) from sedimentation increases followed by lesser minor (but

measurable) additional impacts from the action approved that would last about 3 decades. In light of this appellant points the Regional Forester to page 20-21 of the EA:

“Aquatic Macroinvertebrates

Aquatic macroinvertebrates are a group of water-dwelling invertebrates (insects, crustaceans, mollusks, worms, etc.) that are important as indicators of water quality and as a prey base for fish. Key representatives are the insect orders Ephemeroptera (mayflies), Plecoptera (stoneflies), and Trichoptera (caddisflies), whose immature forms are aquatic. Because different species have different tolerances for environmental conditions, the particular mix of macroinvertebrates present can give an indication of water quality. Several numerical indices based on macroinvertebrate composition, such as the Hilsenhoff Biotic Index (HBI) and the Biotic Condition Index (BCI), are used to infer water quality.

Aquatic macroinvertebrates in Rilda Canyon Creek were sampled at several locations in May 2004. A total of 814 individuals representing 33 taxa were collected in 6 samples. Mayflies of the genus *Baetis* dominated the samples (nearly half of the total specimens), with *Cinygmula* mayflies and oligochaete worms secondary dominants, comprising around a tenth of the total each (Vinson 2004). The Rilda Canyon Creek samples had a mean HBI of 3.28 (0-10 scale), indicating “slight organic enrichment.” The mean dominance weighted community tolerance quotient (CTQd) was 72. This index varies from around 20 to 100; lower values indicate better water quality (Vinson 2004). Using a potential (i.e. reference, or CTQp) value of 50 with this CTQd gives a BCI value of 69.4, which does not meet the Forest Plan standard of 75. Existing BCI data suggest that portions of the Huntington Creek watershed are stable and portions are experiencing a downward trend, but there are too few data to reliably determine trends for macroinvertebrates on the MLSNF (USDA-FS 2005b).” EA page 20-21.

The above establishes that there is a:

- Failure to gather population trend data for this MIS;
- Failure to meet Forest Plan standard (committed to in the Forest Plan ROD) of a minimum macroinvertebrates MIS of BCI 75;
- Failure to gather data and maintain Forest Plan monitoring and standards for HBI.

All of the above is in violation of the Forest Plan and NFMA. This also is in violation of NFMA regulations cited and applied for this project that includes 36 CFR part 219.19.

This is also in violation of NEPA and its implementing regulations at 40 CFR part 1505.2 and 1505.3. “Mitigation (1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency”

As noted earlier page 14 of the Forest Plan ROD states, “Maintaining visual quality objectives, viable populations of wildlife management indicator species” ...”are all examples of standards and guidelines which act as mitigation measures.” It goes on to state, “Mitigating measures, stated as standards and guidelines, are intended to be

adopted and enforced in project level activities” Failure to monitor, and the failure to enforce the monitoring and mitigation measures for MIS such as the macroinvertebrates MIS with this action implementing the Forest Plan that was approved in with the Forest Plan ROD is arbitrary, capricious, and in violation of NEPA, its above implementing regulations, and the APA.

III. The Manti-La Sal National Forest violated the mandate of the Administrative Procedures Act.

The Manti-La Sal National Forest acted arbitrarily and capriciously in reaching its decision. The APA requires all agency actions to conform to general standards of regularity and rationality. The courts will overturn agency decisions that are “arbitrary, capricious, or an abuse of discretion.”³ The Supreme Court has held:

“Normally, an agency [action] would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”⁴

The appellant has demonstrated that the Forest Service acted arbitrarily and capriciously in violation of the APA and NEPA by issuing the FONSI when the evidence in the EA runs counter to the finding of no significant impact. The failures to commit to, implement, and follow the monitoring and standards committed to in the Forest Plan ROD for MIS such as macroinvertebrates monitoring and minimum standards is arbitrary and capricious, violating the NEPA and the APA. The NFMA and Forest Plan violations relating to MIS are also already demonstrated to be in violation of the APA.

³ 5 USC 706

⁴ Motor Vehicle Manufacturers’ Association v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983)

Request for Relief

Due to the violations of the numerous Federal laws, regulations, the Forest Plan, its FEIS and ROD, the appellant asserts that this project cannot be considered legal. The appellant requests relief in the form of a full remand of the decision made in the DN/FONSI for this project.



September 1, 2005

Tom Lloyd,
Ferron/Price Ranger District,
Manti-La Sal National Forest
Box 310
Ferron, Utah 84532

Dear Tom,

The Utah Environmental Congress (UEC) and Grand Canyon Trust appreciate this opportunity to submit comments on the proposed action to drill for exploratory holes for water development in the Right Fork of Rilda Canyon and in Mill Fork Canyon. UEC and Grand Canyon Trust are interested parties, and we would like to be maintained on electronic, mailing, and contact lists for this proposed action.

The scoping letter received on August 18th and the legal notice published on August 16th request that substantive comments be sent to Tom Lloyd by September 2, 2005. Substantive comments are defined in both notices (attached) as, "Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision." This is the correct and appropriate definition of substantive comments, as it is defined by the ARA comment and appeal regulations at 36 CFR§215.2. Arbitrarily, the 2-week comment period specified in the legal notice in the newspaper of record and scoping letter is not the legal comment period. "Comment period" is defined at 36 CFR§215.2 as, "The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment." The required comment period for all proposed actions implementing the Forest Plan must be 30 days, and we request that the Forest provide the required comment period on this proposed action, which has not been provided to-date. If you choose to ignore this requirement please explain your rationale for denying that in writing.

The portions of the ARA regulations at 36 CFR§215 that exempted categorically excluded (CE) proposed actions implementing the Forest Plan from comment and appeal regulations have been found to be illegal and were struck from the CFR two months ago. CE's are subject to the substantive comment period and are appealable, as mandated by Congress when it passed the ARA in 1992. As indicated below in the court's order, §215.4(a) that excluded CEs from notice and comment procedures and §215.12(f) that excluded CEs from appeal procedures have been severed from the Forest Service ARA comment and appeal regulations:

"IT IS THEREFORE ORDERED:

The following regulations are invalid as stated in this Order and will be severed from the Forest Service regulations: 36 C.F.R. § 215.4(a) (excluding from notice and comment procedures projects and activities that are categorically excluded from documentation in

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an EIS or EA); 36 C.F.R. § 215.12(f) (excluding from appeal procedures decisions that have been excluded from documentation in an EIS or EA); 36 C.F.R. § 215.20(b) (exempting from notice, comment, and appeal procedures decisions signed directly by the Secretary); 36 C.F.R. § 215.10(a) (permitting delegation of the determination that an emergency situation exists); and 36 C.F.R. § 215.18(b)(1) (providing that an appeal decision will be sent to appellants five days after the decision is rendered). Dated at Anchorage, Alaska, this 2nd day of July 2005. /s/James K. Singleton, Jr. JAMES K. SINGLETON, JR.

*United States District Judge IN THE UNITED STATES DISTRICT COURT
Case No. CIV F-03-6386 JKS*

The Forest needs to notice this action pursuant to the ARA regulations §215 and allow for the 30-day substantive comment period. This has not been done as 2 weeks is not the regulations' required 30-day substantive comment period on the proposed action. Given that 36 CFR§215.12(f) has been stricken from the CFR, this decision will be subject to the ARA appeal process even if the proposed action is Categorically Excluded. This proposed action needs to be noticed for 30 days and the decision made administratively appealable under the ARA regulations at 36 CFR §215. If this is not done, the Forest will be in contempt of court and will violate the ARA. Please let us know as soon as possible in writing if you do not intend to provide the ARA's 30 day substantive comment period on this proposed action or if you do not intend to make the decision for this action subject to administrative appeal. If you do intend to provide the ARA's 30 day substantive comment period on this proposed action and you intend to make this decision subject to administrative appeal, we do not need you to write us and tell us that, as providing those ARA public involvement procedures is expected because it is the law.

The map attached to the scoping letter indicates a clear need to authorize temporary and/or long term use of some roads or routes that are not currently classified or temporary roads. One example is the (at least temporary) road access that will be needed to access proposed drill hole #2, which is in or immediately adjacent to Left Fork Rilda Canyon Creek. Granting use through any permit or authorization approving the current proposed action, even if temporary, for the unclassified roads and other routes that are not classified roads in the area is an activity that constitutes new road construction per the National forest transportation system CFR direction at 36 CFR§212.

Some of new road construction and road use would appear to also be inside IRA and/or draft roadless, undeveloped area identified for the Forest Plan revision. The analysis of impacts from this and compliance with law/regulation would require at least an environmental assessment in and of itself. Significance under NEPA can be triggered even just by the possibility of a proposed action being in violation of law/regulation. We remind the Forest of the following road-related definitions:

“Classified Roads. Roads wholly or partially within or adjacent to National Forest System lands that are determined to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.” 36 CFR§212.1

“Unclassified Roads. Roads on National Forest System lands that are not managed as part of the forest transportation system, such as unplanned roads, abandoned travelways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were

once under permit or other authorization and were not decommissioned upon the termination of the authorization.” 36 CFR§212.1

“New Road Construction. Activity that results in the addition of forest classified or temporary road miles.” 36 CFR§212.1

“Road Reconstruction. Activity that results in improvement or realignment of an existing classified road as defined below:

(1) Road Improvement: Activity that results in an increase of an existing road's traffic service level, expands its capacity, or changes its original design function.

(2) Road Realignment: Activity that results in a new location of and existing road or portions of an existing road and treatment of the old roadway.” 36 CFR§212.1 (Emphasis added)

We remind the Forest that unclassified roads are not, by definition, under permit or authorization. The proposal described in the scoping letter would involve authorization for use of unclassified roads and/or non-existent routes not even identified as unclassified roads with this decision and associated permits or authorizations. This indicates that segments of unclassified road (or other unspecified routes) must be added as classified or temporary road to approve the currently proposed action. (Conversely, to permit authorized use of an unclassified road [without designating it as a temporary or classified road] would be in violation of the transportation system regulations at 36 CFR §212 and FSM 7710-7712 direction.) The description of new road construction (temporary and/or classified) that would occur with the proposed action needs to be clearly disclosed, and the effects analysis needs to be completed in an environmental document before approving the proposed action.

Furthermore, the road construction (temporary and/or classified) inherent to the proposed action (but not clearly disclosed) is also inconsistent with the Roadless Area Conservation Rule and recent Bush administration interim directives for roadless area conservation. This may need to be a decision that is signed by the Chief of the Forest Service due to the road construction in IRA. The road use and construction would also result in direct, indirect and cumulative impacts to the aquatic and riparian communities and habitats in South Fork Rilda Canyon creek, North Fork Rilda Canyon creek, and Mill Fork Creek.

Is this proposed action consistent with the Forest Plan and the 1982 NFMA regulations it is developed and implemented pursuant to? With the planning, analysis, and implementation of the proposed action, is the Forest relying upon the current Forest Plan and the 1982 NFMA regulations it is based entirely upon? Please let us know in writing as soon as possible if this is not the case, as we will have additional substantive comments if the proposed action is being analyzed and/or implemented pursuant to the 2005 NFMA regulations instead of the Forest Plan/1982 regulations. Furthermore, given that the Forest has not implemented an EMS with a minimum scope that includes the “land management planning process,” implementation of this action could not possibly be consistent with the 2005 NFMA implementing regulations or directives. Additional comments on the proposed action as it relates to NFMA and the Forest Plan will be raised again later in these comments.

The past, present, and reasonably foreseeable cumulative impacts of this project and in the affected watersheds and habitat areas will potentially cause long lasting and cumulatively significant environmental impacts. The markedly out of date macroinvertebrates MIS data for the

creeks in and near this project area clearly indicates that existing impacts in the watershed had resulted in sub-standard water quality and below-standard aquatic MIS population trends.

The proposed stream disturbance, drilling, and the associated larger action to install a new coal mine portal, road and facility (with wastewater to be disposed) from the larger proposed action in the project area action raise many questions with respects to how stream flow and quality will be impacted. If stream flow is to be compromised in any way through stream water displacement, loss of water, the human environment will deteriorate. The proposed action could cause potential adverse effects to area wildlife, fish, and vegetation, which all depend on a reliable source of water. Aquatic wildlife of particular concern includes macroinvertebrates, Colorado River cutthroat trout populations/habitat, resident trout, amphibians, and mollusks. At this point there are likely impacts to macroinvertebrates, a Manti La Sal National Forest management indicator species, which would result from this proposed water drilling action, as well as the larger action it is associated with – the new coal mine portal, road, and facility. There are also unanswered questions about the extent of potential harm to local as well as downstream populations of trout and TES fish or their habitat. A detailed analysis will be necessary to determine the extent of impacts to aquatic species in the project area and downstream. Because this is associated with the larger proposed action that is in this project area to construct a new coal mine portal, road, and facility, we are attaching UEC's earlier comments on the larger proposed action in the project area to these substantive comments because they bear directly upon and raise substantive concerns relating to the proposed action.

Full analysis of threatened and endangered species as well as consultation with U.S. Fish and Wildlife Service should be conducted for potentially impacted T and E aquatic species or their habitat. The project area is in fact near active Golden eagle MIS, goshawk MIS, other protected raptors, and other avian TES wildlife that would be impacted by the proposed action directly, indirectly, and cumulatively. This needs to be disclosed and analyzed before approving this action, closely monitored during implementation. Also, appropriate, proven-effective mitigation measures need to be required in the decision document if this proposed action is approved.

While it is obvious that the described proposed action should be inside the project area, it is not clear what the size, location, and extent of the project area for the proposed action actually are. Please mail UEC a map of the project area for this proposed action as soon as it is available. What selected MIS *in the project area* (as opposed to the whole National Forest) are being used in the analysis and monitoring of the proposed action? It is important to select and monitor more than just a few MIS with population trend data inside the project area to meet NFMA and the Forest Plan's fish and wildlife diversity MIS mandates. The 10th Circuit Court of Appeals ruling in UEC's favor on the 1000 Lakes Timber Sale directly informs this concern:

Under a plain reading of § 219.19 and UEC I, we conclude that the Forest Service must select an MIS with some evidence that it is "present in the [project] area." The Forest Service must then collect "actual, quantitative population data," id. at 1226, to monitor population trends and to determine relationships to habitat changes. See 36 C.F.R. § 219.19(a)(6). It must also confirm, with "good faith efforts," the presence of the selected MIS within a project area. UEC I, 372 F.3d at 1230. If no MIS representative is "present in the [project] area," the Forest Service must show good-faith efforts to confirm and explain the absence of selected MIS. It may be that the Forest Service selected an improper guild, or actions previously taken may have had a significant deleterious effect on the chosen MIS. "[W]here impossible, the Forest Service is not required by the applicable statutes and regulations to

collect population data.” *Id.* at 1229.

*The Forest Service must select within each guild an appropriate MIS that is present in the project area. Selecting only one or two (or a few) acceptable MIS actually present in a project area cannot satisfy the overall monitoring obligations of § 219.19. See Martin, 168 F.3d at 7 (concluding that the Forest Service violated §§ 219.19 and 219.26 because it “ha[d] no population data for half of the MIS in the Forest and thus [could not] reliably gauge the impact of the timber projects on these species”). Utah Env’tl. Cong. v. Bosworth, No. 03-4251, 2005 U.S. App. LEXIS 17619, at *1 (10th Cir. Aug. 19, 2005). (Emphasis added.)*

A PDF copy of the ruling is available at www.uec-utah.org. As this Circuit Court has ruled, the Forest Service is entitled deference in the MIS it selects for projects implementing the Forest Plan, but in order to meet the requirements of §219.19, that MIS selection *must include MIS actually in the project area* so that the effects of the project on the MIS population trends can be determined and analyzed in meeting the NFMA and Forest Plan requirements. What MIS have you selected and monitored for the environmental analysis in the environmental document that is to be prepared? More than just a few need to be selected and monitored in the project area. Please let us know in writing as soon as possible and before a decision has been signed which MIS have been selected for the analysis in this project area, and what their population data is in the project area, and how it was decided that these MIS meet and effectuate the Forest Plan and NFMA wildlife diversity and MIS monitoring obligations.

The construction of the drills, waste water, and particularly the many water diversions and ancillary facilities would likely cause the elimination and/or damage to riparian vegetation thereby decreasing habitat for wildlife and MIS that depend on riparian vegetation.

Big game species in particular rely on habitat in the area. UDWR identifies this area as critical value big game habitat. Mule deer and Rocky mountain elk (among others) are both management indicator species for the Forest. The Forest Service must comply with applicable law and regulations incorporated into the Forest Plan (and its FEIS) direction, fish and wildlife direction, and conduct a quantitative analysis of population trends of these MIS prior to project approval and development 36 C.F.R. §§219.19 and 219.26 as relied upon in the Forest Plan and its FEIS. The Forest Service needs to present population data for the MIS and must use this data to determine relationships between the habitat impacts and population changes. Such data must be provided and evaluated in a site-specific EA or EIS for the project area. Specifically, any site-specific analysis must address the impacts of development and drilling to MIS, MIS populations, and MIS habitat. The Forest has not been collecting aquatic MIS trend data in the affected watershed using the three indices required in the Plan, and what old data does exist demonstrates that the water quality and aquatic MIS trend data are below standards and Forest Plan direction. This action to further disturb and impact the three creeks in or adjacent to the proposed drilling and associated coal/water developments, which will disturb the highly erosive soils in the drainage will add cumulatively to the sub-standard conditions.

