



0034

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

February 5, 1986

FILE COPY

Mr. Val Payne
Emery Mining Corporation
P. O. Box 310
Huntington, Utah 84528

Dear Mr. ~~Val~~ Payne:

RE: MRP Amendment, Raptor Monitoring Plan, Utah Power & Light
Company, Wilberg/Cottonwood Mines, ACT/015/019, #3, Emery
County, Utah

Enclosed is a draft of our comments on the draft raptor monitoring plan you submitted January 15, 1986. For final comments, we are waiting for information from U. S. Fish and Wildlife Service. Hopefully this draft will let you get started on some revisions and the final plan can be finished soon.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn M. Mutz".

Kathryn M. Mutz
Reclamation Biologist

kmm
Enclosure
cc: C. Shingleton
J. Whitehead
0531R-9

RAPTOR MONITORING PLAN COMMENTS

Utah Power & Light Company
Wilberg/Cottonwood Mines
ACT/015/019, Emery County, Utah

February 5, 1986

The following are the Division of Oil, Gas and Mining's (DOGM) comments on Utah Power and Light Company's (UP&L) proposed subsidence and raptor monitoring plan. The plan was presented on January 15, 1986 at a meeting at Emery Mining Corporation (EMC) offices in Huntington, Utah. Meeting attendees were: EMC--Val Payne and Larry Guymon; UP&L--Chris Shingleton; Division of Wildlife Resources (DWR)--Larry Dalton and Miles Moretti; U. S. Fish & Wildlife Service (USFWS)--Clark Johnson and Bruce Waddell; DOGM - Kathy Mutz. The comments presented here are a synthesis of DOGM staff opinions and take into consideration comments provided to DOGM by DWR and discussions with Val Payne of EMC. Comments provided by DWR are attached.

Objectives Section

DWR recommends that the stated objectives be trimmed and modified (see attached letter). There appears to be agreement on the endpoint(s) of the study but assuring clarity of purpose is important for a project with so many participants involved. DWR's four "objectives" are concise statements of the desired outcome(s) of the study (goals). UP&L's "objectives" are more specific statements of what is needed to accomplish the DWR "objectives." Organization of the study plan around DWR's four goals and use of UP&L's more detailed objectives to specify a study plan may help to clarify the situation.

The following section addresses UP&L's specific objectives.

1. Objective #1. The area to be used to establish general eagle population data/trends (referred to as the "mine plan area") should be indicated on a map (e.g., scale 1" = 2000'). This map should include locations of subsidence monitoring mirrors and EDM and Permanent Photo Station locations. See also comments #2 and 6.

Consensus at the meeting seemed to be to extend the study area for annual eagle population inventory northward to include nests on the north side of Mill Fork Canyon. The baseline survey of the designated study area (Objective #2 and page 3) would be a thorough search of the raptor nesting cliff zone noting all active and inactive raptor nests. DWR suggests specific equipment, personnel and time required to accomplish a baseline survey. The 10 hours estimated by DWR is a best-guess but should not be interpreted as the maximum or minimum time

needed to do an adequate survey. Subsequent annual population surveys would cover the same cliff area but would concentrate on assessing the use and condition of known nests. Subsequent annual surveys would be expected to take less helicopter time than the baseline survey.

Since the area eagle population is currently low, annual observations of known nests near Joe's Valley Reservoir and across Huntington Canyon from the Bear Creek Campground would be desirable additions to the data base. Analysis of these data would have to take into account the fact that these would be isolated observations rather than complete cliff surveys.

The need for a one-time larger survey (e.g., 10 mile radius of the mine sites) in order to get a "take permit" for inactive nests is still being discussed. USFWS should have a decision from their Enforcement Branch in the near future. Attached is the USFWS guidelines for issuing permits and the appropriate contacts for obtaining them.

