

HINDRANCE TO ENFORCEMENT VIOLATIONS
INSPECTOR'S STATEMENT

Company/Mine: InterWest Mining Company _
Permit #: C/015/0018 _

CO # 21195
Violation # 1 of 1

- A. **HINDRANCE TO ENFORCEMENT:** (Answer for hindrance violations only such as violations concerning record keeping, monitoring, plans and certification).

Describe how violation of this regulation actually hindered enforcement by DOGM and/or the public and explain the circumstances.

Explanation: While conducting an inspection of the permit and associated requirements as part of the 2016 annual review, it was discovered that the Permittee did not conduct raptor surveys for 2016. As noted in the MRP, there are several Golden Eagle nests within a ½ mile buffer of surface facilities and surveys are conducted as part of the wildlife protection plan. In order to protect a species, you must first know if it has the potential to be impacted.

The Bald and Golden Eagle Protection Act prohibits anyone without a permit from “taking” golden eagles, including their nests. The Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture trap, collect, molest or disturb.” “Disturb” means “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, 1) injury, 2) decrease in productivity or 3) nest abandonment.

The purpose of the raptor survey is to avoid a “Take” situation by conducting an annual survey to 1) determine if any nests are occupied and 2) avoid disturbance to an active nest. Without knowing the status of the nest, it is impossible to know if mining operations had any impacts of the survival of a protected species.

The MRP states in several locations that annual raptor surveys will be conducted. Volume 1, page 2-210.6 states the Rilda Canyon Surface Facilities are “located within one-half mile of three raptor nests sites”. Page 2-210.7 “... a raptor survey, will be completed prior to commencement of surface disturbing activities.

Volume 11, Page 12, Terrestrial Species, “Raptor nesting studies and nest mapping have been conducted in the North Rilda Area. Much of the area is raptor nesting habitat... Energy West Mining Co. conducts annual raptor surveys in the area. The results of those surveys are available upon request.”

Volume 11, Page 17, Section 645-301-323. “ The Raptor nest map has been transmitted to the Division of Oil, Gas, and Mining, and is part of the PacifiCorps’ confidential files, located in the UDOGM office. In addition to biologic base maps provided in this section, PacifiCorp conducts annual reconnaissance surveys...”

Volume 11, Page 18, Section 645-301-330, provides the Protection and Enhancement plan. Number #9 of the plan is to conduct an Annual raptor survey.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: No, the permittee is responsible for conducting (or hiring) the raptor survey.

- Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care, explain.

Explanation: No, the MRP states the surveys will be conducted annually. In light of the upcoming reclamation schedule, the comments provided by the Division in the 2015 annual review explicitly stated specific care be taken for nest 2065 which was tended in 2015 and within a ½ mile of the Rilda surface facility.

- If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: NA

- Was the operator in violation of any conditions or stipulations of the approved MRP?

Explanation: Yes. See comments under A. Volume 11, Page 18, Section 645-301-330, Protection and Enhancement, #9, Annual raptor survey. See R645-301-322 and R645-301-333.

- Has DOGM or OSM cited a same or similar violation of this regulation in the past? If so, give the dates and the type of enforcement action taken.

Explanation: No

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

**Hindrance to Enforcement
Inspector's Statement**

NOV/CO # 21195
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Explanation: NA

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: Yes. The operator has conducted the survey in all years past.

3. Was the submission of plans prior to physical activity required by this NOV / CO? NO. If yes, explain.

Explanation: _____


Authorized Representative

Signature

April 10, 2017
Date

2015 Annual Report
see letter dated 8/2/16

COMMITMENTS AND CONDITIONS

The Permittee is responsible for ensuring annual technical commitments in the Mining and Reclamation Plan and conditions accepted with the permit are completed throughout the year. The Division has identified these commitments below and has provided space for you to report what you have done during the past year for each commitment. If additional written response is required, it should be filed as an attachment to this report.

Title: RAPTORS

Objective: To document the location and activity of nests that could be affected by mining.

Frequency: annually

Status: Ongoing

Reports: Submit annually in annual report.