Because this project will occur on Forest Service lands, compliance with the Manti-La Sal Land Resource Management Plan (LRMP) is required and conformity with the requirements NF’s LRMP must be demonstrated. The Manti La Sal LRMP requires protection of deer/elk habitat

and their water sources.¹ The Manti-La Sal National Forest ranks first out of all six Utah National Forests in potential to produce big game. The LRMP requires that habitat be maintained for minimum viable populations of vertebrate wildlife species. Id. at III-22. This requires that habitat and habitat diversity improvement or at least maintenance of the status quo. Id. Specifically vegetative composition should be maintained to at least 50% of current habitat (1980) for existing wildlife. Id.

The project as currently proposed will remove and impact vegetation and also degrade habitat quality for wildlife thereby eliminating some suitable habitat for project area species. The value of riparian vegetation and habitat cannot be understated particularly in this relatively dry region of the state. Due to the dewatering of surface waters, fracturing of subsurface aquifers and hydrological disruption caused by this mine in recent years in the greater electric lake/Huntington creek watershed, the cumulative impacts to aquatic, riparian, TES and MIS resource conditions must be disclosed. An estimated 60-70% of western bird species (Ohmart 1996) and as many as 80% of wildlife species in Arizona and New Mexico (Chaney et al. 1990) and in southeastern Oregon (Thomas et al. 1979) are dependent on riparian habitats. Because of this riparian ecosystems are considered to be important repositories for biodiversity throughout the west. A.J. Belsky, A. Matzke, S. Uselman, 1999.

Riparian zones provide key service for all ecosystems, but are especially important in dry regions, where they provide the main source of moisture for plants and wildlife, and the main source of water for downstream plant, animal, and human communities. (Meehan et al. 1977, Thurow 1991, Armour et al. 1994). Rooted streamside plants retard streambank erosion, filter sediments out of the water, build up and stabilize streambanks and streambeds, and provide shade, food, and nutrients for aquatic and riparian species. (Weingar 1977, Thomas et al. 1979, Kauffman and Kruegar 1984). In short the elimination of riparian vegetation will cause irreversible impacts that harm the long term integrity of this area. We recommend that any component of this project that would have any impacts to the watershed, hydrology and aquatic habitat be eliminated from consideration. To accomplish this would necessitate alternative water drilling locations far away from these three creeks.

To what extent water has been utilized (or will be utilized) as a consumptive use is unknown and must be analyzed in any EA or EIS. Regardless, water diversion that is clearly foreseeable in this instance (and consumptive use practices) could threaten downstream Colorado River endangered fish including the Colorado pikeminnow, humpback chub, bonytail chub, and razorback sucker. The US Fish and Wildlife Service considers depletion of water in the Colorado River drainage a threat to the existence of these endangered fish.

Aside from potential problems created by stream alteration and wastewater issues, there is reason to believe that water quality standards are not being met or would be impaired directly, indirectly or cumulatively. The removal of vegetation, the use of roads through heavy equipment, drilling machinery, and potential oil and waste water spills could all cause water quality to deteriorate. This project could easily cause water quality standards to deteriorate further than they currently have. The reviewing agency (Forest Service in this case) will need to show how the proposed project will comply with all applicable water quality standards. Failure to do so will cause the lead agency to violate the federal Clean Water Act as implemented by the state of Utah.

¹ "In areas of historic water shortages during the dry season of the year develop water as appropriate."
"Manage key deer and elk habitat so as to minimize disturbance during the period of use." LRMP at III-20.

The lead agency may also need to comply with other provisions of the Clean Water Act based on the proposed stream diversion. This may include compliance with §404 of the CWA or some additional stream alteration permit. Stream alteration permits are typically obtained from the state engineer's office although in certain instances the U.S. Army Corp of Engineers may need to approve the permit. These permits must be obtained prior to release of a draft EA or EIS. Further, the impacts of the diversion (and compliance with the CWA) must be analyzed in the EA or EIS.

The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). "The word 'integrity' . . . refers to a condition in which the natural structure and function of ecosystems [are] maintained." H.R. Rep. No. 92-911, at 76 (1972); see also Minnehaha Creek Watershed Dist. v. Hoffman, 597 F.2d 617, 625 (8th Cir. 1979). The legislative history of the Clean Water Act, in turn, defines "natural" as "that condition in existence before the activities of man invoked perturbations which prevented the system from returning to its original state of equilibrium." H.R. Rep. No. 92-911, at 76. "Any change induced by man which overtaxes the ability of nature to restore conditions to 'natural' or 'original' is an unacceptable perturbation." H.R. Rep. No. 92-911, at 77.

According to Congress, a primary goal of the CWA is to maintain the natural structure of streams. Such an interpretation is supported by case authority which holds that the "Clean Water Act should be construed broadly to encompass deleterious environmental effects of projects." Riverside Irrigation Dist. v. Andrews, 568 F. Supp. 583, 588 (D. Colo. 1983), aff'd 758 F.2d 508 (10th Cir. 1983). Taking a live stream and channeling it through an artificial diversion violates the natural structure of the stream. As one recent case stated:

The Clean Water Act (CWA) was "a bold and sweeping legislative initiative," United States v. Commonwealth of P.R., 721 F.2d 832, 834 (1st Cir. 1983), enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a)(1994). "This objective incorporated a broad, systematic view of the goal of maintaining and improving water quality: as the House report on the legislation put it, 'the word "integrity" ... refers to a condition in which the natural structure and function of ecosystems [are] maintained.'" United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 132, 106 S.Ct. 455, 462 (1985) (quoting H.R.Rep. No. 92-911, at 76 (1972) U.S. Code Cong. & Admin.News 1972, at 3744). Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1294 (1st Cir. 1996).

Under the CWA, states must adopt water quality standards for all water bodies within the state. 33 U.S.C. § 1313.

These standards include three components: (1) designated uses for each body of water, such as recreational, agricultural, or industrial uses; (2) specific limits on the levels of pollutants necessary to protect those designated uses; and (3) an antidegradation policy designed to protect existing uses and preserve the present condition of the waters.

National Wildlife Fed'n v. Browner, 127 F.3d 1126, 1127 (D.C. Cir. 1997) (citing 40 C.F.R. §§ 131.10 - 131.12).

“A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.” 40 C.F.R. § 131.2. EPA implementing regulations define designated uses of water as “those uses specified in water quality standards for each water body or segment whether or not they are being attained.” 40 C.F.R. § 131.3(f). The minimal designated use for a water body is the “fishable/swimmable” designation. See 33 U.S.C. § 1251(a)(2).

Thus, in any EA or EIS prepared for the project the lead agency must (1) determine the designated uses for creeks in the area; (2) analyze the specific limits on the levels of pollutants necessary to protect those designated uses; and (3) and demonstrate how multiple stream diversions comply with the anti-degradation policy designed to protect existing uses and preserve the present condition of the waters.

The U.S. Supreme Court has squarely held that:

The text [of the CWA] makes it plain that water quality standards contain two components. We think the language of § 303 is most naturally read to require that a project be consistent with *both* components, namely, the designated uses *and* the water quality criteria. Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.

PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700, 714-715, 114 S.Ct. 1900 (1994)(emphasis in original).

The action cannot violate state and federal antidegradation regulations. According to federal regulation, applicable antidegradation policies “shall, at a minimum, be consistent with . . . [e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1). Under this regulation, “**no activity is allowable . . . which could partially or completely eliminate any existing use.**” PUD No. 1, 511 U.S. at 718-19, 114 S.Ct. at 1912 (emphasis added)(citing EPA, Questions and Answers on Antidegradation 3 (Aug. 1985)). Thus, any activity which would even *partially* eliminate those uses in affected creeks is not permitted.

Under the CWA, the minimum designated use for navigable water is the “fishable/swimmable” designation, which “provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(2). But the protection is not limited to streams which support fish: A water body composed of solely plants and invertebrates is also protected under the antidegradation policy. Bragg v. Robertson, 72 F. Supp.2d 642, 662 n.38 (S.D. W. Va. 1999) (citing EPA, Water Quality Standards Handbook § 4.4). Under federal regulations, limited degradation is permitted only where (1) the quality of the water exceeds levels necessary to support the fishable/swimmable use designation, and (2) the quality of water necessary to protect all existing uses is maintained. 40 C.F.R. § 131.12(a)(2).

By creating artificial stream diversions in the larger proposed action that this action is a part of, which by their very nature cannot support aquatic life, and by drilling in and adjacent to these three creeks, the Forest would potentially violate the antidegradation policy. The quality and quantity of water necessary to protect existing aquatic life and other designated uses **must** be maintained and such demonstration must take place in any EA or EIS developed for the project. See 40 C.F.R. § 131.12(a)(2). Because artificial diversion of the stream and proposed drilling in and adjacent to three streams would essentially turn the relevant portion of the living streams into

a dead stream, incapable of supporting plants, fish and other wildlife, proposed diversions potentially violates the antidegradation policy under the Clean Water Act and is therefore, likely unlawful. An EA/EIS is clearly indicated due to cumulatively significant impacts and CWA concerns.

For this project, environmentally preferable alternatives to the proposed action likely exist that have not yet been developed that would maintain the stream course in its current state and avoid impacts to water quality, quantity, aquatic habitat, riparian habitat, wetlands, TES and MIS wildlife populations/habitat. One immediately obvious environmentally preferable alternative is to explore off-Forest alternative drilling locations for additional water removal, or alternative drilling locations far away from these three creeks in the project area.

What monitoring system is in place that measures how mining has impacted surface hydrology, vegetation, and TES/MIS wildlife populations in this project area?

It is not consistent with the direction of the NEPA regulations or the FSH to CE this project from analysis and public disclosure in an environmental document (EA/EIS). Some of these issues were addressed earlier in these comments, but not specifically in terms of impacts to extraordinary circumstances and FSH direction. This project area has valuable habitat for (and may have populations of) TECPS species. This is critical big game habitat, a particularly important resource condition that will (and not just may) be cumulatively impacted by the proposed action. There will also be direct/indirect/and cumulative impacts to wetlands and aquatic communities/habitat. These constitute extraordinary circumstances. Furthermore significant state and/or federal dollars have already been spent to conserve/improve this critical and high value habitats and populations of TES resource conditions in the watershed.

Also, as mentioned earlier, we comment that parts of the project area are identified by the UEC as qualifying roadless, undeveloped area, and by the Manti-La Sal NF as partially inside IRA. This also involves impacts to this resource that cumulatively may be significant. New road construction and use, as well as the proposed drill pads, waste substances, and drill facilities will undoubtedly impact/effect this roadless resource condition. Pursuant to FSH 1909.15 chapter 30 section 30.3 this proposed action must not be categorically excluded because it will have impacts on several resource conditions that will result in extraordinary circumstances. Furthermore, the impacts on the TES, IRA, wetland, and other listed resource conditions (FSH) may easily be directly, indirectly, and cumulatively significant. An EIS is indicated, not categorical exclusion.

In terms of the NEPA regulations, this proposed action may have significant cumulative effects on the human environment, especially TEPCS, MIS, and big game, as well as potential wilderness area, and wetlands and aquatic/riparian communities and downstream water uses. Given that cumulative impacts in the area resulting from the connected action to build a new mine portal and facility in this project area will be significant, an Environmental Impact Statement (EIS) and not merely an EA is required. At this point the environmental impacts of the proposed project are unknown, but the proposed drilling in and near the three streams and tapping of the underlying aquifer may cause individually and/or cumulatively significant impacts. This is particularly obvious when impacts of this action are contemplated in light of the significant impacts of the directly associated larger action or plan for a new coal mine portal and facility right on top of and next to these creeks. A recent federal court has explained that "an EIS must

be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor. To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient". League of Wilderness Defenders - Blue Mts. Biodiversity Project v. Marquis-Brong, 259 F. Supp. 2d 1115 (D. Or. 2003).

Cumulative impacts to Colorado River cutthroat trout habitat and other T and E fish habitat in this watershed also, may be cumulatively significant. The cumulative effects analysis must account for the past, present, and reasonably foreseeable cumulative effects from the current subsidence mining as well as very reasonably foreseeable expansions of this mine in the watershed and project area. Please read attachments that outline just a few of the existing and reasonably foreseeable coal mining actions in this project area that must be addressed.

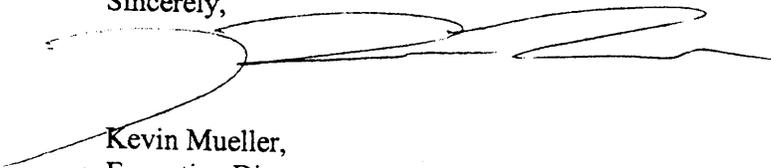
Tiering this decision to the Forest Plan EIS will not meet requirements for cumulative effects analysis of the currently unprecedented level of coal exploration on the Forest because the Forest Plan lacks an adequate programmatic cumulative effects analysis of current levels of coal exploration and extraction on the Forest. This further underlines the need to proceed with an EIS.

The Migratory Bird Treaty Act (MBTA) makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs.² Executive Order 13186 issued in January of 2001 re-instituted the responsibilities of Federal agencies to comply with the MBTA. It's well known that many migratory bird species are currently declining across the intermountain west, and the proposed action may result in cumulatively significant impacts to and taking of migratory bird resources. We recommend the Forest conduct a rigorous evaluation using the newest data and research to minimize impacts to migratory birds (and their habitat), including a focus on species on the 2002 List of Birds of Conservation Concern and species that are listed among the Partner's in Flight Priority Species. To help meet responsibilities under Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), the UEC recommends that you conduct activities outside critical breeding seasons for migratory birds, minimize temporary and long-term habitat losses, and mitigate all unavoidable habitat losses. If your activities occur in the spring or summer, we recommend you conduct surveys for migratory birds to assist you in your efforts to comply with the Migratory Bird Treaty Act (16 U.S.C. 703-712) and E.O. 13186. If some portion of your mitigation includes off-site habitat enhancement, it should be in-kind and either within the watershed of the impacted habitat or within the foraging range of the habitat-dependent species. To be in compliance with the language and intent of the MBTA and EO 13186, and NEPA's mandate for rigorous analysis, the environmental analysis must disclose and rigorously analyze how the proposed activities would or would not be in compliance with the Migratory Bird Treaty Act and Executive Order 13186. The Forest has been instructed to "develop and implement, within two years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations." (EO 13186 § 3) We are not aware of any current MOUs. Please demonstrate within the environmental analysis for this project that such an MOU has been developed and entered into with the USFWS. Because this is such an important issue that should inform the public and the decision maker, we request a copy be provided within or as an appendix to the final document, and not simply included in the project file.

² 16 U.S.C. § 703-712.

We also request an opportunity to provide comments on the site-specific environmental document and any supporting scientific/specialist reports before a decision has been made. Failure to provide the environmental document (EA/EIS) for comment before a decision is made would be in violation of the NEPA. The regulations implementing the ARA do not conflict with or override this NEPA requirement. We thank you for the opportunity to comment on this project, and look forward to receiving a copy of the EA or EIS when it is released so that we may comment on the NEPA environmental analysis.

Sincerely,



Kevin Mueller,
Executive Director
Utah Environmental Congress

Mary O'Brien
Grand Canyon Trust



United States
Department of
Agriculture

Forest
Service

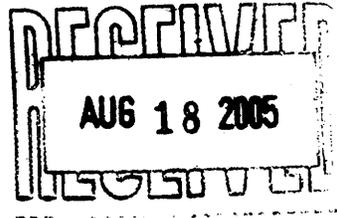
Manti-La Sal
National Forest

Ferron/Price Ranger District
Ferron Work Center
115 West Canyon Road
P.O. Box 310
Ferron, UT 84523
Phone # (435) 384-2372
Fax # (435) 384-3296

File Code: 1950-1/2820-4

Date: August 16, 2005

Kevin Mueller
Utah Environmental Congress
1817 South Main, #9
Salt Lake City, UT 84115



Dear Kevin:

The Ferron/Price Ranger District, Manti-La Sal National Forest is evaluating the possible environmental effects of a proposal from Energy West/PacifiCorp to conduct hydrologic investigation in the Right Fork of Rilda Canyon (Sec. 29, T. 16 S., R. 7 E., SLBM) and in Mill Fork Canyon (Sec. 21, T. 17 S, R. 7 E, SLBM) (Map I). The purpose of the investigation is to further study the feasibility of developing a new water collection system for the North Emery Water Users Special Service District. The drilling would occur on National Forest System lands administered by the Manti-La Sal National Forest.

The proposal is to drill 4 holes, a maximum of 60 feet deep. Access to the drill sites would be on existing roads. Drilling would be done along existing roads with a truck-mounted rig. Surface disturbance would be less than 100 sq. ft. per site, and would be reclaimed to Forest Service specifications. Since the project as proposed, would have minimal disturbances to land and resources, it is anticipated this may be categorically excluded from further NEPA analysis (EA or EIS) under category 31.2(8), Forest Service Handbook, 1909.15.

The public is invited to comment on the proposed action. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this solicitation, must include name, organization and address of those who comment, and will be considered part of the public record for this project. Comments should be sent to Tom Lloyd, Ferron/Price Ranger District, Manti-La Sal National Forest, Box 310, Ferron, Utah 84523, by September 2, 2005.

