GARY R. HERBERT
*Governor*

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*Lieutenant Governor*

# State of Utah

**DEPARTMENT OF NATURAL RESOURCES**

MICHAEL R. STYLER
*Executive Director*

**Division of Oil, Gas and Mining**

JOHN R. BAZA
*Division Director*

July 18, 2018

Ken Fleck, Environmental Manager
Interwest Mining Company
P.O. Box 310
Huntington, Utah 84528

Subject: Request to Remove Raptor Survey Requirement, PacifiCorp/Interwest Mining Company, Deer Creek Mine, C/015/0018, Task #5684

Dear Mr. Fleck:

In response to your June 29th, 2018 letter, the Division has re-evaluated your application for removing the raptor survey requirement from the Deer Creek mining and reclamation plan. The Division is unable to approve your application to amend the Deer Creek Permit at this time due to deficiencies that have been identified in your plans. The deficiencies are listed in the Technical Analysis and Findings attached to this letter.

The deficiencies author is identified so that your staff can communicate directly with that individual should questions arise. The plans as submitted are denied. PacifCorp will still be obligated to conduct raptor surveys at least through periods of active reclamation. You may wish to reapply, once the active reclamation phase is completed.

If you have any questions, please call me at (801) 538-5325.

Sincerely,

Daron R. Haddock
Coal Program Manager

DRH/sqs
Attachment
O:\015018.DER\WG5684 RAPTOR\Deficiencies2.doc

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## Technical Analysis and Findings

## Utah Coal Regulatory Program

| | |
|---|---|
| **PID:** | **C0150018** |
| **TaskID:** | **5684** |
| **Mine Name:** | **DEER CREEK MINE** |
| **Title:** | **REMOVE RAPTOR SURVEY REQUIREMENT** |

## Operation Plan

### Fish and Wildlife Protection and Enhancement Plan

*Analysis:*

Each mine plan must include a fish and wildlife plan for the reclamation and postmining phases of operation that is consistent with the operation plan required under R645-301-330. This protection and enhancement plan, required for the life of the mine, is found in the current MRP and is the focus of this application. This amendment seeks to modify the plan by removing annual raptor monitoring from its requirements. R645-301-330-333 states that there must be a description of measures taken to "minimize disturbances and adverse impacts to fish and wildlife and related environmental values during coal mining and reclamation operations." The annual raptor survey was included in the protection and enhancement plan as a measure to ensure that disturbances to raptor nesting behavior would be minimized. The protection and enhancement plan does not end with the termination of active mining. It continues through reclamation operations as well.

Reclamation activities differ from the regular day-to-day activities of the mine to which the raptors may have become habituated. Reclamation operations such as demolition and heavy earthwork, like active mining activities, carry reasonable potential to disturb raptor nesting. This change in activity, exacerbated by the unpredictable consequences of the local wildfire, necessitates the continuation of raptor monitoring so long as activities that possess reasonable potential to disturb raptor nesting are ongoing at the mine site. Without monitoring, there would be no way to know if new raptor nests appear in an area where they may be disturbed by reclamation activities such as demolition and heavy earthwork. Upon completion of these disturbance activities, the issue of discontinuing annual raptor surveys may be revisited.

*Deficiencies Details:*

This amendment does not meet the State of Utah R645-301-342 requirements for a fish and wildlife protection and enhancement plan. The following deficiency must be addressed:

R645-301-342: The protection and enhancement plan for reclamation and postmining activities is to be consistent with the adopted protection and enhancement plan for active mining. The approved protection and enhancement plan includes annual raptor monitoring and that plan does not automatically change with the shift to reclamation activity. As long as it is reasonably possible for postmining activity, such as reclamation earthwork and demolition, to disturb raptor nesting, annual monitoring is required under the mine's protection and enhancement plan.

**tmiller**

## Reclamation Plan

### WildLife Protection

*Analysis:*

The amendment does not meet the State of Utah R645-301-358 requirements for wildlife protection. The amendment proposes removing the annual raptor survey requirement for both the Cottonwood/Wilberg and Deer Creek facilities, including Rilda Canyon. The stated reasons for this request include the fact that there will be no more mining, construction, or remote exploratory drilling activities in these areas that could affect raptors. The company also states that there are no known raptor nests within ½ mile of any active operations to be conducted by the company. However, according to the raptor survey map included in the 2017 annual report, there was an active golden eagle nest with a chick observed less than 0.5 miles from the Deer Creek facility in May of 2017. The status of this nest along with other golden eagle and raptor nests in the area is unknown following the Trail Mountain fire currently burning in the Deer Creek and Rilda Canyon areas. This fire, which has burned over 17,000 acres in the area, has created an element of unpredictability with regards to raptor nesting in 2018, 2019, and beyond. As such, it is unknown whether nests in the area persist, whether raptors displaced by the fire may move into the area, or whether raptors will abandon the areas surrounding the active reclamation operations. The reclamation operations of Deer Creek and Rilda Canyon present reasonable concern for impacting potential raptor nesting in the area. The monitoring of known raptor nests in the Rilda Canyon and Deer Creek areas is required as well as monitoring for any new nests that may appear within the 1 mile maximum buffer zone of reclamation activity.

Furthermore, wildlife monitoring conducted by surface management agencies as a result of wildfire or otherwise does not alter or remove the responsibility of mining companies to monitor for potential impacts their own activities may bring about. The potential for raptor nesting to be disturbed by mine reclamation activities is real and raptor monitoring is necessary to maintain awareness of raptor activity in an area where reclamation activities may be disruptive. Consultation with the U.S. Fish and Wildlife Service, Utah Department of Wildlife Resources, and the U.S. Forest Service included concerns about the potential for reclamation activities to disturb raptors; the conclusion being that while these activities are ongoing, the threat of disturbance remains, and the monitoring regimen should continue. Upon completion of these activities, the issue of removing the annual raptor survey requirement from the approved protection and enhancement plan may be revisited.

*Deficiencies Details:*

The amendment does not meet the State of Utah R645-301-358 requirements for wildlife protection. The following deficiency must be addressed prior to approval.

R645-301-358.200: To maintain awareness of raptor nesting activity during the reclamation operations at Deer Creek and Rilda Canyon, the annual monitoring of raptor nests by the Permittee is required during the active reclamation phase.

**tmiller**