Citation: MRP, Section 322, Subsection Terrestrial Species. Vol. 11

Operator Comments

Located in confidential file

Reviewer Comments Met Requirements Did Not Meet Requirements

4/29/16: LR: The raptor survey was performed as evidenced by data and flight map. I performed analysis to determine that the tended nest (2065) is barely outside the 1/2 mile buffer of the Rilda surface facilities. During closure, please note the 1/2 mile buffer area in case materials are flown in for portal closures. Flight-lines must stay outside of the buffer.

Title: SUBSIDENCE MONITORING REPORT

Objective: To Determine the effects of subsidence

Frequency: Annually

Status: Ongoing

Reports: Submit in annual report

Citation: MRP, Volume 3, Appendix X

Operator Comments

Included with this submittal as stand alone report.

Reviewer Comments Met Requirements Did Not Meet Requirements

The Permittee included a subsidence mine map, subsidence monitoring report and summary table with the annual report. The subsidence map shows the recorded subsidence contours for the Deer Creek Mine Area 27 and Area 28 as of the end of 2015. The subsidence monitoring report includes a summary table of predicted vs observed subsidence. The observed subsidence in Area 27 and Area 28, in Mill Fork were 7.2 ft and 13.1 ft respectively. The Permittee has addressed the requirements of this commitment. (CP)

The Rilda Canyon Surface Facilities are located within an area which is designated by UDWR as High Priority Deer Summer Range and Critical Elk Winter Range (see Map Packet 2-19). Additionally, the facilities are located within one-half mile of three raptor nest sites; however, the facilities are visible only from nest site 181.173 (8). This nest site has been included in the annual survey conducted by the applicant since 1986 and has never been observed to be active. The following information represents a summary of the annual survey results for the three sites.

Nest Site Number			Nest Site Activity History	
<u>UDWR</u>	<u>PacifiCorp</u>	<u>Species</u>	<u>Year</u>	<u>Status</u>
181.173	8	Golden Eagle	1986	Very old, dilapidated
			1987	Very old, dilapidated
			1988	Not found
			1989	Not found
			1990	Not found
			1991	Not found
			1992	Not found
			1993	Not found
			1994	Not found
			1995	Not found
183.193	296A	Golden Eagle	1986	Inactive, dilapidated
			1987	Inactive
			1988	Tended
			1989	Active
			1990	Inactive
			1991	Tended
			1992	Inactive
			1993	Inactive
			1994	Inactive
			1995	Inactive
783.2	783.2	Cooper's Hawk	1989	Active
			1990	Inactive
			1991	Inactive
			1992	Inactive
			1993	Inactive
			1994	Inactive
			1995	Inactive

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The habitat exists in the project area for a variety of wildlife species, some of which may be of high interest. A Biological Evaluation for the EA, for the project, was completed

by Manti-La Sal National Forest personnel in August of 1994. The resulting determination states, in part, "... the proposed action is not likely to adversely effect populations of listed, proposed and sensitive species found or suspected of being in the Management area." Additional information regarding TES species surveys is found on page 2-173.1.

Habitat mitigation measures have been discussed, with UDWR personnel (Bill Bates), for other species which may be affected by the project. These are discussed at page 3-94.2. Mitigation and habitat improvement measures that will be employed during reclamation are addressed on pages 4-54.4 and 4-54.5.

Mountain lions are known to travel through the Rilda Canyon area occasionally.

As stated previously, all necessary wildlife surveys, including a raptor survey, will be completed prior to commencement of surface disturbing activities.

Because of the small size of the facility area, and the limited use associated with the facility, impacts to wildlife are expected to be short-term, occurring primarily during the construction period.

Construction of the facilities will begin after July 1, 1995 with completion scheduled prior to December 1, 1995. Facility construction will not occur between December 1 and July 31; the crucial times for wintering elk, fawning deer and nesting raptors, without prior consultation with the Utah Division of Wildlife Resources and identification of precautions which will prevent or reduce impacts to the above listed species.