For further information, contact Tom Lloyd at (435) 384-2372.

Sincerely,

Mesia Nyman Acting For

MESIA NYMAN
District Ranger

Attachment: Proposed Project Area Map



Public Notice:

LEGAL NOTICE

Ferron/Price Ranger diStrict
Manti-La Sal National Forest
Emery County, Utah

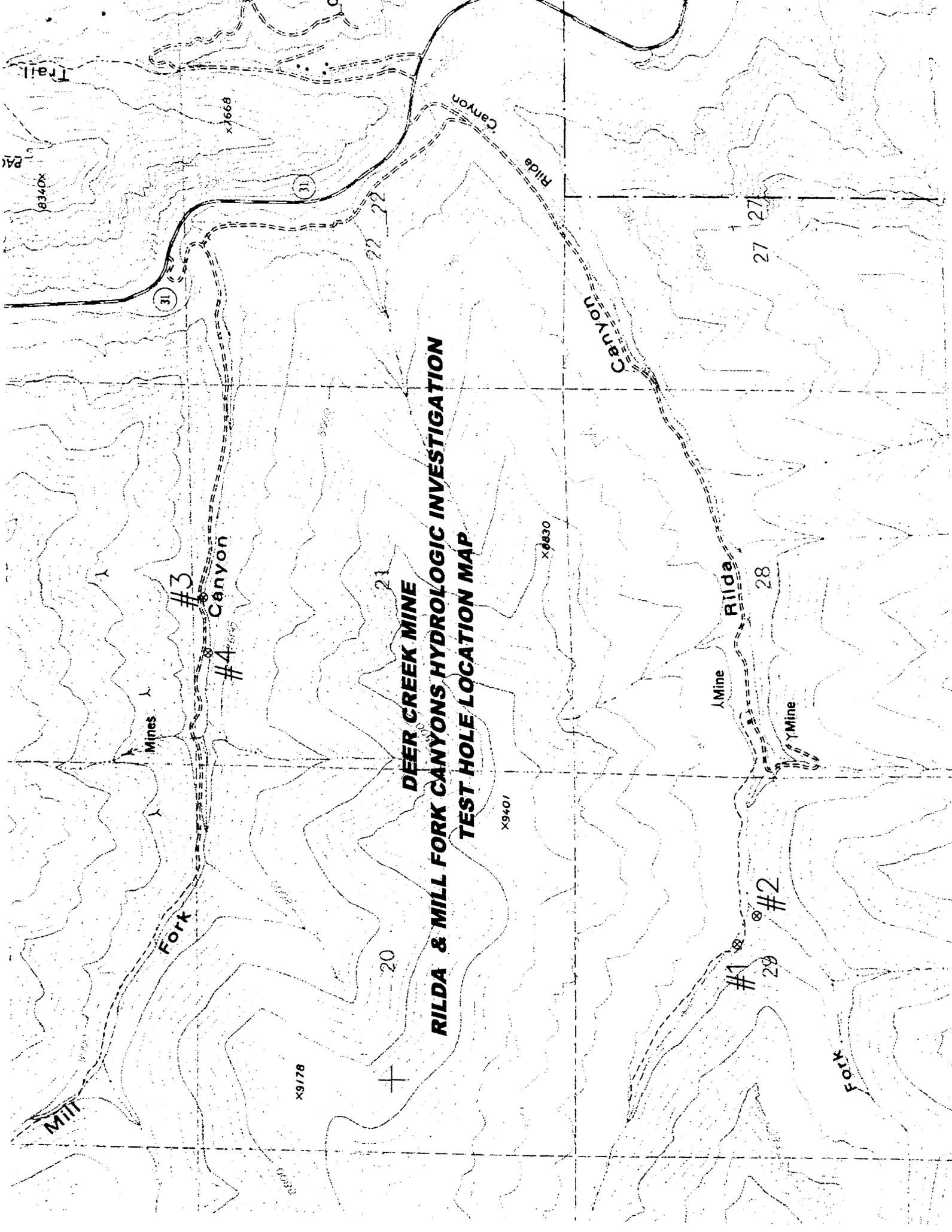
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The public is invited to comment on the proposed actions. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this solicitation, must include name, organization and address of those who comment, and will be considered part of the public record for this project. Comment should be sent to Tom Lloyd, Ferron/Price Ranger District, Manti-La Sal National Forest, Box 310, Ferron, Utah 84523, by September 2, 2005.

For further information, contact Tom Lloyd at (435)384-2372.
Published in the Sun Advocate August 16, 2005.

Public Notice ID: 4173341



**DEER CREEK MINE
RILDA & MILL FORK CANYONS HYDROLOGIC INVESTIGATION
TEST HOLE LOCATION MAP**

Trail

PAI
x1668

31

Mines

Fork

Mill

#3

Canyon

#4

21

20

x9178

x9401

x6830

Canyon

Rilda

Canyon

Mine

Rilda

Mine

27

28

#1

#2

29

Fork

June 1, 2004

Luci Malin
Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
P.O Box 145801
Salt Lake City, Utah 84114-5801

Re: Construction of New Surface Facilities in Rilda Canyon

Dear Ms. Malin:

These comments are being submitted on behalf of Utah Environmental Congress. These comments are submitted in regards to the environmental impacts that are anticipated as a result of the construction of new surface facilities in Rilda Canyon. It is our understanding that UDOGM and OSM will be jointly responsible for preparation of an environmental assessment pursuant to the National Environmental Policy Act 42 U.S.C. §4331 et. seq. Please accept these comments on the proposed Rilda Canyon Portal Facility and incorporate any comment into your EA.

Because of the magnitude and public concern over this project, we believe that the lead agency must, at a minimum, prepare and submit for public review a Draft EA which would be subject to 30-day public notice and comment. Further, we respectfully request a copy of the EA and an opportunity to comment on the EA pursuant to NEPA when it is available. *See* 40 C.F.R. §1503.1.

Notwithstanding the Utah Cooperative Agreement, UDOGM's role as the lead agency for preparation of the EA is inappropriate under the circumstances. First, fulfillment of the duty to prepare an EA is a federal duty under a federal law, namely NEPA. Second, this project will result in significant surface impacts that makes the U.S. Forest Service (NFS or FS) the most appropriate agency to implement duties pursuant to NEPA. Additionally, "for leasing proposals which primarily involve the NFS or adjoining private lands with Federal minerals and which primarily involve NFS issues, the FS will have the lead for environmental analysis and, when necessary, documentation in an environmental assessment or environmental impact statement."¹ Because the Rilda Canyon project is entirely on FS lands and will have direct and irreparable impacts such as stream diversion, vegetation loss, and impacts to wildlife, Federal law requires that FS be the lead agency for preparation of the EA.

There are a number of environmental impacts that are anticipated on the surface that justify the U.S. Forest Service's acting as the lead agency for preparation of an EA. The U.S. Forest Service is charged with the protection of surface resources. 30 C.F.R. §740.4. In this case, the entire project (including construction of a ventilation fan, portal facilities, office, bathhouse, parking lot, and staging areas) will occur on NFS lands.

¹ *See* Interagency agreement between the Bureau of Land Management and the Forest Service for Mineral Leasing

Further, an existing county road would be bypassed to provide access to water developments and other mine facilities, and as acknowledged in the legal notice, the Manti-La Sal National Forest would therefore be the lead agency for issuing any required road easements for the project². Diversion of Rilda Creek through a 1,200 foot culvert is expected, and the driving of a 2100 foot long rock slope to intersect the Hiawatha Seam will all occur on NFS land. Surface disturbance is expected and the diversion of stream flow will likely irreparably impact area aquatic species. Further, the project area located on Rilda Canyon/Creek is directly upstream of Huntington Creek, a state of Utah Blue Ribbon Trout stream, which contains Colorado Cutthroat Trout.

Additionally, because the impacts of this project will potentially cause long lasting and significant environmental impacts, an Environmental Impact Statement (EIS) and not merely an EA is required. At this point the environmental impacts of the proposed project are unknown, but the proposed stream diversion could cause significant impacts. A recent federal court has explained that "an EIS must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor. To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient". League of Wilderness Defenders - Blue Mts. Biodiversity Project v. Marquis-Brong, 259 F. Supp. 2d 1115 (D. Or. 2003).

The proposed stream diversion raises many questions with respects to how stream flow will be impacted. If stream flow is to be compromised in any way through stream water displacement, loss of water or through installation of an imperfectly designed culvert the area environment will deteriorate. The proposed action could cause potential adverse effects to area wildlife, fish, and vegetation, which all depend on a reliable source of water. Aquatic wildlife of particular concern includes macroinvertebrates, amphibians, and mollusks. At this point there are likely impacts to macroinvertebrates a Manti La Sal National Forest management indicator species, which would result from the diversion of Rilda Creek. There are also unanswered questions about the extent of potential harm to downstream populations of trout. A detailed analysis will be necessary to determine the extent of impacts to aquatic species in the project area and downstream.

Full analysis of threatened and endangered species as well as consultation with U.S. Fish and Wildlife Service should be conducted, specifically for the Mexican Spotted Owl (MSO) since this area may contain suitable habitat. Habitat surveying for MSO should be conducted throughout the project area focusing on cliffs, rock outcroppings, and other escarpments, which may contain MSO. The project area is within ½ mile of an active Golden eagle nest that needs to be closely monitored and appropriate mitigation measures provided.

The construction of the culvert facilities would likely cause the elimination of riparian vegetation thereby decreasing habitat for wildlife that depends on riparian vegetation. Big games species in particular rely on such habitat.

² For this reason, and because it is a related and reasonably foreseeable action, any road easement on NFS lands must be analyzed in the EA as part of the cumulative impacts of the project.

Mule deer and Rocky mountain elk (among others) are both management indicator species for the forest. Therefore, the Forest Service must comply with applicable law and regulations and conduct a quantitative analysis of population trends of these MIS prior to project approval and development. 36 C.F.R. §§219.19 and 219.26 (1999). The Forest Service needs present population data for the MIS and must use this data to determine relationships between the habitat impacts and population changes. Such data must be provided and evaluated in a site-specific EA or EIS for the project. Specifically, any site-specific analysis must address the impacts of development to MIS, MIS populations, and MIS habitat.

Because this project will occur on Forest Service lands, compliance with the Manti La Sal Land Resource Management Plan (LRMP) is required and conformity with the requirements NF's LRMP must be demonstrated. The Manti La Sal LRMP requires protection of deer/elk habitat and their water sources.³ This particular area of Utah is traditionally scarce in water and thus a diversion of Rilda Creek (and associated development) could sacrifice available water resources. The removal of riparian vegetation could potentially disturb big game habitat, and would therefore violate the forest plan.

The Manti La Sal National Forest ranks first out of all six Utah National Forests in potential to produce big game. MLS LRMP, p. II-29. "The primary land uses associated with the area are wildlife habitat, critical winter range for elk, and high priority summer range for deer and elk". *Minor Exploration Analysis and Findings for the Deer Creek Mine*, p. 7. The LRMP requires that habitat be maintained for minimum viable populations of vertebrate wildlife species. *Id.* at III-22. This requires that habitat and habitat diversity improvement or at least maintenance of the status quo. *Id.* Specifically vegetative composition should be maintained to at least 50% of current habitat (1980) for existing wildlife. *Id.*

The project as currently proposed will remove vegetation thereby eliminating suitable habitat for area species. The value of riparian vegetation and habitat cannot be understated particularly in this relatively dry region of the state. An estimated 60-70% of western bird species (Ohmart 1996) and as many as 80% of wildlife species in Arizona and New Mexico (Chaney et al. 1990) and in southeastern Oregon (Thomas et al. 1979) are dependent on riparian habitats. Because of this riparian ecosystems are considered to be important repositories for biodiversity throughout the west. A.J. Belsky, A. Matzke, S. Uselman, 1999.

Riparian zones provide key service for all ecosystems, but are especially important in dry regions, where they provide the main source of moisture for plants and wildlife, and the main source of water for downstream plant, animal, and human communities. (Meehan et al. 1977, Thurow 1991, Armour et al. 1994). Rooted streamside plants retard streambank erosion, filter sediments out of the water, build up and stabilize streambanks and streambeds, and provide shade, food, and nutrients for aquatic and riparian species.

³ "In areas of historic water shortages during the dry season of the year develop water as appropriate."
"Manage key deer and elk habitat so as to minimize disturbance during the period of use." LRMP at III-20.

(Weingar 1977, Thomas et al. 1979, Kauffman and Kruegar 1984). In short the elimination of riparian vegetation will cause irreversible impacts that harm the long term integrity of this area. We recommend that any component of this project that would remove vegetation alongside Rilda Creek be eliminated from serious consideration.

To what extent water has been utilized or will be utilized as a consumptive use is unknown and should be analyzed in any EA or EIS. Regardless, water diversion in this instance (and consumptive use practices) could threaten downstream Colorado River endangered fish including the Colorado pikeminnow, humpback chub, bonytail chub, and razorback sucker. The US Fish and Wildlife Service considers depletion of water in the Colorado River drainage a threat to the existence of these endangered fish. See Deer Creek Mine Technical Analysis, p. 9.

Aside from potential problems created by stream alteration there is reason to believe that water quality standards are not being met. The removal of vegetation, the use of roads through heavy equipment, and potential oil spills could all cause water quality to deteriorate. Within the Deer Creek Mine area there have already been problems with water quality due to irregular monitoring of water quality. This project could easily cause water quality standards to deteriorate. The reviewing agency will need to show how the proposed project will comply with all applicable water quality standards. Failure to do so will cause the lead agency to violate the federal Clean Water Act as implemented by the state of Utah.

The lead agency may also need to comply with other provisions of the Clean Water Act based on the proposed stream diversion. This may include compliance with §404 of the CWA or some additional stream alteration permit. Stream alteration permits are typically obtained from the state engineer's office although in certain instances the U.S. Army Corp of Engineers may need to approve the permit. These permits must be obtained prior to release of a draft EA or EIS. Further, the impacts of the diversion (and compliance with the CWA) must be analyzed in the EA or EIS.

The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). "The word 'integrity' . . . refers to a condition in which the natural structure and function of ecosystems [are] maintained." H.R. Rep. No. 92-911, at 76 (1972); see also Minnehaha Creek Watershed Dist. v. Hoffman, 597 F.2d 617, 625 (8th Cir. 1979). The legislative history of the Clean Water Act, in turn, defines "natural" as "that condition in existence before the activities of man invoked perturbations which prevented the system from returning to its original state of equilibrium." H.R. Rep. No. 92-911, at 76. "Any change induced by man which overtaxes the ability of nature to restore conditions to 'natural' or 'original' is an unacceptable perturbation." H.R. Rep. No. 92-911, at 77.

According to Congress, a primary goal of the CWA is to maintain the natural structure of streams. Such an interpretation is supported by case authority which holds that the "Clean Water Act should be construed broadly to encompass deleterious environmental effects of projects." Riverside Irrigation Dist. v. Andrews, 568 F. Supp. 583, 588 (D.

Colo. 1983), aff'd 758 F.2d 508 (10th Cir. 1983). Taking a live stream and channeling it through an artificial diversion violates the natural structure of the stream. As one recent case stated:

The Clean Water Act (CWA) was "a bold and sweeping legislative initiative," United States v. Commonwealth of P.R., 721 F.2d 832, 834 (1st Cir. 1983), enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a)(1994). "This objective incorporated a broad, systematic view of the goal of maintaining and improving water quality: as the House report on the legislation put it, 'the word "integrity" ... refers to a condition in which the natural structure and function of ecosystems [are] maintained.'" United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 132, 106 S.Ct. 455, 462 (1985) (quoting H.R.Rep. No. 92-911, at 76 (1972) U.S. Code Cong. & Admin.News 1972, at 3744).

Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1294 (1st Cir. 1996). In this case, it is clear that the elimination of over 1,200 feet of Rilda Creek does not "maintain the natural structure and function of the ecosystem" in that watershed.

Under the CWA, states must adopt water quality standards for all water bodies within the state. 33 U.S.C. § 1313.

These standards include three components: (1) designated uses for each body of water, such as recreational, agricultural, or industrial uses; (2) specific limits on the levels of pollutants necessary to protect those designated uses; and (3) an antidegradation policy designed to protect existing uses and preserve the present condition of the waters.

National Wildlife Fed'n v. Browner, 127 F.3d 1126, 1127 (D.C. Cir. 1997) (citing 40 C.F.R. §§ 131.10 - 131.12).

"A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 C.F.R. § 131.2. EPA implementing regulations define designated uses of water as "those uses specified in water quality standards for each water body or segment whether or not they are being attained." 40 C.F.R. § 131.3(f). The minimal designated use for a water body is the "fishable/swimmable" designation. See 33 U.S.C. § 1251(a)(2).

Thus, in any EA or EIS prepared for the project the lead agency must (1) determine the designated uses for Rilda Creek; (2) analyze the specific limits on the levels of pollutants necessary to protect those designated uses; and (3) and demonstrate how a 1,200 stream diversion of Rilda Creek complies with the antidegradation policy designed to protect existing uses and preserve the present condition of the waters.