2. Objective #2. As described in the Baseline Data section, "inventory data on golden eagle nest sites" includes raptor use data, nest condition information and cliff conditions. This objective should clearly state that nest condition/use data will be obtained for all nests in the study area but cliff condition data will only be obtained in the intensive study areas.
3. Objectives #3 and #4. The "affected area" should include not only Newberry Canyon but also the portion of Miller Canyon which will be affected by longwall mining. This should include the area affected by angle of draw of subsidence calculated by EMC. The affected area should be clearly delineated on the appropriate map(s).
4. Objective #5 of the study is to determine effects on nesting success/productivity rather than behavior since nesting behavior would require much more frequent nest observation and is beyond the scope of the study.

The ground monitoring of the intensive study areas suggested by DWR will be a useful addition to helicopter flight data in evaluating the effects of subsidence.

5. Objective #7. DCGM maintains there is a need for mitigation of loss of nests, adults, young birds and eggs. Identifying suitable mitigation measures for these losses is a valid

objective from DOGM's perspective. To avoid confusion, the word "compensation" should be substituted for "mitigation" since the latter has special significance to USFWS and is not a viable alternative for loss of birds or eggs under the Eagle Protection Act. Mitigation is a measure which could be taken to reduce the impact of an action being allowed under the Act. In this situation, active nest taking cannot be allowed.

See also DWR comments.

Baseline Data Section

Throughout this section it would be helpful to reference individual procedures back to the objective which they address.

6. Defining a nest as "active if egg laying has occurred" may not be reasonable if the only aerial survey will be performed after hatching to avoid disturbing birds during the brooding period. Eggs may have been layed, abandoned and destroyed. Categories for data analysis of "inactive," "tended," "occupied by young," "fledged," etc., may be useful.
7. A manageable map of all eagle nests in the study area may require a scale smaller than the 1" = 500' proposed. The 1" = 2000' used in the UP&L permits seems appropriate.

A larger scale map of the affected and control areas (Newberry and Miller canyons) is important for overlaying nests with longwall panel progress and subsidence monitoring data. While both 1" = 200' and 1" = 500' subsidence maps are currently provided; a scale of 1" = 200' is suggested for use in this study since the control area will only be about 1200' in length.

Monitoring Section

8. Subsidence monitoring should be continued until subsidence has ceased as agreed to for other types of monitoring in UP&L's approved plan. If subsidence continues beyond the two years after mining is completed, the frequency of monitoring could be reduced (e.g., quarterly, biannually or even annually) if subsidence seems to be very infrequent or minor. A two year postmining limit on subsidence monitoring cannot be adopted until there is more data on the cliff subsidence phenomenon.
9. Routine annual reporting is reasonable but subsidence events affecting nests should be verbally reported immediately to DOGM since it should precipitate immediate action by DWR or USFWS.

Additional Information Needed for the Final Plan

10. The final study plan should include:
 - A. maps discussed above to define the areas of both general and intensive study;
 - B. a schedule of activities pertinent to the study (e.g., equipment set-up, raptor monitoring, bimonthly subsidence monitoring, general subsidence monitoring, phased longwall mining, etc.);
 - C. example of the data sheets to be used for raptor monitoring (both helicopter and ground observations) and bimonthly subsidence monitoring;
 - D. example of the photo and grid system proposed for cliff spalling detection;
 - E. discussion of the statistical methods proposed for analysis of the subsidence data; is the sample size proposed suitable for statistical analysis?

0526R-48-51



STATE OF UTAH
NATURAL RESOURCES
Wildlife Resources

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
William H. Geer, Division Director

1596 West North Temple • Salt Lake City, UT 84116-3154 • 801-533-9333

January 29, 1986

RECEIVED

JAN 31 1986

DIVISION OF OIL
GAS & MINING

Dr. Dianne Nielson, Director
Utah Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

Attn: John Whitehead and Kathy Mutz

Dear Dianne:

In regard to Utah Power and Light Company's proposed monitoring plan for eagle nesting and subsidence associated with the Cottonwood Mine, the following is offered for your consideration.