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II. Terrestrial Species

Wildlife studies have been conducted within the Deer Creek Mine permit areas and those areas adjacent to it. The wildlife habitats of the North Rilda Area include Mixed Conifer, Pinyon-Juniper/Mountain Brush, and Sagebrush/Grass communities. Descriptions of these and other habitats that exist within the permit and adjacent boundaries have been given in previous wildlife sections of the MRP. "Species of Special Significance", threatened, endangered, and "Special Status Species" have been described previously. Table 1 of Volume 1, Part 2 of the MRP lists Vertebrate Species of the Wasatch Plateau of which the Deer Creek Mine permit and adjacent area and the North Rilda Area are part. The tables include the species status (common, rare, threatened, etc.), the habitats in which they occur, and the likelihood of their occurrence within the boundaries of the lease area.

Mule Deer, Elk, and Moose habitats have been mapped for the permit and adjacent areas. Refer to Maps 300-3, 300-4, and 300-5 of this section to view the areas. "Critical Summer Range", "Critical Winter Range", and "High Value Winter Range" are shown on the maps. The Utah Division of Wildlife Resources indicate that the entire Rilda Canyon area is habitat for Mountain Lion and Black Bear. UDWR also have records of occurrence for wolverine eight miles northwest and thirteen miles southwest of Rilda Canyon. Habitat for the Canadian Lynx is also found in the Rilda Canyon area. The wolverine and lynx habitat maps, found on the UDWR web site (<http://dwrcdc.nr.utah.gov/ucdc/default.asp>) are shown as "predicted habitat" and not "known habitat" maps.

Raptor nesting studies and nest mapping have been conducted in the North Rilda Area. Much of the area is raptor nesting habitat. Specific nests have been numbered and mapped in the area (this report has been submitted to the Division of Oil, Gas and Mining only and is found in PacifiCorp's Confidential Files, located at the UDOGM office) The status of the two nests in Rilda Canyon have also been submitted and are part of the Confidential Files. Nest information and locations are based on results from the 2004 annual raptor survey conducted by Energy West Mining Co., in conjunction with the Utah Department of Wildlife Resources. Energy West Mining Co. conducts annual raptor surveys in the area. The results of those surveys are available upon request.

A Ventilation Fan Sound Survey was conducted in November 2004; see Volume 11 Appendix Volume - Biology: Appendix E. Results indicate that the sound frequency and volume of the fans in Rilda Canyon will be near background levels at the perennial stream origination point.

R645-301-322.210 Threatened and Endangered Species

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R645-301-323 Maps and Aerial Photographs

The map for vegetation diversity is located in the Maps Section of R645-301-300: Biology of this volume (Map 300-1). Deer, elk, and moose habitat are located on Maps 300-3, 300-4 and 300-5. The Raptor nest map has been transmitted to the Division of Oil, Gas and Mining, and is part of PacifiCorp's confidential files, located in the UDOGM office. In addition to biologic base maps provided in this section, PacifiCorp conducts annual reconnaissance surveys, including subsidence monitoring (annual aerial photogrammetric surveys), infrared photography (5 year intervals), and hydrologic monitoring.

R645-301-330 OPERATION PLAN

Protection and Enhancement:

Methods, devices, and procedures to protect fish, wildlife and stream degradation during construction, operation and reclamation activities are:

1. Reduced disturbed footprint.

As depicted in Volume 11 - Engineering, Maps Section, Map 500-1, the Rilda Canyon Portal Facilities are located in an area disturbed by historical coal mining. This disturbed land is part of the historic coal developments known as the Helco, Leroy, Rominger, and Jeppson mines. All of the mines were reclaimed by AML in 1988. The historic mine sites disturbed a total of 10.67 acres. Of the 7.28 total disturbed acres, 1.79 acres are on land pre-disturbed by the historical mine sites. The pre-disturbed land is 24.6% of the total disturbed at the Rilda Canyon Portal Facilities. PacifiCorp commits to enhancing the previously disturbed area to revegetation standards relative to the non-disturbed reference areas. In addition to the designing the facilities utilizing the previously disturbed area, PacifiCorp negotiated with Andalex Resources to acquire a right-of-way within the existing Genwal Mine disturbed area for a future breakout associated the Deer Creek Mine. Originally, PacifiCorp included a potential breakout for the Deer Creek Mine within the Mill Fork Lease ML-48258 located in Crandall Canyon upstream from the existing Genwal Mine. The ventilation breakout in Crandall Canyon would have required access road and pad disturbing approximately 1.0 acre near Crandall Creek. As a result of the right-of-way acquisition, overall the disturbance associated with the Deer Creek Mine will be reduced.

