

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

December 12, 2006

TO: Internal File

THRU: Pamela Grubaugh-Littig, Permit Supervisor

FROM: Jerriann Ernstsens, Ph.D., Environmental Scientist, Biology.

RE: DOGM's Informal Phone Consultation with USFWS and Decision Memo for OSM for the Mill Fork West Extension LBA/Federal Lease, Energy West Mining Inc., PacifiCorp, Deer Creek Mine, C/015/0018, Task ID #2544, 2656

DOGM TECHNICAL ANALYSIS SUMMARY:

The Permittee submitted a plan on June 30, 2006 for an extension to access federal coal (lease number UTU-84285) that is west of the Mill Fork State Lease (ML-48258). The extension would increase their mine permit area by 213.57 acres. The plan does not include adding acreage to the disturbed area for operations. The proposed extension area would allow the Permittee to locate the "set-up rooms" farther to the west providing greater coal recovery, mostly, from the long-wall mining within the Mill Fork State Lease. The proposed area above the set-up rooms should not subside.

THREATENED, ENDANGERED, AND SENSITIVE ANIMAL/PLANT SPECIES

The MRP meets R645-301-322 because there is adequate discussion, supporting documentation, and maps on TES species that could occur within or adjacent to the permit area.

The MRP includes current TES lists and an overview of habitat and occurrence data for all the TE species in Emery County, the Manti-Lasal National Forest sensitive species, and other state listed sensitive species (Vol. 11, Sec. 300, App. C, and Tabs. 300-1 through 300-4; Vol. 12, Sec.300). Of the TE species listed for the area, the only TE species that may be present is the Mexican spotted owl (although recognized as highly unlikely).

Plants

The MRP states that no threatened or endangered plant (or animal) species inhabit the Mill Fork or Rilda Canyon areas. There are, however, sensitive species within the permit area. The MRP discusses the potential presence of Monti's milkvetch, Canyon sweetvetch, Peterson

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catchfly, and Link trail columbine. A query to the Utah Natural Heritage program identified Carrington daisy, USFS sensitive species, occurring in the permit area. The MRP describes the potential of this species occurring primarily within the southern region of the mine permit area. USFS considers that subsidence will not impact this species. The Utah Natural Heritage program identified the Link Canyon columbine and Canyon sweetvetch, both USFS sensitive species, occurring adjacent to the permit area in Little Bear Canyon.

Mexican Spotted Owl

The Mill Fork permit area includes MSO habitat. The Willey 1997 and 2000 models illustrate that the habitat is on the far northeastern boundary of the permit area and is in the far southwestern corner of the permit area (T16S, R6E, S22). The MSO habitat is not within the predicted subsidence zone.

Fish

The Permittee addresses the Colorado River cutthroat trout and its habitat within or adjacent to the permit area. The mine's overall water budget is a contribution not depletion to the Colorado River basin and here is no significant change in water contribution. The 2004 fish surveys reported observations of cutthroat in Rilda Creek, but DWR considers that the observed fish were most likely Yellowstone cutthroat. Populations of this species, however, are known to exist in Crandall Creek.

DOGM INFORMAL, PHONE CONSULTATION WITH USFWS SUMMARY:

The Division initiated informal consultation with the USFWS (Diana Whittington) on September 6, 2006 for this application. Jerriann Ernstsens informed Diana that there was no surface disturbance and that the Permittee does not predict subsidence for the extension area. Jerriann mentioned that of the TE species listed for the area, the only TE species that may be present is the Mexican spotted owl (although recognized as highly unlikely). Jerriann mentioned that there are no known raptor nests for the area (#1475 is close, but not within). The project map (MFS1866D) shows that the area may include 5 relatively steep sites, however, the Division supports that these areas are talus slopes and not steep escarpment sites.

DOGM INFORMAL DECISION

The Division's determination is that the proposed Deer Creek expansion project is "No effect" to threatened or endangered species listed for the County because there would be no surface disturbance for facilities, there is no subsidence planned for the extension area, and there is no depletion of water from the Colorado River basin.