The Division has reviewed the Company's proposed monitoring plan and find the seven objectives to be cumbersome and without the appropriate definition. It is recommended that the objectives be trimmed and modified such that only four exist. The following are recommended:

1. Establish trend data for golden eagle nest populations within Utah Power & Light's East Mountain mine plan area and nearby environments. This would be known as the study area.
2. Determine the rate of cliff spalling as effected by subsidence in the Newberry (experimental) and Miller Canyon (control) nesting areas.
3. Determine the effects of mining and subsidence on golden eagle nest activity in Newberry and Miller Canyons.
4. Identify potential mitigation measures for subsidence impacts to golden eagle nests.

In order to accomplish Objective 1, the Company needs to contract for a helicopter, either a Hughes 500 or a Jet Ranger with complete onboard communications, capable of transporting three field personnel. It is recommended that those personnel be represented by the Division of Wildlife Resources, U.S. Fish and Wildlife Service and Utah Power & Light Company. The helicopter inventory needs to make an intensive survey of the entire study area to determine the location of raptor nests and the status of such during the last half of the month of May. Such a task would require approximately 10 hours of flying time.

Dr. Dianne Nielson
Attn: John Whitehead and Kathy Mutz
Page 2
January 29, 1986

In order to accomplish Objective 2, the cliffs associated with Newberry Canyon need to be monitored through the use of electronic distance meters (EDM) this should occur at two month intervals throughout the period of mining as well as during post-mining until a time when subsidence has ceased. Although U.P. & L. anticipates that the subsidence would be fairly rapid following the completion of mining, that question still remains unresolved. Therefore, it is recommended that monitoring with EDM equipment continue for a minimum of two years post-mining. In addition, a photographic sampling of 10% of the cliff face in Newberry and Miller Canyons, which represents experimental and control situations respectively, should be made to determine the degree of spalling. This can be accomplished by having permanent photo locations over which a grid can be laid for statistical analysis. Such a grid should be of complexity to allow replacations and pooled data analysis.

In order to accomplish Objective 3, the Newberry Canyon area needs to be monitored from the ground for a four hour period during six different time periods (late February, early and late March, mid-April, mid-May and early June). The purpose of this monitoring is to determine the nature of eagle activity associated with the four nest sites known in Newberry Canyon. Data collected is to be correlated with underground mining activities, EDM measurements and cliff spalling data.

In order to accomplish Objective 4, the company needs to search the literature and determine what other scientists have accomplished in the arena of mitigation relative to raptor nesting, particularly eagles. Without question, the mitigation potential can be expanded and manipulated by Utah Power & Light Company to fit the needs of their particular mining operation.

It is important to stress that the monitoring plan submitted to date by Utah Power & Light Company roughly indicates a monitoring technique. From a cursory position this technique appears to be nearly adequate. However, Utah Power & Light Company should be encouraged to draft a very detailed, but yet concise, monitoring plan such that the anticipated goals and associated methodology can be adequately evaluated. It is also important to note that the data collected under Objective 1 will have the least utility in the decision making process concerning the effect of underground coal mining and subsidence on raptor nesting.

Thank you for an opportunity to review and provide comment on this plan.

Sincerely,

William H. Geer
Director

REGIONAL OFFICE

U.S. FISH AND WILDLIFE SERVICE
LAKE PLAZA NORTH BUILDING
134 UNION BOULEVARD
LAKEWOOD, COLORADO 80228

MAILING ADDRESS: P.O. Box 25486
Denver Federal Center
Denver, CO 80255

COMPUTER COMMUNICATION - 1200 BPS: 776-7925 Attendant: 776-7926

FAXFORM: 776-8295 Attendant: 776-8302

NOTE: Commercial number for each office is (303) 236-XXXX, unless otherwise noted. FTS is 776-XXXX.