2. The surface yard has been constructed such that all surface runoff flows to the north, away from the stream, to a disturbed culvert system. (Refer to Engineering and Hydrology Sections for plan to treat disturbed runoff).
3. A Barrier has been installed along the surface yard's southern disturbed boundary (closest disturbance near the stream).
4. Interim vegetation on slopes and topsoil piles.

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Wildlife Mitigation Commitments:

Table 300-5: Rilda Canyon Wildlife Mitigation						
Wildlife	Project	Project Summary	Overseeing Agency(s)	General Objective	Date of Implementation	Required Reporting
Big Game Species	Leroy Mine Area; Buried Coal Removal and Landscape Enhancement	Leroy Coal Mine operated during the 1940's through the 1950's. Development included a narrow access road, two portals and coal storage and haulage area. Soil/geotechnical surveys delineated an area containing approximately 4,000 tons of buried coal. In addition, these surveys also documented that the depth of soil was limited in this area and ultimately affected the success and diversity of the revegetation. PacifiCorp proposes as part of the development of Rilda Canyon to remove the buried coal within the proposed disturbed area. During final reclamation, PacifiCorp commits to reclaiming this area to the same standards as areas previously not disturbed, including committing the revegetation standards to non-disturbed reference areas.	DOG M	To achieve reclamation of the Leroy Mine buried coal area with vegetation success similar to the non-disturbed reference area.	Project will be initiated and be completed during the development of the facilities, approximately two years.	Certified as-built drawings after the construction of the Rilda Canyon facilities. This project was completed August 2006, Refer to Map 300-6 in the Maps Section

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Table 300-5: Rilda Canyon Wildlife Mitigation

Wildlife	Project	Project Summary	Overseeing Agency(s)	General Objective	Date of Implementation	Required Reporting
Big Game Species Small Game Species Migratory Birds	Habitat Protection on East Mountain Private Land	"PacifiCorp owns and controls approximately 4,440 acres of private lands on East Mountain within the Manti-LaSal National Forest boundary in Emery County, Utah. These private fee lands are located amongst federal lands and have unrestricted open range access to the southern and eastern portions of East Mountain together with open range on 440 acres of fee lands in the northern area in Rilda Canyon. PacifiCorp manages these private lands for multiple use and has no plans for development which would impair wildlife habitat, seasonal livestock grazing or recreation."	NA	Maintain ownership and control of East Mountain properties throughout the life of the Rilda Canyon facilities. These lands will be managed for multiple use. Use which would impair wildlife habitat, such as seasonal livestock grazing or recreation will be limited.	NA	NA

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North Rilda
Rilda Canyon Portal Facilities **Biology**
PacifiCorp

Table 300-61 Rilda Canyon Wildlife Mitigation						
Wildlife	Project	Project Summary	Overseeing Agency(s)	General Objective	Date of Implementation	Required Reporting
Riparian Habitat Big/Small Game Species Migratory Birds Aquatic Habitat	Rilda Creek Sediment Loading Reduction Project	Rehabilitate through sediment and erosion control activities the perennial portion of Rilda Creek, from Rilda Canyon Springs to the mouth of the canyon. Coordinate with government agencies to facilitate the project. Project would involve approximately two miles of stream corridor.	DWR, USFS, DOGM	Install best management practices (BMP's) to control erosion and reduce sediment loading throughout the perennial reach (approximately two miles) of the Rilda Creek. Sediment and erosion control will involve a systematic approach: identify the problems and opportunities, develop project goals and objectives, select and design BMP alternatives, implement selected designs, monitor results and modify designs if necessary.	Upon issuance of the Rilda Canyon permit, PacifiCorp will coordinate initial meeting with governmental agencies necessary funding to complete all work within one year after the completion of the reconstruction of EC#306.	N/A This project was completed November 2008
General	Noxious weed	PacifiCorp will monitor Rilda and Mill	DOGM and	Control noxious weeds in Rilda and		NA

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