The U.S. Supreme Court has squarely held that:

The text [of the CWA] makes it plain that water quality standards contain two components. We think the language of § 303 is most naturally read to require that a project be consistent with *both* components, namely, the designated uses *and* the water quality criteria. Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.

PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700, 714-715, 114 S.Ct. 1900 (1994)(emphasis in original).

Here, the diversion at Rilda Canyon cannot violate state and federal antidegradation regulations. According to federal regulation, applicable antidegradation policies “shall, at a minimum, be consistent with . . . [e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1). Under this regulation, “**no activity is allowable . . . which could partially or completely eliminate any existing use.**” PUD No. 1, 511 U.S. at 718-19, 114 S.Ct. at 1912 (emphasis added)(citing EPA, Questions and Answers on Antidegradation 3 (Aug. 1985)). Thus, any activity which would even *partially* eliminate those uses in Rilda Creek is not permitted.

Under the CWA, the minimum designated use for navigable water is the “fishable/swimmable” designation, which “provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(2). But the protection is not limited to streams which support fish: A water body composed of solely plants and invertebrates is also protected under the antidegradation policy. Bragg v. Robertson, 72 F. Supp.2d 642, 662 n.38 (S.D. W. Va. 1999) (citing EPA, Water Quality Standards Handbook § 4.4). Under federal regulations, limited degradation is permitted only where (1) the quality of the water exceeds levels necessary to support the fishable/swimmable use designation, and (2) the quality of water necessary to protect all existing uses is maintained. 40 C.F.R. § 131.12(a)(2).

By creating artificial stream diversions, which by their very nature cannot support aquatic life, PacifiCorp would potentially violate the antidegradation policy applicable to Rilda Creek. The quality and quantity of water necessary to protect existing aquatic life and other designated uses **must** be maintained and such demonstration must take place in any EA or EIS developed for the project. See 40 C.F.R. § 131.12(a)(2). Because artificial diversion of the stream would essentially turn the relevant portion of this living stream into a dead stream, incapable of supporting plants, fish and other wildlife, PacifiCorp’s proposed diversions potentially violates the antidegradation policy under the Clean Water Act and is therefore, likely unlawful.

Pursuant to the National Historic Preservation Act and Manti La Sal special coal lease stipulations the lead agency will be required to survey for historic sites that are eligible

for listing on the National Register for Historic Properties. If surveys indicate that such sites exist consultation and other procedures pursuant to §106 must occur.

Special coal lease stipulation #3 requires a study to quantify existing surface resources. The study should locate, quantify, and demonstrate the interrelationship of the geology, topography, surface and groundwater hydrology, vegetation and wildlife. There has been regular flow data recorded in the project area; however it is unknown whether the above study has been completed. This study is very important because it will help determine whether area wildlife and vegetation have an adequate water supply to maintain their viability.

For this project environmentally preferable alternatives likely exist that would maintain the stream course in its current state. Stipulation six of the coal lease would support selection of the environmentally preferable alternative.⁴ Because alternatives exist that would protect the area environment to a greater degree than the proposed alternative the environmentally preferred alternative should be chosen.

Pursuant to stipulation seven the lessee will be required to establish a monitoring system that is to provide a continuing record of change over time on how mining impacts the area environment.⁵ There has been regular monitoring of stream flow for the Deer Creek mine, however it is unclear whether the monitoring system in place measures how mining has impacted surface hydrology and vegetation.

We thank you for the opportunity to comment on this project, and look forward to receiving a copy of the EA or EIS when it is released so that we may comment on the project.

Sincerely,

Joel Ban
Wildlaw Southwest

September 1, 2004

⁴ Stipulation 6: "Where alternative sites are available, and each alternative is technically feasible, the alternative involving the least damage to the scenery and other resources *shall* be selected...."

⁵ Stipulation 7: "The lessee shall be required to establish a monitoring system to locate measure and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data."

Lucia Malin, Environmental Scientist
State of Utah, Department of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, suite 1210
PO Box 145801
Salt Lake City, UT 84114-5801

Dear Ms Malin,

The Utah Environmental Congress (UEC) appreciates your letter of July 21, 2004 regarding the **PacifiCorp Deer Creek Mine – Rilda Expansion Project**. We are encouraged to learn that the proposal is going to be modified such that 1,200 feet of Rilda Creek will not be placed in a 'culvert.' We understand from your letter that, when DOGM determines that the revised plan to construct a mine portal on the North side of the road to be complete, that revised plan will become the Proposed Action to be analyzed in an environmental assessment (EA).

The UEC hereby incorporates all earlier comments that have been submitted by the UEC and Wildlaw Southwest into these comments.

We look forward to the opportunity to submit comments on the Proposed Action when that has been finalized. Please include useful maps (preferably in 1:24,000 scale) with the notice of opportunity to comment on the proposed action so that the public and other Agencies may learn exactly where the proposed facilities may be located. It may be helpful to display the IRA boundaries on this map, as well as springs, streams, as well as the locations of Forest Plan management area prescriptions.

Direct, indirect, and cumulative effects to TEPS, MIS and FS Sensitive aquatic, terrestrial, avian, and migratory bird species continues to be a concern that should be explored. Effects that can be avoided should be avoided. Unavoidable direct, indirect, and cumulative effects should be mitigated.

The UEC also request the opportunity to review and comment on the EA that is prepared before a decision document has been prepared.

Please keep us on all mailing lists for this project, and mail the UEC hard copies of all environmental documents as they become available for review and comment. Thank you very much for your time and effort.

Sincerely,

Kevin Mueller,
Program Coordinator

CC: Joel Ban, Wildlaw Southwest, UEC attorney



MANTI-LA SAL NAT'L FOREST

Forest Supervisor's Office
& Price Ranger District
599 West Price River Drive
Price, UT 84501

Phone: (435) 637-2817

Fax: (435) 637-4940

Number: 801-539-4260

Date: 02/11/04

To: Kent Hoffman

From: Aaron Howe / Carter Reed

Subject: Ridda

Total Pages (including cover page): 5

Comments:

Red. your draft. Here is our draft that has been reviewed and ok'd by Alice and Barry. If have any questions, call Aaron at 435-636-3542, then dial 0 to get operator and have him paged. He is in a budget meeting. Carter

Plan to send via mail today and FAX to OSU before end of today. Thanks



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2820-4

Date:

Peter Rutledge
Chief Program Support Division, Western Regional
Coordinating Center
Office of Surface Mining
P.O. Box 46667
Denver, CO 80201-6667

Dear Mr. Rutledge:

This letter is in response to your January 28, 2004 letter requesting additional comments regarding the proposed Mine Permit Change for PacifiCorp's North Rilda Canyon portal facilities.

We have reviewed environmental documents previously completed and find that the proposal is not within the scope of prior NEPA documentation or agency decisions, nor is it authorized by the approved Mine Plan or permit. We believe the proposal will involve "significant surface disturbance" as defined in the Mineral Leasing Act of 1920 as amended by the Federal Coal Leasing Amendments Act of 1975 (Section 6), as it will extend completely across the canyon bottom and require piping 1,200 feet of perennial stream. For clarification, the entire 10.2-acre proposed project area is viewed as new disturbance because the 'previously disturbed and reclaimed' area referenced in your letter was associated with pre-SMCRA activities that were successfully restored to resource production over a decade ago.

We completed a preliminary assessment of the proposal relative the CEQ significance criteria at 40 CFR 1508.27 and believe that there is potential for significant effects (Attached). An environmental analysis should be prepared jointly by OSM and the FS in accordance with agency regulations, Forest Plan direction, and lease stipulations (U-2810, SL-051221 & U-06039). Additionally, the Forest has a connected action associated with Emery County's desire for a public road easement along the rerouted roadway.

We believe that the proposal should be designated as a Mine Plan Modification because of potential for significant effects, and because the action would be beyond the scope of prior mine plan approval/consent pursuant to the Minerals Leasing Act. An environmental analysis should be conducted to explore alternatives and mitigations, and disclose effects to the public. Preparation of an Environmental Assessment or Environmental Impact Statement should commence as soon as possible to avoid delays.

If you have any questions, contact Aaron Howe or Carter Reed at the Forest Supervisor's Office in Price, Utah.

Sincerely,



ALICE B. CARLTON
Forest Supervisor

Enclosure

cc:

Regional Forester, Intermountain Region

Sally Wisely, Utah State Director, Bureau of Land Management

Mary Ann Wright, DOGM

D-2/3

PRELIMINARY SIGNIFICANCE EVALUATION PROPOSED RILDA CANYON PORTAL FACILITIES

Manti-La Sal National Forest, 02/09/04

Significant Effects (CEQ Regulations)

The criteria used to determine significance as defined under NEPA are contained in 40 CFR 1508.27. "Significantly" as used in NEPA requires consideration of both context and intensity.

Context: Significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality. In case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.

- For the Rilda Canyon project, the physical effects context would be generally defined as the Huntington Canyon drainage and watershed, including Rilda Creek and other tributaries. Effects to elk and deer herds would be much broader considering the affected herds and range of habitation and use. The affected human environment would involve a larger area consisting of at least the Castle Valley Area communities (recreation, livestock grazing, water use).
- The duration of effects would be 20 to more than 50 years considering both the length of time of facilities will be used plus time needed for reclamation to restore the understory and overstory vegetation, and the aquatic ecosystem to pre-mining conditions.

Intensity: This refers to the severity of impact considering ecologically critical areas, the extent to which the effects could be highly controversial, and whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small components.

- **Controversy** - Among the involved agencies there would most likely be general consensus regarding the magnitude and duration of effects, however affected interests are likely to strongly disagree.
- **Cumulative Effects** - There is little doubt that the analysis must consider the effects of the many actions and uses in the Huntington Canyon area to be defined as the affected environment. The proposed project is likely to cause significant effects to some resources by complete removal of a substantial amount of the aquatic ecosystem in the canyon and habitat for terrestrial wildlife. Cumulative effects to wildlife, water quality, recreation, and wildlife grazing are currently occurring due to the high-intensity human activities occurring in the area. They

consist of coalbed methane field development, other mine portal facilities (Deer Creek and Crandall Canyon), the Huntington Power Plant, subsidence of escarpments, breakout in the South Fork of Rilda Canyon, the mixing of coal, oil and gas, and recreation traffic along the Huntington Canyon Scenic Byway (State Route 31), recreation use, and livestock grazing.

- **Reduced flow in Huntington Creek potentially due to Subsidence at Skyline Mine** -Of specific concern regarding cumulative effects to fish habitat and macroinvertebrates in Huntington Creek is that minimum discharge to Huntington Creek from Electric Lake has been reduced from 12 CFS to 6 CFS to preserve water stored to meet power plant needs. This has affected fish and macroinvertebrate productivity. Only preliminary monitoring results are currently available.
- **Big-Game Winter Range (Forest Management Indicator Species)** -The proposed developments, combined with other activities in the Canyon and adjacent areas, would cumulatively interfere with big-game (elk) wintering and migration.



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2820-4

Date: November 4, 2005

Appeal Resolution
between
Utah Environmental Congress
and the
Manti - La Sal National Forest

Per our resolution discussions regarding the October 13, 2005 administrative appeal filed by Utah Environmental Congress (UEC) of the Deer Creek Coal Mine Plan Modification (Fed. Coal leases U-06039, U-2810, SL-050862, SL-051221) Decision Notice/Finding of No Significant Impact and Environmental Assessment, we have created the following agreement.

The parties hereby agree as follows:

1. Manti-La Sal National Forest (MLSNF) Supervisor Alice Carlton is the Responsible Official for the appealed decision and has authority to commit the Forest Service to the terms of this agreement. UEC Executive Director Kevin Mueller commits the UEC to the terms of this agreement.
2. UEC hereby withdraws its October 13, 2005 administrative appeal of the Supervisor's decision to the Regional Forester. As required, UEC will mail a letter to the Regional Forester withdrawing the appeal.
3. The MLSNF shall include the following mandatory stipulations in its consent to OSM, regarding the mine plan modification for the Rilda Canyon facility, and concurrence to the Utah Division of Oil, Gas, and Mining (DOG M) for permitting associated with the mine plan modification for the Rilda Canyon Facility.
 - A) The mine operator shall implement an aquatic and riparian ecosystem improvement project in Rilda Creek that is the product of coordination among the Forest Service (including the Forest Fisheries Biologist and/or Forest Hydrologist) and Utah Division of Wildlife Resources (including the Fisheries Biologists). The objective of the project is to actively improve the aquatic and riparian ecosystem in Rilda Canyon below the proposed PacifiCorp facilities. Examples include but are not limited to raising the water table, improving cottonwood galleries, riparian, and aquatic habitats, containing dispersed camping, and reducing sediment. The specifics of the restoration project to be implemented will be developed, planned and monitored by the above Forest Service and UDWR biologists, and will be funded and implemented by PacifiCorp. Project implementation must begin no later than the field season following issuance of the permitting for the Rilda Canyon facility, providing that the permitting is completed prior



to 6 months before the end of that year's field season. If the permitting is completed less than 6 months prior to the end of the field season, the ecosystem improvement project will begin the following field season. The ecosystem improvement project must be completed no later than five years thereafter.

Annual monitoring or progress reports will be required. They will be prepared jointly by UDWR and the Forest Service and made available to UEC, DOGM, PacifiCorp, and the public. A copy of each annual report will be mailed to UEC each year. The results of each year's macroinvertebrates monitoring (see following section) will be included with each annual report mailed to the UEC. The FS, DOGM, and UEC will evaluate each annual monitoring report for 5 years following the beginning of aquatic and riparian ecosystem improvement project to determine if the project is moving towards its goals. If it appears that those goals are not being approached, the group will re-evaluate the ecosystem improvement project and modify those portions that are not successful, and the company will implement modified portions during the next field season.

B) The mine must commit to monitoring macroinvertebrates and water quality at 2 locations in Rilda Creek (upstream and downstream of the project area). Samples may be collected with the same protocol used by UDWR for the initial, baseline studies. However, the macroinvertebrates monitoring shall be done at least twice each year (dates to be determined by Forest Hydrologist/Fisheries Biologist) for 5 years after approval of the Rilda Canyon Facility project. This data and any supplemental reports will be included in the annual progress reports that will be mailed to the UEC. BCI will be included in the metrics calculated from the samples. At the end of 5 years, if macroinvertebrates do not meet the original Forest Plan standards (1986, as amended) including a BCI of 75, the Manti-La Sal N.F. will work with DOGM and will make a good faith effort to contact UEC, to meet, review data, and discuss actions available to resolve water quality and/or macroinvertebrate concerns. The mine shall then implement those actions as required by DOGM with Forest Service concurrence to resolve those macroinvertebrate and water quality problems.

C) The approximately 200 acres of timber harvesting said to be included for (big/small game and migratory bird) Wildlife Mitigation on Table 300-5 (page 21 of 'R645-301-300 Biology' document) is removed. It is recognized that removal of the timber harvesting component of Table 300-5 may result in other parts of this measure not occurring.

Signed:

Date:

11/4/05

Kevin Mueller,
Executive Director
Utah Environmental Congress

Alice Carlton 11/4/05
Date:

Alice Carlton,
Forest Supervisor
Manti-La Sal National Forest

Atch #2

OK



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

September 7, 2005

Allen D. Klein, Western Division Director
Office of Surface Mining
1999 Broadway, Suite 3320
P.O. Box 46667
Denver, Colorado 80201-6667

Subject: Request for Assistance in Coordinating Resolution of Conflicts and Difficulties Between the Utah Division of Oil, Gas and Mining and the U.S. Forest Service

Dear Mr. Klein:

This letter is to request that the Office of Surface Mining "assist" in "coordinating resolution of conflicts and difficulties" between the Utah Division of Oil, Gas and Mining (DOGM) and the U.S. Forest Service (USFS), pursuant to the Utah Cooperative Agreement between the Secretary of the Interior and the Governor of Utah (30 CFR 944.30).

The nature of Utah's difficulties with the U.S. Forest Service is two-fold. First is the recent last minute policy change by the USFS—more specifically the Manti-LaSal National Forest—in the previously agreed-upon schedule for processing a mining plan modification to the Deer Creek Coal Mine, called the North Rilda Canyon Portal Facilities. The Division of Oil, Gas and Mining and the coal operator, Interwest Mining, relied on time schedules developed jointly by the BLM, OSM, USFS and DOGM, over the course of nearly eighteen months (April 2004 to early August 2005). In early August 2005, the USFS suddenly decided it needed to conduct its own NEPA decision and solicit public comment on its own. They announced to DOGM that it was necessary for the USFS to take an independent, appeal-able action, which now adds up to 120 days on to the permitting action. Meanwhile, Interwest Mining anxiously awaits this mine plan modification in order to secure the necessary ventilation and access critical for continuing mining operations. Had this position been asserted early in the process, the parties may have been able to adjust their actions accordingly. As a result of the USFS action, emergency action had to be taken to allow the mine to "breakout" to the surface to obtain the much-needed air for the miners.

The USFS actions would be understandable if there were issues identified by the NEPA process that were of substance or of significant environmental impact. There were not. In fact, over the time frame noted above, there were two public outreach meetings, a published scoping period, and a 'permit completeness' newspaper publication. Such actions on the part of the USFS lack good cause and shut down the permitting process.