| TITLE | NAME | OFFICE NUMBER |
|---|-------------------------|--|
| Regional Director (RD) | Galen L. Buterbaugh | FTS Direct: 776-7920 Comm: (303) 236-7920 |
| Executive Assistant (EA) | Barbara G. Henry | FTS Direct: 776-7920 |
| Deputy Regional Director (DRD) | | FTS Direct: 776-7920 |
| Secretary to the Directorate (SD) | Jeanette Rollwitz (Jan) | FTS Direct: 776-7920 |
| Special Assistant to the Director (SpA) | Frank Dunkle | FTS Direct: 776-7909 |

PUBLIC AFFAIRS (PA)

| | | |
|-------------------------------|------------------------|----------------------|
| Public Affairs Officer (PAO) | Joseph S. Marler (Sam) | FTS Direct: 776-7904 |
| Public Information Specialist | Violette M. Solt (Vi) | FTS Direct: 776-7904 |
| Public Affairs Assistant | Barbara Perkins | FTS Direct: 776-7904 |

LAW ENFORCEMENT
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FISHERY RESOURCES

U.S. FISH AND WILDLIFE SERVICE

PERMITS TO TAKE GOLDEN EAGLE NESTS - 50 CFR 22.25

Guidelines for Issuing Permits to Take Inactive Golden Eagle Nests Which Interfere with Resource Development or Recovery Operations

I. Nesting Population Low

- 1 to 4 pairs known to have made nesting attempt during the preceding year within 10 miles of nest proposed to be taken.

1.1 Habitat Limited

- Other suitable nesting and foraging habitat not available for use by displaced eagles.

1.11 Artificial Nest Site

- Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that alternative nest site be developed on natural or reclaimed substrate or on a permanent man-made structure within 10 miles of site. a/

1.12 Natural Nest Site

- Nest located on natural structure or on natural or reclaimed substrate.

ACTION: Deny permit.

1.2 Habitat Not Limited

- Other suitable nesting and foraging habitat available for use by displaced eagles.

1.21 Artificial Nest Site

- Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.

1.22 Natural Nest Site

- Nest located on natural structure or on natural or reclaimed substrate.

ACTION: Issue permit with condition that disturbed land be restored for long-term reoccupancy by eagles. b/

2. Nesting Population Not Low

- 5 or more pairs known to have made nesting attempt during preceding year within 10 miles of nest proposed to be taken.

2.1 Site Unique

- Extraordinary nesting density where 3 or more pairs had constructed or maintained nests during the preceding year within 3 miles of nest proposed to be taken.

2.11 Artificial Nest Site

- Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.

2.12 Natural Nest Site

- Nest located on natural structure or on natural or reclaimed substrate.

ACTION: If land in Federal ownership, deny permit.

ACTION: If land not in Federal ownership, issue permit with condition that disturbed land be restored for long-term reoccupancy by eagles. b/

2.2 Site Not Unique

- Nesting population density not extraordinary where fewer than 3 pairs had constructed or maintained nests during the preceding year within 3 miles of nest proposed to be taken.

2.21 Artificial Nest Site

- Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.

2.22 Natural Nest Site

- Nest located on natural structure or on natural or reclaimed substrate.

ACTION: Issue permit with the condition that disturbed foraging habitat and, when feasible, nesting habitat be restored for the long-term reoccupancy by eagles. b/

Notes:

a/ The Service discourages the use of permanent man-made structures as golden eagle nesting sites. However, these structures may be used for mitigation purposes when the development of natural or reclaimed sites is not feasible.

b/ Use of artificial nest structures may not be considered as a mitigation measure except when there is an expectation of long-term benefit to the area nesting population.

J. Eugene Heeter

Director, U.S. Fish and Wildlife Service

5-10-84
Date

Receipt 10/27/78 by [unclear]

said sections" and "but the proof of such taking shall lie upon the accused in any prosecution under said sections", respectively.

1959 Amendment. Pub.L. 86-70 deleted "except the Territory of Alaska," following "subject to the jurisdiction thereof."

Legislative Intent. Enacting clause of Act June 8, 1940, provided:

"Whereas the Continental Congress in 1782 adopted the bald eagle as the national symbol; and

"Whereas the bald eagle thus became the symbolic representation of a new nation under a new government in a new

world; and

"Whereas by that Act of Congress and by tradition and custom during the life of this Nation, the bald eagle is no longer a mere bird of biological interest but a symbol of the American ideals of freedom; and

"Whereas the bald eagle is now threatened with extinction: Therefore

"Be it enacted . . .", etc.

