

From: Dale Harber <dharber@fs.fed.us>
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Date: 5/8/2006 12:39:28 PM
Subject: UEC Comment Letter

Pam:

Here is the UEC comment letter.

Dale

(See attached file: uec_comments.doc)



April 27th, 2006

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

RE: Bear Canyon Mining Plan Modification

Dear Ms. Carlton,

These comments are submitted in response to the Forest's solicitation of comment for the above project. Currently the Manti-La Sal National Forest, OSM, and DOGM are preparing to evaluate the effects of a mine plan modification for the Bear Canyon Mine. OSM has already determined that the proposed action constitutes a mine plan modification. Because federal coal is involved the Assistant Secretary of the Department of Interior must approve the operation and reclamation plan.

As a preliminary matter the legal notice that is associated with the Forest's solicitation of comment is entirely inadequate in terms of the details of the proposed action. Fortunately, project leader Dale Harber has been most gracious in providing jpg versions of maps of the mine area expansion as well as a legal description. However, these versions are blurry and map legends cannot be read because they were reproduced on jpg. In the future, please supply hard copy maps that clearly delineate the boundaries of a project area or mine expansion.

The project must include coal lease stipulations pursuant to the Mineral Leasing Act to protect surface resources. The stipulations must protect surface resources from the impacts of subsidence induced mining, including surface geology, any perennial streams, perennial springs, archaeological resources, wildlife (terrestrial and aquatic), water, and soils. The Forest Plan permits you to attach stipulations for the protection of the environment. Plan, p. III-12. Based on the anticipated environmental consequences of the project a surface use plan of operations that adequately protects surface resources should be developed. Under 36 C.F.R. § 228.107 the Forest Service is required to review the surface use plan as early as possible, and in addition is required to evaluate the plan in keeping with the requirements of NEPA.

The LRMP provides that the habitat needs of cavity nesting birds, raptors, and small mammals are to receive special attention. LRMP at III-22. Recently concerns were raised by Forest Service staff members that the Interagency Coal group was not meeting wildlife recommendations. Specific problems raised were whether prescribed buffers were being adhered to or whether there was undue pressure to waive such buffers. Buffers may be appropriate for any goshawk, golden eagles, or other sensitive raptors in the vicinity of the mine

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expansion. Big game is of particular concern since the Manti-La Sal is known to have the densest populations of big game of all the National Forests in Utah. Plan, p. II-29. Currently, the Forest Plan requires collection of population trend data for the MIS designated in the plan. This includes elk, mule deer, macroinvertebrates, goshawk, golden eagle, and abert squirrel. This project area is proximate to and may include several goshawk nests. The Utah Northern Goshawk Amendment provides specific provisions for the protection of goshawks and/or habitat in the event that nests are found in the project vicinity. Manti-La Sal Forest Plan Amendment for Goshawks, p. CC-60.

It is also apparent that this coal mine expansion will potentially impact an undetermined amount of springs located on FS land. The Forest Service and/or OSM should take a close look at whether proposed mining expansion will impact springs through subsidence induced impacts. Subsidence mining should not occur under springs if this is possible. If it is not then this would be a factor to consider for whether significant impacts will occur. If significant effects are likely then an EIS should be prepared, and if the significance of the mine plan modification is unclear an EA should be prepared.

The operator of permittee is required to conduct activities in a way that minimizes unnecessary or unreasonable harm to surface resources. 36 C.F.R. §228.108(a). The operator is additionally required to conduct extraction activities in a way that controls soil erosion, water runoff, and solid and hazardous wastes. 36 C.F.R §228.108(g)(3). The operator is additionally required to revegetate areas that become disturbed through drilling activities and ensure that other reclamation activities occur as necessary. *Id.* We request that the Forest Service mandates that these provisions be followed and integrated into the Surface Use Plan so that the environment is properly protected during and after the operator's activities.

In addition, we request that any culturally significant resources be surveyed for through a class III survey based on anticipated surface disturbance. If culturally significant sites are found please consult with relevant Indian tribes, SHPO, and the public. Mining activities should either avoid impacts to these sites or if impossible such activities should be minimized or mitigated. Forest Plan, p. III-16.

Please identify any geologic hazards in the mine plan modification area and limit activity in areas that include steep slopes and the where the risk of geologic erosion or subsidence induced cracking is high. Any mitigation proposed to limit the effects to geologic resources should be evaluated to determine the efficacy of such measures. If there are concerns to geologic resources and/or wildlife that cannot be effectively mitigated either scale down the project or prescribe specific lease stipulations. Plan, p. III-35. As you know there are a number of lease stipulations in the back of the Forest Plan. Please review these stipulations (or create additional needed stipulations) and based on predicted impacts apply them to the lease as needed.

The Manti-La Sal National Forest should ensure that the cumulative effects of coal mining, both on private and FS land are analyzed. A thorough analysis of cumulative effects will help determine if the mine expansion will constitute a "significant" effect on the environment that would require the FS and/or OSM to prepare an EIS. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided

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by terming an action temporary or breaking it down into small component parts." The courts have consistently ruled that Agencies are not allowed to avoid their responsibilities for cumulative effects analysis under NEPA by artificially dividing a larger plan or action into smaller components. For example, in Thomas v. Peterson, 753 F.2d 754-158 (9th Cir. 1985), the court found that section 102(2) (c) of NEPA requires an EIS for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C).

Please kindly forward all project related documents to our office as they are produced. We thank you for the opportunity to comment.

Sincerely,

Joel Ban