Utah's second difficulty with the USFS lies in DOGM's unsuccessful efforts at developing a Working Agreement for coal mine permitting actions. The Division of Oil, Gas and Mining has attempted to develop an agreement for over two years. Despite its efforts, each time DOGM believes it is close to signing the agreement, the USFS proposes new changes.

This issue of failed coordination with the USFS is not new. Utah DOGM has worked hard and has hosted many coordination activities in which OSM has been a full participant over the past five years:

- Monthly coal permitting coordination meetings and conference calls,
- Quarterly managerial level agency coordination meetings,
- Two professionally facilitated agency coordination meetings,
- Development of a joint agency mission statement: "The Coal Program Team Cooperatively facilitates coal mining in an environmentally sound manner that ensures maximum benefit to the public."
- Working Agreement development meetings (ICOP – Interagency Coal Operating Procedures) held over a two-year period,
- A high-level meeting, held 1-23-2004, among: the Regional Forester, Intermountain Region; Manti-LaSal National Forest Supervisor, yourself, OGM Director, Utah BLM State Office Director and OSM Field Office Director for Utah. **The January 2004 meeting was held to discuss coordination among the agencies during the leasing, permitting, and mine plan actions. An agreement was reached that the actions of leasing and mine plan approval were the only "Federal actions" involving coal mining on Federal lands. The BLM directs the leasing with associated NEPA, and OSM directs the mine plan approval and associated NEPA activities. The Forest Service is a welcome participant in these NEPA activities. The Forest Service agreed with BLM and OSM on this plan and that, therefore, there would be no need for the FS to undertake additional NEPA associated with its responsibility to provide comments and to concur as required.**

If Utah is to continue as the lead coal mine permitting agency in Utah, DOGM needs to be able to rely upon a Working Agreement that clearly identifies the agencies' roles, actions and responsibilities. It is clear that the lack of dependable coordinated actions is hurting the permitting process and the coal mining operations. Utah is asking for assistance from OSM, and looks forward to a

Page 3
Allen Klein
September 7, 2005

new day with the USFS pledging adherence to an agreed-upon processes. I express my thanks in advance for your assistance in defining a smooth and predictable coal mine permitting process.

Sincerely,



Mary Ann Wright
Associate Director, Mining

Enclosures:

Chronology of Rilda project

August 29, 2005 USFS DN/FONSI

cc: Jeff Jarrett, Director, OSM
Jack Troyer, Regional Forester
Alice Carlton, Manti-LaSal NF
John Baza, Director, OGM
Mike Styler, Executive Director, DNR
David Litvin, Utah Mining Association
Bob King, VP Interwest Mining

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Utah OGM Chronology of North Rilda Canyon Portals Project

In addition to the meetings outlined below, ongoing meetings and conference calls involving the EA Core Team occurred approximately monthly. The USFS was involved in every meeting and/or call.

March 16, 2004 – OSM Determination of Mine Plan Modification

March 23, 2004

Meeting in Salt Lake City, called by Pete Rutledge (OSM) to announce the decision that the Rilda Expansion would be a Mine Plan Modification, that an EA would be written by DOGM on the behalf of OSM and that he has formally asked the USFS and BLM to be cooperating agencies. The reason the NEPA process was required was that the previous EA written in 1996 stated that there would be no additional surface disturbance, and that a separate NEPA action would be required if any surface facilities were proposed.

NEPA Core Team formed.

| | |
|------|---------------------------------------------------------------------------------------------------------------|
| OSM | Bob Block |
| DOGM | Luci Malin, Susan White, Daron Haddock (Pam Grubaugh-Littig advising) (Daron later replaced by Wayne Hedberg) |
| BLM | Gregg Hudson |
| USFS | Carter Reed (Later replaced by Dale Harber) |

Extended Team formed (interdisciplinary team) to include various resource specialists –

DOGM: Priscilla, Jerriann, Jim, Joe, Wayne W
USFS: Terry Nelson, Bruce Ellis, Tom Lloyd, Pam Jewkes, Katherine Foster, Meisa Nyman, Kelle Reynolds
USFWS – Diana Whittington
DWR –Wildlife: Bill Bates, Leroy Mead, Craig Walker, Justin Hart
DWR – Water Rights: Mark Page, Daren Rasmussen
Emery County – Rex Funk

Initial schedule developed

March 31, 2004

Meeting held in Springville with the NEPA Core Team and others (Guy Davis, Rick Collins, Diana Whittington, Jason (ACOE), and PacifiCorp to go over initial proposal and schedule.

April 7, 2004

Field trip to Rilda with Pete, meeting afterwards in Huntington
Open house planned for Huntington to get public input

May 12, 2004

Open House in Huntington for public input – Scoping
A lot of concern about culvert

June 1, 2004

Pacificorp decided to remove culvert idea, back to the drawing board, PAP not submitted, scheduled for August.

July 15, 2004

Daron left the group Wayne joined

2nd open house planned for Huntington

June, July, August

PacifiCorp doing cultural, raptor, wildlife, vegetation, soil, macro-invertebrate studies.

August 8, 2004

Open House number 2 in Huntington Canyon – Proposal without culvert.

August 10, 2004

Luci gave presentation at Emery County Public Lands Council meeting in Castledale.

September 2, 2004

PAP received (never determined administratively complete)

Week of September 7, 2004

Carter Reed provides out line of Forest Service Decisions and Appeal ability for Rilda Canyon in which it states the FS concurrence would not be an appeal able decision.

September 10, 2004

Carter left the group, Dale joined

September 16, 2005

Internal scoping (agencies) meeting held in Provo with the NEPA team, other interested agencies (USFWS, ACOE, Division of Wildlife Resources, Division of Water Rights) and PacifiCorp. Created list of potential impacts by resource area.

Soil stockpile off permit area. USFS says that will cause them to have to make a decision and have to have a 45 day appeal plus waiting period.

October 2004

Chapters 1 and 2 DRAFTs written

November 1 and 2, 2004

EA team meets in Salt Lake City

November 3 and 4, 2004

EA team meets in Price with other specialists in Price to talk about potential impacts.

Lawyers divided the process – NEPA vs SMCRA

December 6, 2004

PacifiCorp withdraws PAP – redesign. Proposal will be ready end of month.

December 21, 2004

PAP submitted

January

Start Chapters 3 and 4

January 28, 2005

PAP determined administratively complete

February 2, 2005

Core team meeting in SLC and NEPA update and review for Title V people

February

Title V people reassigned to SMCRA part of project only

March 6, 2005

Chris Rohrer, AMRP, added to NEPA team

Third party reviewer added to NEPA process

April, May, June, early July

Several draft reviews – chapters 1, 2, 3, 4

Chapter 5 written

July 7, 2005

Dale Harber sends Wayne letter stating FS has reviewed the Mine Plan and found it to be consistent with lease plan and Forest Plan. OGM and OSM interpret this to be the FS concurrence letter.

July 22, 2005

EA out for Final review

August 2, 2005

Luci told Dale he was out of time and that OSM had moved the EA to their solicitor's office. We would be able to accept slight changes only.

August 3, 2005

E-mail from Mary Ann to staff stating Barry Burkhardt (USFS) has said they (FS) were willing to write a concurrence letter to OSM.

August 4, 2005

Dale requests from Pam letters that specify that the mine's action will constitute a Mine Plan Modification. He also requests information from the 1997 Mine Plan Decision Document that states "No additional surface disturbance except that

related to mining-induced subsidence will result from this action. Dale says the request is on behalf of Ken Pauers, USFS.

August 8, 2005

Dale calls Pam and states that the consent letter of July 6, 2005 is not consent letter.

August 17, 2005

Conf call with Pete, Mary Ann, Pam and Wayne to discuss what the retraction of the concurrence letter means and its impacts to the process.

August 22, 2005 9:00

Jim Kohler called Pam to consult regarding the R2P2 notification for the mine to move ahead and break out to the surface for air as recommended by an email Jim received on Friday August 19 from Alice Carlton.

August 22, 2005 9:30am

Conference call with OSM (Pete, Bob); DOGM (Pam, Wayne, Luci and Mark); BLM (Gregg) and USFS (Dale, Alice, Carter, Steve Rigby, Jeff Alexander and Barry Burkhardt came on late) Discussed proposed alternative of the mine breaking out and the need for the FS to have their concurrence viewed as a NEPA decision. Carter retracts his early written discussions regarding under what conditions the FS consent is an appeal able decision.

August 22, 2005 3:00pm

Conference call with OSM (Pete, Ron Singh); DOGM (Pam, Susan, Wayne, and Mark); BLM (Jim Kolher, Stan Perks, Jeff Mckenzie, Gregg) and USFS, Barry Burkhardt came on late), PacifiCorp (Chuck, Scott, Carl). Pam stated OGM's position that breaking out would be a surface disturbance and necessitate a NOV. The mine could not wait any longer. The FS was under direction to have their "concurrence" be an appeal able decision, because of consent language in the Mineral Leasing Act, which could add approximately 125 days before Mining Plan Approval. OSM would not forward the Mining Plan with out the necessary concurrence letter. The participants came to a resolution that the mine would submit a R2P2 request to the BLM to allow development of the fan breakout. The FS would allow the development of the fan portal if no surface equipment was used. OSM agreed this would not constitute a mine plan modification and could be accomplished with an amendment to the mine's current permit. OGM would require a permit amendment from the mine.

August 24, 2005 10:00am

BLM approved the R2P2 for the breakout. OGM approved an amendment for the breakout. Interwest still awaiting Mining Plan Approval.

August 29, 2005

Manti-LaSal National Forest issues its own DN/FONSI. Appeal time 45 days begins upon publication.

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Atch #3

LEGAL NOTICE OF PROPOSED ACTION
 PacifiCorp Proposed Rilda Canyon Portal Facilities
 Notice of Opportunity for Public Comment and Open House

The Utah Division of Oil, Gas, and Mining (DOGGM) is evaluating a permit change application from PacifiCorp which proposes to construct new surface facilities in conjunction with the Deer Creek underground coal mine in Rilda Canyon on a federal coal lease with the surface land managed by the Manti-La Sal National Forest. The evaluation will consist of a review of the permit application for completeness and technical adequacy. DOGGM will issue a decision granting, requiring modification of or denying the permit change application. The Office of Surface Mining (OSM) is the responsible agency for recommending approval of a federal mining plan modification and is the lead agency for the preparation of an Environmental Assessment (EA) under the requirements of the National Environmental Policy Act (NEPA). Pursuant to the Utah Cooperative agreement [at 30 CFR 944.3 Article VI: C.3. and 30 CFR 740.4(c)(7)] the OSM has delegated the preparation of the EA to DOGGM with OSM assistance where appropriate. The Bureau of Land Management and the Manti-La Sal National Forest would be the lead agency for issuing any required road easements.

The proposed facilities may include construction of a ventilation fan, portal facilities, office, bathhouse, parking lot, and staging areas. No coal handling facilities are proposed. The existing County Road in Rilda Canyon would be relocated to bypass the mine facilities and provide unimpeded access to water developments, other mine facilities, and National Forest System trails west of the planned facilities. Total surface disturbance would be approximately 10 acres that would include temporarily diverting Rilda Creek beneath the facilities through a 1,200 foot culvert. This proposed action is located in Rilda Canyon (Section 28, T. 16 S., R. 7 E, SLM, Emery County, Utah).

The public is invited to comment on the proposed project. Comments may be submitted during a public Open House to be held at the Huntington Town Hall, 40 North Main, Huntington, Utah, on May 12, 2004 from 4:00pm to 8:00pm, as well as during the comment periods discussed below.

Comments or requests for information may be sent to Luci Malin, at the Utah Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210/P.O. Box 145801, Salt Lake City, Utah 84114-5801, FAX (801)359-3940, phone (801)538-5323, or by email at luciamalin@utahgov. Comments will be accepted until June 1, 2004. Comments may also be delivered to the DOGGM during regular business hours of 8:00 a.m. to 5:00 p.m., Monday-Friday, excluding Federal and State holidays.

Regarding any necessary modifications to the Forest Service road easement, only those who submit timely and substantive comments will be accepted as appellants. Each individual or representative from each organization submitting substantive comments must either sign the comments or verify identity upon

request. Comments received in response to this solicitation, including names and addresses, will be considered part of the public record. Comments must include the supporting reasons and documentation that the commenter believes the Responsible Official should consider in reaching her decision. Comments should include the information required pursuant to 36 CFR 21.5.6(a)(3), as published in the Federal register on June 4, 2003. Comments or requests for information regarding the road easement may be sent to Alice Carlton, the responsible official for any road easement decision, Forest Supervisor, Manti-La Sal National Forest (attn: Carter Reed), 599 West Price River Drive, Price, UT 84501, Phone (435)636-3547, FAX (435)637-4940. The comment period for the proposed road modification will end 30 days after publication in the Sun Advocate. Published in the Sun Advocate April 27, 2004.

Public Notice ID: 2752319

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Public Notice

County: Carbon
Printed In: Sun Advocate
Printed On: 2005/08/30

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Public Notice:

LEGAL NOTICE OF DECISION
Mining Plan Modification, Federal Coal Leases
U-06039, U-2810, SL-050862, and SL-051221
Manti-La Sal National Forest

PacifiCorp has proposed to construct new surface facilities in Rilda Canyon for their Deer Creek Mine located in Emery County, Utah. An Environmental Assessment (EA) has been prepared by the USDI-Office of Surface Mining, in cooperation with the Forest Service and the Bureau of Land Management, to analyze the proposal. Rod Player, Acting Forest Supervisor of the Manti-La Sal National Forest, has signed a Decision Notice/Finding of No Significant Impact (DN/FONSI) to consent/concur to the terms of the mining plan approval and post-mining land use (Alternative 1, Approval of the Proposed Permit Application Package with Conditions) on August 25, 2005. Under Alternative 1, the Assistant Secretary of the Interior would approve PacifiCorp's proposed Mine Plan.

The decision is subject to appeal pursuant to 36 CFR part 215.11. Individuals or organizations that submitted substantive comments during the comment period may appeal this decision. Appeals must meet the content requirements of 36 CFR 215.14, as published in the Federal Register on June 4, 2003.

Appeals should be sent to: Regional Forester, Appeal Deciding Officer, 324 25th Street, Ogden, UT 84401; phone: (801) 625-5605, fax: (801) 625-5277; e-mail: appeals-intermtn-regional-office@fs.fed.us. E-mailed appeals must be submitted in MS Word (*.doc) or rich text format (*.rft). Appeals may also be delivered to the above address, during regular business hours of

8:00 a.m. to 4:30 p.m., Monday-Friday, excluding federal holidays. The appeal, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the date of publication of this legal notice in the Sun Advocate. The date of publication of this legal notice in the Sun Advocate is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates or timeframe information provided by any other source.

If no appeal is received within the 45-day time period, implementation of this decision may begin on, but not before, the 5th business day following the close of the appeal filing period. If an appeal is received, implementation may occur for 15 business days following the date of appeal disposition.

This decision is also subject to appeal pursuant to 36 CFR 251-82. Notice of appeal must be postmarked or received by the Appeal Reviewing Officer within 45 days of the date of this decision. A notice of appeal, including the reasons for appeal, must be filed with the Regional Forester, Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84501. A copy of the notice of appeal must be filed simultaneously with Alice Carlton, Forest Supervisor, 599 West Price River Drive, Price, Utah 84401. Appeals must meet the content requirements of 36 CFR 251.90.

To obtain a copy of the DN/FONSI or EA, requires additional information, or to discuss the decision, contact Dale Harber at (435)636-3548.

Published in the Sun Advocate August 30, 2005.

Public Notice ID: 4216469.HTM

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Attachment 4

State Decision Document

**North Rilda Canyon Portal Facilities
Deer Creek Mine
C/015/0018**

July 27, 2005

Mine # C/015/0018
File Outgoing
Record # 6055
Doc. Date 7-27-05
Paid Date

**UTAH DIVISION OF OIL, GAS AND MINING
STATE DECISION DOCUMENT AND
TECHNICAL ANALYSIS**

**PacifiCorp
North Rilda Canyon Portal Facilities
Deer Creek Mine
C/015/0018
Emery County, Utah**

July 27, 2005

CONTENTS

- * Administrative Overview
- * Location Map
- * OSM determination that this action does constitute a mining plan modification, dated March 10, 2004, October 22, 2004 and January 20, 2005
- * Permitting Chronology
- * Findings, dated July 27, 2005
- * Permit, issued July 27, 2005
- * Technical Analysis, dated July 14 2005
- * Cumulative Hydrologic Impact Assessment, dated July 14, 2005
- * Experimental Practice Concurrence from OSM upon approval of Environmental Assessment
- * Determination of Completeness, January 27, 2005
- * Affidavit of Publication (Emery County Progress)
- * AVS Recommendation, dated June 24, 2005
- * Public Road Determination, dated July 18, 2005
- * Letters
 - USFWS, letter dated May 16, 2005
 - SHPO, letter dated March 18, 2005
 - U. S. Forest Service Letter, dated July 6, 2005
 - BLM, R2P2, dated February 28, 1991, July 16, 1997, March 25, 2005,

ADMINISTRATIVE OVERVIEW

PacifiCorp
North Rilda Canyon Portal Facilities
Deer Creek Mine
C/015/0018
Emery County, Utah

July 27, 2005

PROPOSAL:

In 1997 the Permittee, PacifiCorp, received approval to expand its mining operations into the North Rilda Area in and adjacent to Rilda Canyon. In 1999, the Mill Fork Tract added 5,562.82 acres to the Deer Creek Mine permit.