Legislative History. For legislative history and purpose of Pub.L. 86-70, see 1959 U.S.Code Cong. and Adm.News, p. 1875. See, also, Pub.L. 92-535, 1972 U.S. Code Cong. and Adm.News, p. 4285.

Notes of Decisions

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¼. Construction with other laws
Rules of decision developed under the Migratory Bird Treaty Act, section 703 et seq. of this title, may not automatically be applied to a prosecution under sections 668 to 684 of this title. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

¼. Retroactive effect
Where alleged violation of sections 668 to 684 of this title occurred in 1971, ex post facto considerations precluded a trial under sections 668 to 684 of this title as they stood following the 1972 amendment. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

1. Jury trial
Defendant, who was charged by information with unlawfully taking a bald eagle and a golden eagle in violation of this section imposing penalty of fine of not more than \$500, or imprisonment of not more than six months, or both, was entitled to jury trial on demand, where alleged offenses were not committed on a government reservation or within exclusive or concurrent jurisdiction of United States. U. S. v. Martinelli, D.C.Cal.1965, 240 F.Supp. 365.

2. Indictment and information
Indictment charging that on or about December 5, 1971, defendant unlawfully took and possessed parts of a dead bald eagle, in violation of sections 668 to 684 of this title was legally insufficient to support conviction for failure to allege that defendant acted knowingly, unlawfully and willfully. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

3. Offenses
Defendant, who found dead bald eagle while hunting, was not in violation of sections 668 to 684 of this title by failing to report existence of the bird to a conservation official. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

4. Defenses
Defendant, who while hunting found the carcass of a bald eagle that had died the tarsus and talons from both legs for use as Boy Scout decorations could not be found to have violated sections 668 to 684 of this title. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

6. Willfulness
Willfulness and specific intent are essential elements of a prosecution for violation of sections 668 to 684 of this title as they read before the 1972 amendment. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

6. Review
Outright reversal rather than remand was the only appropriate disposition of appeal from conviction for alleged violation of sections 668 to 684 of this title where evidence adduced at trial established that the government, which had failed to establish an essential element of the offense, could not offer any additional evidence to meet the standard of proof required by sections 668 to 684 of this title as they read at time of prosecution. U. S. v. Hetzel, D.C.No.1974, 385 F.Supp. 1311.

7. Indian reservations
Member of Red Lake Band of Chippewa Indians who, within confines of reservation, shot at a bald eagle was not subject to criminal liability under this section prohibiting the taking of any bald eagle, since the Red Lake Band of Chippewa Indians enjoys a right to hunt on the Red Lake Reservation and that right has been implicitly recognized in treaties negotiated by that Band and the United States, and since, to effect those rights, Congress must expressly abrogate or modify the spirit of the relationship between the United States and the Red Lake Chippewa Indians on their native reservation, something it has not done in this section. U. S. v. White, C.A.Minn. 1974, 506 F.2d 453.

§ 668a. Same; taking and using for scientific, exhibition and religious purposes

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: *Provided*, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests; *Provided further*, That bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior: *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry: Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations.

June 8, 1940, c. 278, § 2, 54 Stat. 251; Oct. 24, 1962, Pub.L. 87-884, 76 Stat. 1246; Oct. 23, 1972, Pub.L. 92-535, § 2, 86 Stat. 1065; Nov. 8, 1978, Pub.L. 95-616, § 9, 92 Stat. 3114.

Historical Note

1972 Amendment. Pub.L. 92-535 added proviso that the Secretary of the Interior may permit the taking, possession and transportation of golden eagles for the purposes of falconry with exception that only golden eagles that cause depredations on livestock and wildlife may be taken for falconry.

the golden eagle, permitted the taking of specimens for the religious purposes of Indian tribes and authorized the taking of golden eagles for purpose of seasonally protecting domesticated flocks and herds.