PacifiCorp evaluated long-term options to improve access to the coal reserves in the Mill Fork tract. Options considered were:

- Acquisition of Crandall Canyon Mine;
- New portal facilities in Mill Fork Canyon; and
- New portal facilities in Rilda Canyon.

PacifiCorp and Andalex Resources, Inc. were unable, however, to arrive at an agreement that would allow utilization of the Crandall Canyon Mine

From extensive investigation, including in-seam horizontal drilling, PacifiCorp selected new portal facilities in Rilda Canyon as the best option. Initially, the facilities were proposed in an area disturbed by previous mining operations; however, due to concerns related to culverting approximately 1,500 feet of the perennial stream, PacifiCorp chose to move the proposed facility site up-canyon approximately ½ mile.

The proposed North Rilda Canyon Portal surface facilities would be located just below the intersection of the Right and Left Forks of Rilda Canyon. These proposed facilities are designed to minimize surface disturbance, covering approximately 13.1 acres, 9.0 acres at the portal area and two separate soil storage areas covering 3.0 acres and 1.1 acres, respectively.

The proposed facilities would cover a long, slender area approximately 4,000 feet long by 200 feet wide covering 13.1 acres on the canyon floor. Of this area, the support facilities (portals, shop, office, etc.) would cover an area approximately 2,000 feet long by 120 to 250 feet wide (9.0 acres) at the west (up-canyon) end of the site. The remainder of the site to the east of the mine yard area would have hydrologic controls, two topsoil stockpiles, and a road turnaround. All facilities would be entirely on the north side of Rilda Canyon Creek except for one topsoil stockpile. The proposal would use the existing county road and 25 kv power line that run through the site. The county road would be paved.

Proposed facilities would include:

Structures: Office/bathhouse/warehouse building; four (4) vertical retaining walls constructed of 12-inch thick concrete; two (2) other retaining walls in the yard area; water treatment building; mine ventilation fan; 168-stall parking lot; underground vehicle parking garage; steel frame building to house fan motors; steel framed storage sheds to house bagged rock dust, ready-mix concrete, and other dry products; oil shed; fueling dock with 4,000 gallon above-ground diesel fuel storage tank; steel shed for storage of cans of oil and lubricant; rock dust silo; pneumatic pipeline for rock dust; and a sediment pond with supporting drainage structures.

Power: An existing 25 kv power line already provides power at the Left Fork Portal Facility. A transformer would be installed to supply power to the North Rilda Canyon Portal Facilities and there would be diesel generator backups for the new ventilation fan.

Water related facilities:

Culinary system: 10,000-gallon steel water storage tank for treated culinary water.

Sewage system: Waste water from office/bathhouse/warehouse would be separated into gray water and black water. A 20,000-gallon temporary storage tank would hold black water (sewage) until it can be transported by truck to an approved disposal facility. Gray water (discharge from boot wash, showers, floor drains, etc) would be stored before being pumped into an abandoned portion of the underground mine workings.

Runoff system: a two compartmented runoff collection tank with 1) a 7,540 gallon compartment for gray water, and 2) an 18,500 gallon compartment for temporary storage of surface runoff water. Surface runoff would spill over into the gray water compartment of the tank. This system would also include an emergency spillway connected by pipe to the sediment pond; pump station to move surface runoff into collection tank.

Drainage system: two systems, 1) for collection of "undisturbed" or overland runoff water from above the portal site and from adjacent side slopes that bypasses the developed area and moves this runoff into the natural channel, and 2) for collection of runoff and all non-sewage waste water from the disturbed portal area, parking lots, storage areas, bathhouse/office/warehouse, fan area, etc. to convey it to the runoff collection tank for discharge into the mine. Culverts would direct any overflow to the sediment pond.

Storage: Mining and snow removal material and equipment would be stored on asphalt and gravel surface areas on the cut or embankment fills. A primary covered storage area would be constructed west of the parking garage to store non-coal waste, coal waste, oil, fuel facilities and bulk rock dust. Secondary covered storage areas would be constructed to store crib blocks, roof bolts, conveyor hardware, conveyor belting, beams, etc. Another covered non-coal waste/sand/rock waste storage area would be constructed on the north side of the mine yard between the fan and access portal. Sand and salt for winter road maintenance would also be stored here. Coal and non-coal wastes would be hauled away.

Soil Stockpile Storage Areas: Two topsoil and subsoil stockpile areas not contiguous to the main facilities and on previously disturbed land (approximately 800 feet by 300 feet, 3.0 acres, and 320 feet by 220 feet, 1.1 acres) would be created. The smaller stockpile would be on the south side of Rilda Canyon Creek and accessed via the existing bridge. The larger stockpile would be located on the north side of Rilda Creek in a small ephemeral drainage below the old Rominger Mine.

The projected active life of the facilities is 15-20 years. When the mine shuts down, the site would be reclaimed. Structures would be removed, the site regraded to its original topography, the county road profile reestablished through the site, topsoil from the stockpiles redistributed over the site, and all disturbed areas revegetated. Reclamation would take ten years, two years for the actual demolition and site restoration work and the balance of the time for vegetation to become established before final bond release.

These proposed facilities are associated with coal leases U-06039, SL-050862, U-2810, and SL-051221.

BACKGROUND:

The original permit for the Deer Creek Mine was issued February 7, 1986 for approximately 14,620 acres. The mining plan for Federal leases SL-064607-064621, SL-064900, SL-070645, U-1358, U-02292, U-084923, U-084924, U-083066, U-040151, U-044025, U-014275, U-024319, and U-47979 was approved on October 11, 1985 for the Deer Creek Mine. A Waste Rock Storage Facility was added September 1988. The permit was renewed on February 7, 1991.

The January 8, 1993 mining plan approval (IBC-1) added 120 acres of coal (80 acres in a portion of Lease No. U-47977 and 40 acres in a portion of Lease No. SL-050862). The July 22, 1993 mining plan approval (IBC-2) added 160 acres (80 acres in a portion of Lease U-47977 and 80 acres in a portion of Lease SL-050862).

PacifiCorp submitted an application for the Rilda Canyon Lease Extension, which included Leases U-7653, U-47977, U-06039, and SL-050862 on February 12, 1990 and resubmitted an application on February 8, 1994. This submittal was revised on June 27, 1994, as an incidental boundary change (IBC-3) to include development mining only in U-06039, U-47977, and SL-050862 (approximately 100,000 tons). Included in the revised application was longwall mining the Second, Third and Fourth East panels and development mining in the Third North Mains and the Sixth East Gate. Longwall mining would proceed in areas that were previously approved as incidental boundary changes with mining plan approval dates of January 8, 1993 (IBC-1) and July 22, 1993 (IBC-2). Entry development mining in the Third North Mains and the Sixth East Gates entailed about 40 acres beyond the approved permit boundary in Leases U-06039, U-47977 and SL-050862. IBC-3 was approved July 28, 1994.

The Rilda Canyon Lease Extension to mine in federal leases U-7653, U-47977, SL-050862, part of U-06039, and state lease ML-22509 was approved on December 13, 1994.

A modification to lease U-06039 (not requiring mining plan approval) to mine 42.97 acres (or approximately 100,000 tons) was submitted on May 26, 1995 and approved on June 13, 1995.

Construction of the original surface facilities (Left Fork Fan Portal) in Rilda Canyon was a significant revision to the Deer Creek Mine permit and was submitted on March 29, 1994. The approval to construct surface facilities in Rilda Canyon was granted on July 31, 1995, with nine conditions. All of the conditions were met on November 8, 1995.

PacifiCorp submitted an application for the North Rilda Area (which included Federal Leases U-24317, U-2810, U-06039, SL-051221 and fee coal), for a total of 1960 acres on February 4, 1997. This application was approved on July 15, 1997, which brought the total permitted area of the Deer Creek Mine to approximately 18,706 acres.

In order to access the Mill Fork lease, PacifiCorp acquired a lease modification to lease

U-06039. This modification, consisting of 65.7 acres, was added to the Deer Creek permit on August 14, 2002 as an incidental boundary change.

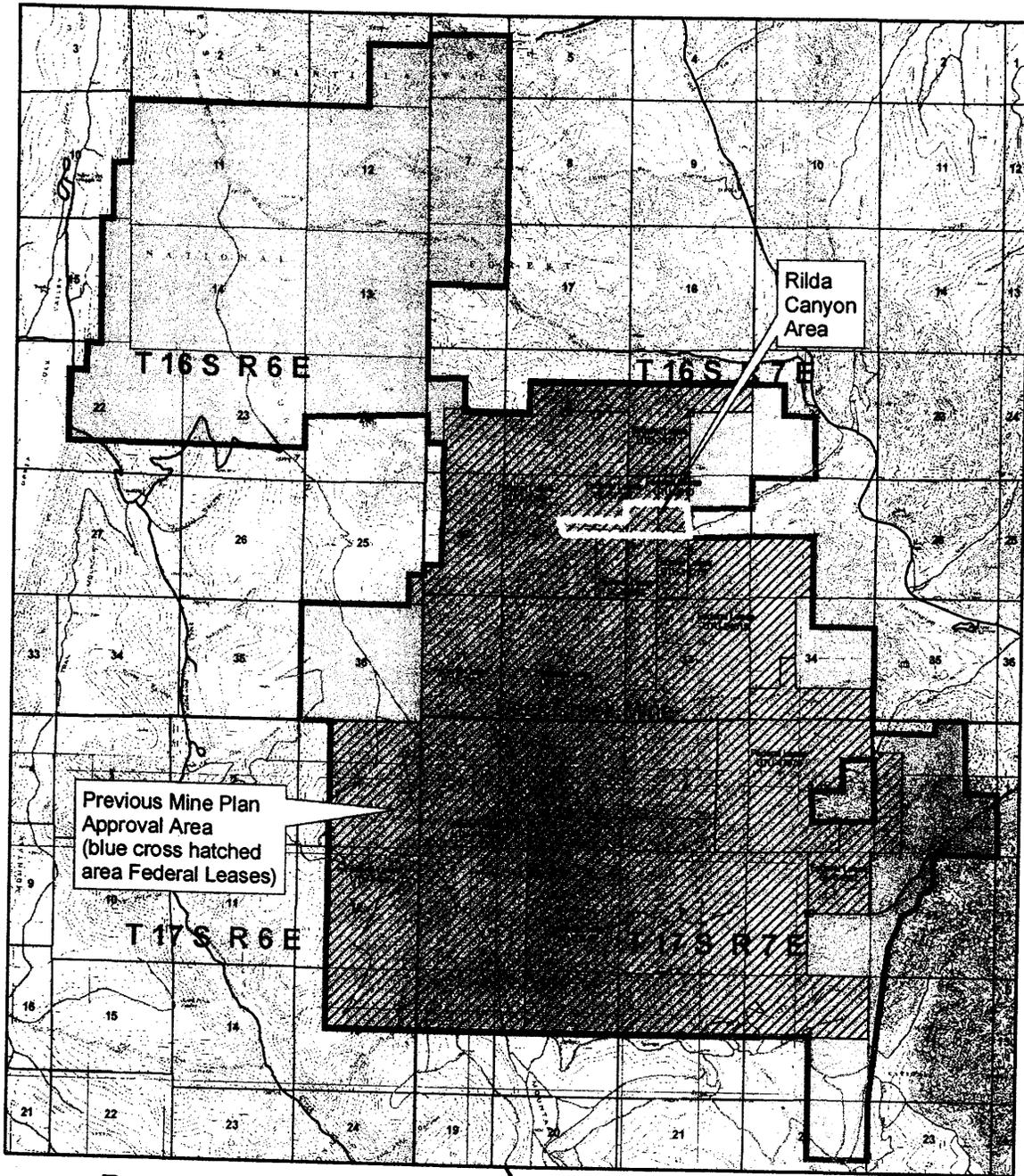
PacifiCorp submitted an application for the Mill Fork Lease (State Lease ML-48258), to the Division of Oil, Gas and Mining on October 29, 2001. The coal tract as described in the lease contains 5,562.82 acres, more or less. This represented about 64 million tons of minable coal to be produced over the life of the mine in this area. Approval on March 5, 2003 for mining in the SITLA Mill Fork lease added 5, 562.82 acres to the Deer Creek Mine. This mining is conducted in the Blind Canyon and Hiawatha seams.

ANALYSIS:

The Division of Oil Gas and Mining has conducted an Administrative and Technical Analysis (TA) of the proposed mine Permit Application Package (PAP) for the proposed Rilda Canyon Portal Facilities. All appropriate State and Federal agencies have been consulted regarding this proposal. The probable hydrologic consequences of the action have been analyzed and a Cumulative Hydrologic Impact Assessment (CHIA) has been prepared. All requirements for public participation have been satisfied. The application meets the requirements of the Utah Coal Regulatory Program.

RECOMMENDATION:

This recommendation is based on the complete PAP, the TA conducted by the Division, the CHIA also prepared by the Division, and the administrative record. PacifiCorp has demonstrated that building this surface facility can be done in conformance with the Surface Mining Control and Reclamation Act, and the corresponding Utah Act and performance standards. The 510 (c) report on the Applicant Violator System was verified for this mine on June 30, 2005 and there are no violations.

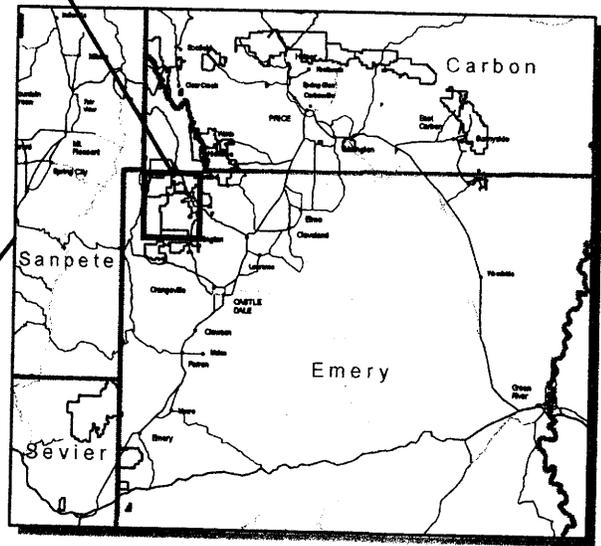
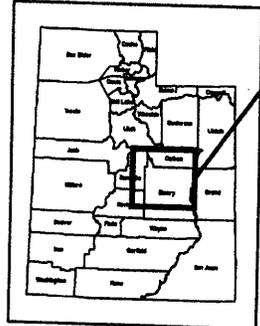
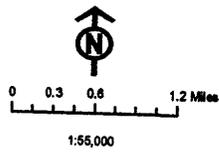


**Deer Creek Mine
Mining Plan Approval Area**

ACT0150018
Emery County, Utah
June 2005

Township 16 South Range 7 & 8 East
Township 17 South Range 6 & 7 East

File: N:\gis\coal\coalareamaps\C0150018Fed.pdf



Locator Map

0031

Pair



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667.

March 10, 2004

RECEIVED
MAR 15 2004
DIV. OF OIL, GAS & MINING

Mary Ann Wright, Associate Director, Mining
Utah Division of Oil, Gas, and Mining
Coal Regulatory Regulatory Program
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Alice Carlton, Forest Supervisor
Manti-La Sal National Forest
599 West Price River Road
Price, Utah 84501

Kent Hoffman, Deputy State Director
Bureau of Land Management, State Office
324 South State Street
P.O. Box 45155
Salt Lake City, Utah 84145-0155

*Incoming
2/15/18
Copy Mary Ann,
Karen, Pam*

RE: PacifiCorp "Deer Creek" Mine – Application for Permit Revision, North Rilda Facilities Area

Ladies and Gentleman:

Thank you very much for your prompt reply to my letter of January 28, 2004 requesting your input as to whether the North Rilda Canyon Facilities permit revision meets the requirements of 30 CFR 746.18(d) and therefore constitutes a mining plan modification. After careful review of the pertinent documents and your input, we have determined that the facilities revision does meet the criteria of 30 CFR 746.18(d) and will require a modification to the existing approved mining plan. The reason is that the documentation in the August 1997 mining plan decision document for the two leases where the facilities would be constructed contains a sentence that states "No additional surface disturbance except that related to mining-induced subsidence will result from this action." Therefore this proposal will change the information before the Assistant Secretary.

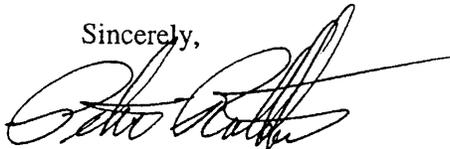
Since OSM, by regulation, must prepare the mining plan decision document and is responsible for determining the scope, content and format of the required NEPA document, OSM will be the lead agency for the preparation of an environmental assessment (EA). Pursuant to the Utah



Cooperative Agreement at 30 CFR 944.30 VI C3 and 30 CFR 740.4(c)(7) the Utah Division of Oil, Gas And Mining will prepare the documentation with OSM assistance where appropriate.