1962 Amendment. Pub.L. 87-884 extended the provisions of the section to

Environmental Safeguards on Activities for Animal Damage Control. For provisions relating to environmental safeguards on activities for animal damage

A-2

Excerpt

~~Return to [unclear] D.D.S.~~
Sue

DEPARTMENT OF THE INTERIOR
DRAFT ENVIRONMENTAL ASSESSMENT

PERMITS TO TAKE GOLDEN EAGLE NESTS THAT
INTERFERE WITH RESOURCE DEVELOPMENT OR RECOVERY OPERATIONS

ABSTRACT: The Fish and Wildlife Service proposes to amend Subpart C of 50 CFR 22 to allow the taking of golden eagle nests not in current use that interfere with coal mining, timbering, oil extraction and other resource development or recovery operations. This action is applicable to the entire breeding range of the golden eagle in the U.S., including the Rocky Mountain States where eagle-mining conflicts are most evident. The proposal makes no provision for taking eagle nests in current use, or any eagle eggs or eagles. This action is authorized by the Eagle Protection Act, 16 U.S.C. 668-668d. The consequences of the proposed action and possible alternatives are described and discussed.

AUTHORSHIP: This document was prepared by -

J. L. Ruess, Nongame Bird Specialist
Office of Migratory Bird Management
U.S. Fish and Wildlife Service
Department of the Interior
Washington, D.C. 20240

Phone: 202-254-3207

R. L. Phillips and J. M. Lockhart,
Wildlife Biologists
Denver Wildlife Research Center
U.S. Fish and Wildlife Service
Sheridan, Wyoming 82801

Phone: 307-672-5826

U. S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
MARCH 1981

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APPENDICES

Appendix A - The Eagle Protection Act, 16 U.S.C. 668-668c as Amended November 8, 1978, Pub. L. 95-616.

Appendix B - Current Eagle Permit Regulations, Subpart C of 50 CFR 22.

Appendix C - Proposed Rule to Amend Eagle Permit Regulations, Subpart C of 50 CFR 22, FR 45(2):809-811, January 3, 1980.

DRAFT ENVIRONMENTAL ASSESSMENT

Proposed Rulemaking - Permits to Take Golden Eagle Nests That Interfere with Resource Development or Recovery Operations

L. Purpose and Need for Action

In recent years a conflict has arisen between the Eagle Protection Act and the development of certain natural resources. To resolve this problem, Congress amended the Act to authorize the "taking" of golden eagle nests. Of primary concern to the Fish and Wildlife Service is what effect this action may have on golden eagle populations. The major problems occur in the coal mining areas of Montana, Wyoming, Colorado and Utah. This region has a high resident population of golden eagles that nest on existing coal leases or lands with high potential for recovery of strippable coal. Although the recovery of western coal reserves is the major conflict with golden eagle nests, other types of resource development such as oil and gas exploration, dam construction, timber harvest and the construction of roads, railroads and pipelines could cause problems.

Prior to 1978, the Eagle Protection Act (16 U.S.C. 668) made no provision for the taking of golden eagle nests associated with resources development or recovery operations. Current Federal regulations (50 CFR, Part 22) reflect that legislative restriction. In 1978, the Act was amended (Pub. L. 95-616, 92 Stat. 3114) to give the Secretary authority to promulgate regulations that "may permit the taking of golden eagle nests which interfere with resource development or recovery operations." The Service is cognizant of the impediment imposed by current eagle protection regulations and the national need to develop certain energy and other resources, and proposes to alleviate restrictions when compatible with the conservation of regional populations of golden eagles.

2. The Proposed Action and the Alternatives

The Service proposes to permit the taking, i.e. destruction or removal, of golden eagle nests that are not in current use to facilitate resource development or recovery operations such as mining, timbering, oil extraction, etc. The proposal does not provide for the taking of any nest that is in current use, or any eagle egg or golden eagle. A description of this proposal and possible alternatives are presented.