We invite and encourage the Forrest Service and the Bureau of Land Management to be cooperating agencies in the preparation of the EA. We currently have scheduled a meeting to develop the scope, content and format of the EA and a plan for its completion at the Division of Oil, Gas and Mining's offices on March 23, 2004 and hope the Forrest Service and Bureau of Land Management will be able to attend.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Rutledge", with a long horizontal flourish extending to the right.

Peter Rutledge
Chief Program Support Division

cc: Chuck Samborski
Barry Burkhardt



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

October 22, 2004

Mary Ann Wright, Associate Director, Mining
Utah Division of Oil, Gas, and Mining
Coal Regulatory Program
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

hearing
C/015/0018
Copy, Susan, Wagner,
Speci

RE: PacifiCorp "Deer Creek" Mine – Revised application for Permit Change C0150018, North Rilda Facilities Area

Dear Mary Ann:

This is in response to Sheila Morrison's request of 9/21/2004 for OSM's determination whether or not the above revised permit change constitutes a Mining Plan Modification.

Please be advised that for reasons stated in my letter dated March 10, 2004, the above subject permit change continues to meet the criteria of 30 CFR 746.18(d) and will require a modification of the existing mining plan. According to the decision conveyed in my above referenced letter, the ongoing work to prepare an environmental assessment needs to continue.

Sincerely,

Peter Rutledge
Chief Program Support Division

cc: Alice Carlton, Forest Supervisor
Manti-La Sal National Forest

Kent Hoffman, Deputy State Director
Bureau of Land Management, State Office

Chuck Samborski
Barry Burkhardt

RECEIVED

OCT 26 2004

DIV. OF OIL, GAS & MINING

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0019

Mark -> Coal



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

IN REPLY REFER TO:

UT-0016

January 20, 2005

Ms Mary Ann Wright, Acting Director
Utah Division of Oil, Gas, & Mining
Coal Regulatory Program
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

*Incomple OK
C/O 015/0018
Copy Luce, Susan,
Wayne H*

RE: PacifiCorp - "Deer Creek" Mine - Application for a Permit Revision, North Ruda Area Facilities

Dear Mary Ann:

This in response to the Utah Division of Oil, Gas, & Mining's (UT-DOGM) January 7, 2005, request for a decision, under 30 CFR 944.30, whether the above subject permit revision constitutes a mining plan modification.

As stated in my letters dated March 10, 2004 and October 22, 2004, the above subject permit change continues to meet the criteria of the Federal regulations under 30 CFR 746.18(d) and will require modification of the existing mining plan and Secretarial approval. According to the decisions conveyed in the above referenced letters, the ongoing work to prepare an environmental assessment need to continue.

Sincerely,

Peter Rutledge
Chief Program Support Division

cc: BLM - Utah State Office
BLM - Price Field Office
USFS - Manti-La Sal NF
Denver Field Division

VED
Jan 24 2005 1/25
MRK



PERMITTING CHRONOLOGY

Pacificorp
North Rilda Canyon Portal Facilities
Deer Creek Mine
C/015/0018
Emery County, Utah

July 27, 2005

- March 10, 2004 OSM determination that the addition of the North Rilda Canyon Portal facilities will require mining plan modification.
- September 2, 2004 PacifiCorp submits an application for the North Rilda Canyon Portal Facilities.
- October 22, 2004 OSM determination that the addition of the North Rilda Canyon Portal Facilities require mining plan modification.
- December 6, 2004 PacifiCorp withdraws application to resubmit plan all on-lease.
- December 21, 2004 PacifiCorp submits an application for the North Rilda Canyon Portal Facilities.
- January 20, 2005 OSM determination that the addition of the North Rilda Canyon Portal Facilities requires a mining plan modification.
- January 28, 2005 The permit application is determined administratively complete. PacifiCorp published the Notice of Complete Application (including the Experimental Practice) in the local newspaper and placed a copy of the application in the county courthouse.
- February 1, 8, 15 and 22, 2005 Publication for four weeks in the Emery County Progress.
- February 15, 2005 The Division sent letters to state, federal and local planning agencies notifying them of the complete permit application and soliciting their comments.
- March 16, 2005 Division technical review team met with PacifiCorp.
- March 18, 2005 SHPO concurs with the determination of No Historic Properties Affected.

| | |
|---------------------|-------------------------------------------------------------------------------------------------------------------|
| March 22, 2005 | Public comment period ended with no comments. |
| March 25, 2005 | BLM issues approval of a modification of the R2P2. |
| April 1, 2005 | PacifiCorp submits additional information to the Division. |
| May 10, 2005 | Division sends technical review to PacifiCorp. |
| May 16, 2005 | Section 7 Consultation Letter from U.S. Fish and Wildlife Service for the Rilda Canyon Portals. |
| June 2 and 13, 2005 | PacifiCorp sends additional information. |
| June 24, 2005 | AVS check completed with issue recommendation. |
| July 14, 2005 | Technical Analysis completed, all regulatory requirements have been met. CHIA completed |
| July 26, 2005 | OGM receives PacifiCorp ridered bond in the amount of \$1,113,000 (total bond is now \$4,113,000 [2008 dollars]). |
| July 27, 2005 | Decision Document completed and Permit issued. |

FINDINGS

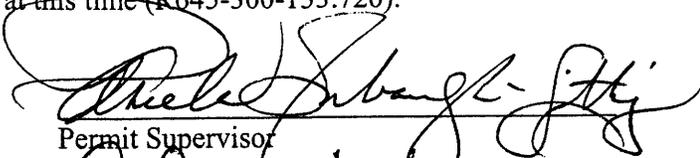
Pacificorp
North Rilda Canyon Portal Facilities
Deer Creek Mine
C/015/0018
Emery County, Utah

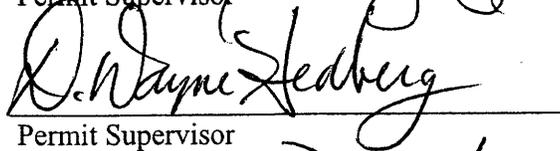
July 27, 2005

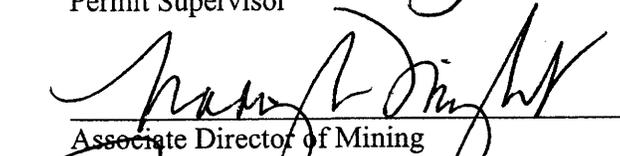
1. The permit application for the extraction of coal from the Mill Fork Lease at the Deer Creek Mine is accurate and complete and all requirements of the Surface Mining Control and Reclamation Act, and the approved Utah State Program (the "Act") are in compliance. See Technical Analysis dated July 13, 2005 (R645-300-133.100)
2. The applicant proposes acceptable practices for the reclamation of disturbed lands. The Division has determined that reclamation, as required by the Act can be feasibly accomplished following the approved plan with the attached permit conditions. See Technical Analysis dated July 13, 2005(R645-300-133.710)
3. An assessment of the probable cumulative impacts of all anticipated coal mining and reclamation activities on the hydrologic balance in the general area has been conducted by the Division and no significant impacts were identified. See CHIA dated June 30, 2005. The Mining and Reclamation Plan (MRP) proposed under the revised application has been designed to prevent damage to the hydrologic balance in the permit area and in associated off-site area (R645-300-133.400 and UCA 40-10-11 (2)(c)).
4. The proposed lands to be included within the permit area are:
 - a. Not included within an area designated unsuitable for underground coal mining operation (R645-300-133.220);
 - b. not within an area under study for designated land unsuitable for underground coal mining operations (R645-300-133.210);
 - c. not on any lands subject to the prohibitions or limitation of 30 CFR 761.11 {a} (national parks, etc), 761.11 {f} (public buildings, etc.) and 761.11 {g} (cemeteries);
 - d. not within 100 feet of a public road except at the location where the public road accesses the property(R645-300-133.220); and
 - e. not within 300 feet of any occupied dwelling (R645-300-133.220).

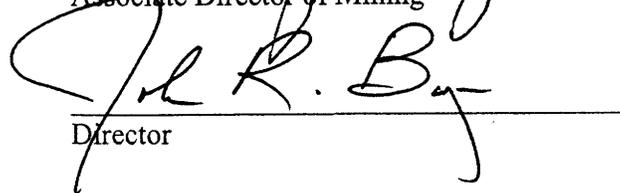
5. The operation would not affect the continued existence of any threatened or endangered species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973. See Technical Analysis dated, July 1, 2005 and letter from U. S. Fish and Wildlife Services dated May 16, 2005 (16 USC 1531 et seq.) (R645-300-133.500).
6. The Division's issuance of a permit is in compliance with the National Historic Preservation Act and implementing regulations (36 CFR 800). See Technical Analysis, dated July 1, 2005. See letter from State Historic Preservation Office, dated March 18, 2005. (R645-300-133.600)
7. The applicant has the legal right to enter and conduct coal mining activities through coal leases issued by the BLM (Federal Coal leases, SL-051221, U-06039, U-2810, and SL-050862. (R645-300-133.300)
8. A 510 (c) report has been run on the Applicant Violator System (AVS), which shows that: prior violations of applicable laws and regulations have been corrected; neither PacifiCorp nor any affiliated company, are delinquent in payment of fees for the Abandoned Mine Reclamation Fund; and the applicant does not control and has not controlled mining operations with demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act (A 510 (c) report was run on, June 30, 2005, see memo to file dated June 30, 2005). (R645-300-133.730)
9. Coal mining and reclamation operations to be performed under the permit will not be inconsistent with other operations anticipated to be performed in areas adjacent to the proposed permit area.
10. The applicant has posted a surety bond for the Deer Creek Mine in the amount of \$4,113,000 issued by Travelers Casualty and Surety Company of America (Surety Number 103908970) (R645-300-134).
11. No lands designated as prime farmlands or alluvial valley floors occur on the permit area. See Technical Analysis dated July 13, 2005 (R645-302-313.100 and R645-302-321.100).
12. The proposed postmining land-use of this disturbed area is the same as the pre-mining land use (wildlife habitat) and has been approved by the Division and the surface land management agency, the Forest Service. No postmining land-use change has been proposed for the Rilda Canyon Portal Facilities.
13. The Division has made all specific approvals required by the Act, the Cooperative Agreement, and the Federal Lands Program. This action does constitute a Federal Mine Plan Modification. See OSM determination letters dated March 10, 2004, October 22, 2004 and January 20, 2005.

14. All procedures for public participation required by the Act, and the approved Utah State Program have been complied with. The public advertisement was published on February 1, 8, 15 and 22, 2005 in the Emery County Progress. No comments were received. (R645-300-120)
15. No existing structures will be used in conjunction with this application. These are new surface facilities being proposed at this time (R645-300-133.720).


Permit Supervisor


Permit Supervisor


Associate Director of Mining


Director

FEDERAL

PERMIT
C/015/0018

July 27, 2005

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, suite 1210
Salt Lake City, Utah 84114-1210
(801) 538-5340

This permit, C/015/0018, is issued for the state of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

PacifiCorp
201 South Main Street
Salt Lake City, Utah 84140-0021
(801) 220-4618

for the Deer Creek Mine. A Surety Bond is filed with the Division in the amount of \$4,113,000, payable to the State of Utah, Division of Oil, Gas and Mining and the United States Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSM). The Division must receive a copy of this permit signed and dated by the permittee.

- Sec. 1 STATUTES AND REGULATIONS** - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act and the R645 regulations.
- Sec. 2 PERMIT AREA** - The permittee is authorized to conduct coal mining and reclamation operations, on the following described lands as described in the approved application, situated in the state of Utah, Emery County:

Township 16 South, Range 6 East, SLB&M Emery County, Utah

- Section 1: SE $\frac{1}{4}$.
Section 10: E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$.
Section 11: All.
Section 12: All.
Section 13: All.
Section 14: All.
Section 15: E $\frac{1}{2}$ E $\frac{1}{2}$.
Section 22: Lots 1, 2, 4, 5, 6, 7, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.
Section 23: N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$.
Section 24: N $\frac{1}{2}$.
Section 25: E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Township 16 South, Range 7 East, SLB&M Emery County, Utah

- Section 6: Lots 5, 6, 7, 8, S $\frac{1}{2}$ SE $\frac{1}{4}$.
Section 7: All.
Section 8: NW $\frac{1}{4}$ NW $\frac{1}{4}$.
Section 18: Lots 1, 2, NE $\frac{1}{4}$.
Section 19: Lots 2-3, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$.
Section 20: E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$.
Section 21: S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$.
Section 22: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.
Section 27: SW $\frac{1}{4}$.
Section 28: W $\frac{1}{2}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$.
Section 29: All.
Section 30: E $\frac{1}{2}$, Lot 4.
Section 33: All.
Section 34: W $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$ W, NW $\frac{1}{4}$ W $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ W $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$.

Township 17 South, Range 6 East, SLB&M Emery County, Utah

- Section 1: Lots 1, 2, 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$.
Section 12: E $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$.
Section 13: E $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$.
Section 24: E $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$.
Section 25: N $\frac{1}{2}$ NE $\frac{1}{4}$,
Beginning at the SE corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T17S, R6E, SLB&M; Thence, north 160 rods, west 116 rods to the center line of the Cottonwood Creek; thence southerly along centerline of said creek to a point 84 rods west of the beginning; thence, east 84 rods to the beginning.

Township 17 South, Range 7 East, SLB&M Emery County, Utah

- Section 2: Lot 12, W $\frac{1}{2}$ SW $\frac{1}{4}$, [SE $\frac{1}{4}$ (SULA #284)].
Section 3: W $\frac{1}{2}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.
Section 4: All.
Section 5: All.
Section 6: All.
Section 7: All.
Section 8: All.
Section 9: All.
Section 10: All.
Section 11: N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ west of the Deer Creek fault, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$, Portions of the E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ west of the Deer Creek fault.
Section 14: Portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ west of the Deer Creek fault, Portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ west of the Deer Creek fault,

Section 15: N¹/₂, SW¹/₄.

Section 16: All.

Section 17: All.

Section 18: All.

Section 19: All.

Section 20: All.

Section 21: All.

Section 22: W¹/₂, W¹/₂ SE¹/₄, W¹/₂ E¹/₂ SE¹/₄, Portions of the E¹/₂ SE¹/₄ SE¹/₄ west of the Deer Creek fault, Portions of the SE¹/₄ NE¹/₄ SE¹/₄ west of the Deer Creek fault.

Section 27: N¹/₂ NW¹/₄, NW¹/₄ NE¹/₄, W¹/₂ E¹/₂ NE¹/₄, Portions of the E¹/₂ E¹/₂ NE¹/₄ west of the Deer Creek fault.

Section 28: N¹/₂ N¹/₂.

Section 29: N¹/₂ N¹/₂.

Section 30: Lots 1, 5, 6, N¹/₂ NE¹/₄, SW¹/₄ NE¹/₄, NW¹/₄ SE¹/₄.

Beltline Corridor

Beginning at a point S 0° 22' E, 142.4 feet from the SW corner of NW¹/₄ of Section 1, T17S, R7E, SLB&M; thence, N 49° 53' 23" E, 2395.4 feet; thence, S 40° 10' 42" E, 101.94 feet; thence, S 49° 52' 03" W, 2481.12 feet; thence, N 0° 22' W, 276.25 feet to the point of beginning.

Waste Rock Site

Beginning 10 feet South of the NE corner of Section 6, T17S, R8E, SLB&M; thence, S 89° 52' 00" W, 1272.000 feet; thence S 0° 08' 00" E, 600.000 feet; thence, S 83° 28' 43" E, 302.035 feet; thence, S 72° 54' 35" E, 314.083 feet; thence, S 63° 06' 41" E, 224.508 feet; thence, S 48° 18' 17" E, 268.404 feet; thence, S 20° 06' 29" W, 1066.848 feet; thence, S 39° 24' 03" W, 855.358 feet; thence, S 41° 10' 40" E, 100 feet; thence N 43° 39' 42" E, 1635.000 feet; thence, N 31° 02' 18" E, 412.959 feet; thence N 22° 58' 45" E, 1310.908 feet; thence, N 89° 40' 41", 740.000 feet; to the point of beginning.

The permittee is authorized to conduct coal mining and reclamation operations on the foregoing described property subject to the conditions of all applicable conditions, laws and regulations.

Sec. 3 COMPLIANCE - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

Sec. 4 PERMIT TERM - This permit expires on February 7, 2006.

- Sec. 5 ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the approval of the Division Director. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13{e} and R645-303-300.
- Sec. 6 RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:
- (a) have the rights of entry provided for in 30 CFR 840.12, R645-400-220, 30 CFR 842.13 and R645-400-110;
 - (b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.
- Sec. 7 SCOPE OF OPERATIONS** - The permittee shall conduct coal mining and reclamation operations only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.
- Sec. 8 ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
- (a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - (b) immediate implementation of measures necessary to comply; and
 - (c) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- Sec. 9 DISPOSAL OF POLLUTANTS** - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.
- Sec. 10 CONDUCT OF OPERATIONS** - The permittee shall conduct its operations:
- (a) in accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and

(b) utilizing methods specified as conditions of the permit by the Division in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.