A. Proposed Action - To allow the taking of inactive or abandoned nests under permit issued by the Fish and Wildlife Service.

It is proposed that the Service Director may issue a permit authorizing the take of golden eagle nests during a resource development or recovery operation, provided that (a) no nests that are under construction or are occupied may be taken and (b) the taking of a nest is compatible with the long-term conservation of the regional population of golden eagles. Applicants for a permit will be required to describe the resource or recovery operation; the status, number and intended disposition of nests proposed to be taken; and any proposed mitigation measures. Permittees will be required to submit reports of their activities as specified in their permits.

If the proposed action were implemented, only nests of no current value to eagle production and survival would be destroyed. Without mitigation measures, long-term impact on eagle populations would depend upon the availability of alternate nest sites and associated foraging areas. Mitigation measures could reduce or eliminate adverse long-term impacts on eagle populations. A joint study sponsored by the coal industry and the Fish and Wildlife Service is currently addressing the problem of mitigation and evaluating the sensitivity of golden eagles to resource recovery operations. As new information becomes available, it will be applied to management decisions regarding the welfare of golden eagles.

B. Alternative Action - No Action: To prohibit the taking of nests.

Under this alternative, the Service would continue to prohibit the taking of golden eagle nests associated with resource development or recovery operations even where such taking would have no significant impact on eagle populations. Currently there are about 2 or 3 eagle-mining conflicts per year. As energy and other resource development activities accelerate, the number of conflicts is expected to increase to about 10 or more annually. While the number of conflicts is small, the cost to resolve them can be great. This cost is shared by resource recovery or development operators, the government and ultimately the public. The Service desires to alleviate those restrictions which are not likely to impact adversely upon the long-term welfare of eagles.

C. Alternative Action - To allow the taking of nests in current use as well as inactive nests.

This alternative action would allow the removal of all golden eagle nests that impede resource development recovery operations whether or not such nests were in current use. While the Eagle Protection Act could be interpreted as providing for the taking of nests in current use, it does not allow the taking of eggs or young or the disturbance of adult eagles that may be attending such structures. Inasmuch as the taking of nests in current use would of necessity involve the taking of eggs or young or the disturbance of adult eagles, such taking would constitute a violation of the Act. This legislative restriction does impose an occasional problem for resource development or recovery operators. Where healthy populations of golden eagles occur, loss of eagle production due to the taking of an occasional nest that is in current use would have little or no long-term impact on regional populations of golden eagles. Noting that resource development/recovery operations can often be planned to avoid conflict with nesting

eagles, the Service does not believe that legislation allowing for the take of nests in current use is necessary at this time.

D. Alternative Action - To allow the taking of inactive nests without the need for obtaining a site-specific permit.

This alternative would allow the removal of inactive nests without requiring the operator to obtain a permit to conduct this activity. The Eagle Protection Act requires that a permit be obtained prior to the taking of any nest. It is possible that the Service could meet this legislative requirement by providing a "blanket" or area-wide permit for the taking of golden eagle nests that interfere with resource development or recovery operations. If this action were allowed, the Service would not be able to effectively monitor the number of nests taken nor be able to adequately assess the affects of their loss on population status. While regulations could be developed to minimize these concerns, the resultant action would offer resource operators little or no benefit beyond that proposed in Section 2 (A).

3. Description of the Affected Environment.

Golden eagles nest in a wide range of habitats from 4,000 to 10,000 feet elevation. Nest site suitability appears to be dependent largely upon the proximity of good foraging areas, freedom from human disturbance, and protection from severe weather. Where available, cliffs with suitable nesting ledges which overlook grasslands are preferred nesting habitat. Large trees near open foraging areas are also readily accepted. Although only one brood is produced in any year by a single pair, golden eagles may construct or maintain several nests within a nesting territory. Distances between alternate nest sites can vary from several feet to more than several miles.