- Sec. 11 EXISTING STRUCTURES** - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.
- Sec. 12 RECLAMATION FEE PAYMENTS** - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.
- Sec. 13 AUTHORIZED AGENT** - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.
- Sec. 14 COMPLIANCE WITH OTHER LAWS** - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq.) and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.
- Sec. 15 PERMIT RENEWAL** - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit area in accordance with the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 16 CULTURAL RESOURCES** - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the Division of Oil, Gas, and Mining. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by the Division within the time frame specified by the Division.
- Sec. 17 APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.
- Sec. 18 SPECIAL CONDITIONS** - There are special conditions associated with this permitting action as described in attachment A.

The above conditions (Secs. 1-18) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them.

These conditions may be revised or amended, in writing, by the mutual consent of the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

THE STATE OF UTAH

By: _____

Date: _____

John R. Baya
7/27/05

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.

**Authorized Representative of
the Permittee**

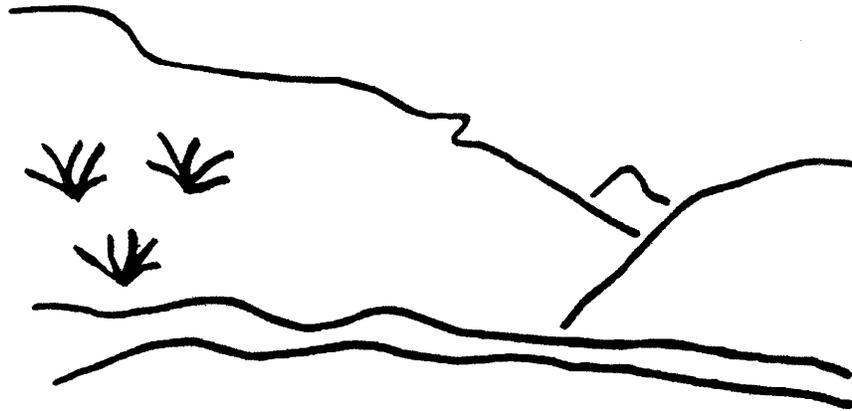
Date: _____

Attachment A

SPECIAL CONDITIONS

1. If during entry development, sustained quantities of groundwater are encountered which are greater than 5 gpm from a single source in an individual entry, and which continue after operational activities progress beyond the area of groundwater production, PacifiCorp must monitor these flows for quality and quantity under the approved baseline parameters. PacifiCorp will notify the Division within 24 hours prior to initiation of monitoring.
2. PacifiCorp will submit water quality data for the Deer Creek Mine in an electronic format through the Electronic Data Input web site, <http://linux1.ogm.utah.gov/cgi-bin/appx-ogm.cgi>.
3. Construction of the North Rilda Canyon Portal Facilities may not commence until a mining plan approval is obtained from the Assistant Secretary of Land and Minerals at the Department of the Interior.

State of Utah



Utah Oil Gas and Mining

Coal Regulatory Program

Deer Creek Mine
PacifiCorp
Technical Analysis
July 14, 2005

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Atch. #5

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
FOR

Deer Creek Mine
Federal Coal Leases Federal Leases U-06039, U-2810, SL-050862, and SL-051221
Mining Plan Decision Document

1. Introduction

PacifiCorp submitted a permit application package (PAP) for a permit revision for the Deer Creek Mine to the Utah Department of Natural Resources, Division of Oil, Gas, and Mining (UT-DOG M). The PAP proposed constructing portals, a mine ventilation fan, office/bathhouse/warehouse, and other associated surface support facilities on approximately 13 acres of Federal leases U-06039, U-2810, SL-050862, and SL-051221. Under the Mineral Leasing Act of 1920, the Assistant Secretary, Land and Minerals Management, must approve, approve with conditions, or disapprove the mining plan modification for Federal leases U-06039, U-2810, SL-050862, and SL-051221. Pursuant to 30 CFR Part 746, the Office of Surface Mining (OSM) is recommending approval of the mining plan modification action without special conditions.

2. Statement of Environmental Significance of the Proposed Action

The undersigned person has determined that the above-named proposed action would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and therefore, an Environmental Impact Statement is not required.

3. Reasons

This finding of no significant impact is based on the attached Environmental Assessment dated July 22, 2005, titled *Deer Creek Coal Mine, Mining Plan Modification, Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221, Emery County, Utah*, prepared by UT-DOG M and OSM, in cooperation with U.S. Forest Service and the Bureau of Land Management which has been independently evaluated by OSM and determined to assess the environmental impacts of the proposed action adequately and accurately and to provide sufficient evidence and analysis for this finding of no significant impact. OSM takes full responsibility for the accuracy, scope, and content of the attached environmental assessment.

Ranvir Singh
Chief, Northwest Branch

Aug. 01, 2005
Date



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

ATCH #6

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2820-4

Date: July 6, 2005

RECEIVED

JUL 11 2005

DIV. OF OIL, GAS & MINING

[Handwritten signature]
7/6/05

D. Wayne Hedberg
Permit Supervisor
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Subject: New Surface Facilities in Rilda Canyon, PacifiCorp, Deer Creek Mine, C/015/0018,
Task ID #2266, Outgoing File

Dear Wayne:

My staff has reviewed the latest revisions to PacifiCorp's application for surface facilities in Rilda Canyon, dated June 2, 2005. The mine plan revision application includes conditions for operations that are consistent with lease stipulations consented to by the Forest Service and the Manti-La Sal National Forest Land and Resource Management Plan. The proposed post-mining land uses of the location for the proposed surface facilities in Rilda Canyon are the same as the pre-mining land uses, and therefore are consistent with the Forest Plan.

We will continue to work as a Cooperating Agency with the Division as it completes the Environmental Assessment and any additional evaluations required under the SMCRA permitting process.

Please contact Dale Harber at (435) 636-3548 if you have any questions.

Sincerely,

[Handwritten signature: Alice B. Carlton]

ALICE B. CARLTON
Forest Supervisor

cc: D-2/3
Regional Forester



Wagner

Atch # 7



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2820-4

Date: December 1, 2005

Mary Ann Wright
Associate Director for Mining
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

J. Keomig
c/o 15/0018

Subject: New Surface Facilities in Rilda Canyon, PacifiCorp, Deer Creek Mine, C/015/0018,
Task ID #2266, Outgoing File

Dear Ms. Wright:

By this letter, the Forest Service consents to the Mining and Reclamation Plan for new surface facilities in Rilda Canyon for PacifiCorp's Deer Creek Mine as required by 30 U.S.C. § 207(c). My decision to consent to the modification, dated August 25, 2005, was upheld by the Regional Forester on administrative appeal on November 28, 2005. In accordance with regulations at 36 CFR § 215.9(b), my decision may be implemented on December 20, 2005. Forest Service consent to the Mining and Reclamation Plan will be effective on that date.

The mine plan revision application includes conditions for operations that are consistent with the Manti - La Sal National Forest Land and Resource Management Plan, and with lease stipulations consented to by the Forest Service. The proposed post-mining land uses of the location for the proposed surface facilities in Rilda Canyon are the same as the pre-mining land uses, and therefore are consistent with the Forest Plan. Forest Service consent is conditioned upon inclusion of terms in the mine plan that requires compliance with the Forest Plan standard for macroinvertebrates.¹ Since the current macroinvertebrate inventory of Rilda Creek is measured

¹ 30 CFR 740.4 Responsibilities (c) "The following responsibilities of OSM may be delegated to a state regulatory authority under a cooperative agreement: ... (2) Consultation with and obtaining the consent, as necessary, or the Federal land management agency with respect to post-mining land use and to special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations:".

30 CFR 740.4 Responsibilities, (e) - "The Federal land management agency is responsible for: (1) Determining post-mining land uses; (2) Protection of non-mineral resources; (3) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law applicable to such lands under its jurisdiction; and (4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mine plan approval".

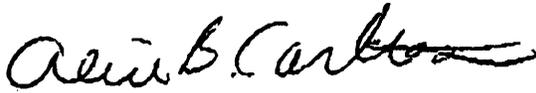
30 CFR 740.11(d) "Nothing in this subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument



at a Biotic Condition Index (BCI) of 69, conforming to the Forest Plan standard for BCI would mean that any mining related activities that caused the BCI to be reduced below 69 would require corrective action by the operator.

Also in accordance with our surface management agency responsibilities² to help protect non-coal resources, we desire that the Rilda Creek Riparian Habitat Restoration Project that is documented in the Permit Application Package/Mining and Reclamation Plan, Table 300-5 Rilda Canyon Wildlife Mitigation of the May 2005 "R645-301-300 Biology" document be retained and enforced under the permit.

Sincerely,



ALICE B. CARLTON
Forest Supervisor

cc: Regional Forester
Pete Rutledge, OSM
Kent Hoffman, BLM

such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Act on land under their jurisdiction".

30 CFR 740.13(d)(3) "The regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations and executive orders for which it is responsible."

² 30 CFR 740.4 Responsibilities, (e) - "The Federal land management agency is responsible for: (1) Determining post-mining land uses; (2) Protection of non-mineral resources; (3) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law applicable to such lands under its jurisdiction; and (4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mine plan approval".

0157



Atch. # 8
United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>

DEC 23 2005

IN REPLY REFER TO:

3452

U-084923, U-084924, SL-070645/U-02292, U-040151, U-83066, and U-1358
(UT-923)

MaryAnn Wright, Associate Director, Mining
Utah Division of Oil, Gas, & Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

J. Manning
c/10/15/0018
c/10/15/0019

Dear MaryAnn:

Bureau of Land Management (BLM) has completed our review of PacifiCorp's application to relinquish portions of the following Federal coal leases U-084923, U-084924, SL-070645/U-02292, U-040151, U-83066, and U-1358. Attached is Table 2 from PacifiCorp's submission, detailing the parcels to be relinquished. BLM is prepared to move forward with accepting partial relinquishment of these six leases per PacifiCorp's request of April 30, 1997. Our decision is based on a review of the administrative record, which includes your previous comments.

BLM has determined that these relinquishments are in the public interest, that the accrued rentals and royalties have been paid and that all obligations of the lessee under the regulations and the terms of the leases have been met in accordance with 43 CFR 3452.1-3. If you have any comments or concerns that BLM should consider before the decision is made, please provide them on or before January 20, 2006.

Should you have questions, or need additional information, please contact Gregg Hudson at 801-539-4040.

Sincerely,

James F. Kohler
Chief, Solid Minerals Branch

Attachment
Table 2 (pp 2)

cc: Steve Rigby (PFO)

RECEIVED
mbw
DEC 27 2005 113
DIV. OF OIL, GAS & MINING

Atech 9

STANDARDS & GUIDELINES

GENERAL DIRECTION

MANAGEMENT ACTIVITIES

CONTINUATION OF: WILDLIFE AND FISH RESOURCE MANAGEMENT (001)

(3) In areas of historic water shortage during the dry season of the year develop water as appropriate.

(4) Manage key deer and elk habitat so as to minimize disturbance during the period of use.

B. Golden Eagle (1) Avoid activities that could cause abandonment of active nests.

C. Blue Grouse (1) Maintain and/or improve lands suitable for Blue Grouse to provide a mix of 10 percent breeding, 20 percent brood rearing, 40 percent feeding and 30 percent wintering.

D. Macroinvertebrates (1) Improve to and maintain a good or above condition and a Biotic Condition Index (BCI) of 7 or above, based on analysis from R-4's Aquatic Invertebrate Laboratory.

E. Abert Squirrel (1) Habitat in ponderosa pine; Silvicultural prescriptions for ponderosa pine on the Monticello Ranger District should consider management that:

- (a) Protects habitat by maintaining occupied sites to produce good to very good habitat condition. This should include: 2 nest or feed trees 9-19" DBH, 1 feed tree 16" DBH, and 10 feed trees 9" DBH within 50 foot radius and 30 additional trees 9" DBH outside the 50 foot radius but within a 100 foot radius.

atch 10



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2820-4

Date: November XX, 2005

Amendment to November 4, 2005 Appeal Resolution
Agreement between
Utah Environmental Congress (UEC)
and the
Manti - La Sal National Forest

Per our meeting on November 10, 2005 in the UEC office regarding Supervisor Carlton's request to explore options for amendment she desires to clarify the intent of our November 4, 2005 appeal resolution agreement (attached) for the UEC appeal of the Deer Creek Coal Mine Plan Modification (Fed. Coal leases U-06039, U-2810, SL-050862, SL-051221) Decision Notice/Finding Of No Significant Impact and Environmental Assessment, the parties agree to the below amendment that strikes all of the wording in the November 4, 2005 appeal resolution agreement and replaces it with the wording below:

Per our resolution discussions regarding the October 13, 2005 administrative appeal filed by Utah Environmental Congress (UEC) of the Deer Creek Coal Mine Plan Modification (Fed. Coal leases U-06039, U-2810, SL-050862, SL-051221) Decision Notice/Finding of No Significant Impact and Environmental Assessment, we have created the following agreement.

The parties hereby agree as follows:

1. Manti-La Sal National Forest (MLSNF) Supervisor Alice Carlton is the Responsible Official for the appealed decision and has authority to commit the Forest Service to the terms of this agreement. UEC Executive Director Kevin Mueller commits the UEC to the terms of this agreement.
2. UEC hereby withdraws its October 13, 2005 administrative appeal of the Supervisor's decision to the Regional Forester. As required, UEC will mail a letter to the Regional Forester withdrawing the appeal.
3. The MLSNF shall include the following mandatory stipulations in its concurrence to the Utah Division of Oil, Gas, and Mining (DOG M) for permitting associated with the mine plan modification for the Rilda Canyon Facility.



A) The mine operator shall implement a Rilda Creek Riparian Habitat Restoration Project that is the product of coordination among the Forest Service (including the Forest Fisheries Biologist and/or Forest Hydrologist), Utah Division of Wildlife Resources (including the Fisheries Biologists), DOGM, and private landowners along the Rilda Creek corridor (known collectively as the "Coordinating Group"). This project is documented in "Table 300-5 Rilda Canyon Wildlife Mitigation" that is located on page 24 of the May 2005 "R645-301-300 Biology" document. This mitigation table demonstrates that the "Table 300-5" is mitigation for aquatic habitat, migratory birds, big/small game species, and riparian habitat. Table 300-5 project summary says, among other things, "Rehabilitate the perennial portion of Rilda Creek from Rilda Canyon Springs to the mouth of the Canyon." The objective of the project is to rehabilitate areas identified by the Coordinating Group within the perennial portion of Rilda Creek. Examples include but are not limited to raising the water table, improving cottonwood galleries, riparian, and aquatic habitats, containing dispersed camping, and reducing sediment. The specifics of the restoration project to be implemented will be developed, planned and monitored by the Coordinating Group, and will be funded and implemented by the mine operator. Project implementation must begin no later than the field season following issuance of the permitting for the Rilda Canyon facility, providing that the permitting is completed prior to 6 months before the end of that year's field season. If the permitting is completed less than 6 months prior to the end of the field season, the ecosystem improvement project will begin the following field season. The ecosystem improvement project must be completed no later than five years thereafter.

Stream restoration will involve a systematic approach: identify the problems and opportunities, develop project goals and objectives, select and design restoration alternatives, implement selected designs, monitor results and modify designs, if necessary. Annual monitoring or progress reports including macroinvertebrate monitoring (see following section) will be prepared by the mine operator and submitted to DOGM. DOGM will mail the annual monitoring or progress reports to UEC in a timely manner. The Coordinating Group will evaluate progress for 5 years following the beginning of the Rilda Creek Riparian Habitat Restoration Project to determine if the project is moving towards its goals. The Forest Service will make a good faith effort to contact UEC to obtain their input regarding the progress of the rehabilitation project and discuss actions that could help better meet project goals. During the five year term, if it appears that those goals are not being approached, the Coordinating Group will re-evaluate the ecosystem improvement project and modify designs, if necessary.

B) The mine operator shall monitor macroinvertebrates and water quality at 2 locations in Rilda Creek (upstream and downstream of the stream improvement project area). Samples may be collected with the same protocol used by UDWR for the initial, baseline studies. However, the macroinvertebrates monitoring shall be done at least twice each year (dates to be determined by the Coordinating Group) for 5 years after

approval of the Rilda Canyon Facility project. This data and any supplemental reports will be included in the annual progress reports that will be submitted to DOGM. BCI will be included in the metrics calculated from the samples. At the end of 5 years, if macroinvertebrate monitoring does not result in meeting the original Forest Plan standard (1986, as amended) of a BCI of 75, the Forest Service will work with DOGM to determine if it is due to mining related activity. If the cause is determined to be mining related, the Forest Service will work with DOGM to identify actions to resolve the macroinvertebrate concerns. DOGM, with Forest Service concurrence, will require the mining company to initiate corrective action. During the evaluation period the Forest Service will make a good faith effort to contact UEC, to meet, review data, and discuss actions available to resolve macroinvertebrate concerns. All obligations established in this agreement expire six years from the day that permitting for the new Rilda Canyon facility is finalized.

C) The approximately 200 acres of timber harvesting said to be included for (big/small game and migratory bird) Wildlife Mitigation on Table 300-5 (page 21 of 'R645-301-300 Biology' document) is removed. It is recognized that removal of the timber harvesting component of Table 300-5 may result in other parts of this measure not occurring.

This Amendment Signed:

_____ Date: _____
 Kevin Mueller,
 Executive Director
 Utah Environmental Congress

_____ Date: _____
 Alice Carlton,
 Forest Supervisor
 Manti-La Sal National Forest