



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
2369 WEST ORTON CIRCLE, SUITE 50  
WEST VALLEY CITY, UTAH 84119

In Reply Refer To

FWS/R6

ES/UT

04-0070

November 30, 2003

Darron Haddock  
Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

RE: Informal section 7 Consultation on the South Crandall Lease Application (UTU78953),  
Genwal Resources Inc., Crandall Canyon Mine, C/015/0032, Task ID #1698

Dear Mr. Haddock:

In response to your letter dated October 7, 2003, below is a list of endangered (E), threatened (T), and candidate (C) species that may occur in the area of influence of your proposed action.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
EMERY COUNTY		
Barneby Reed-mustard	<i>Schoenocrambe barnebyi</i>	E
Jones Cycladenia	<i>Cycladenia humilis</i> var. <i>jonesii</i>	T
Last Chance Townsendia	<i>Townsendia aprica</i>	T
Maguire Daisy	<i>Erigeron maguirei</i>	T
San Rafael Cactus	<i>Pediocactus despainii</i>	E
Winkler Cactus	<i>Pediocactus winkleri</i>	T
Wright Fishhook Cactus	<i>Sclerocactus wrightiae</i>	E
Bonytail <sup>4,10</sup>	<i>Gila elegans</i>	E
Colorado Pikeminnow <sup>4,10</sup>	<i>Ptychocheilus lucius</i>	E
Humpback Chub <sup>4,10</sup>	<i>Gila cypha</i>	E
Razorback Sucker <sup>4,10</sup>	<i>Xyrauchen texanus</i>	E
Bald Eagle <sup>1</sup>	<i>Haliaeetus leucocephalus</i>	T
Mexican Spotted Owl <sup>1,4</sup>	<i>Strix occidentalis lucida</i>	T
Western Yellow-billed Cuckoo	<i>Coccyzus americanus occidentalis</i>	C
Black-footed Ferret <sup>6</sup>	<i>Mustela nigripes</i>	E
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	E

<sup>1</sup> Nests in this county of Utah.

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<sup>4</sup> Critical habitat designated in this county.

<sup>6</sup> Historical range.

<sup>10</sup> Water depletions from *any* portion of the occupied drainage basin are considered to adversely affect or adversely modify the critical habitat of the endangered fish species, and must be evaluated with regard to the criteria described in the pertinent fish recovery programs.

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

Only a Federal agency can enter into formal Endangered Species Act (ESA) section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act (16 U.S.C. 703-712) which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the

only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

The following is a list of species that may occur within the project area and are managed under Conservation Agreements/Strategies. Conservation Agreements are voluntary cooperative plans among resource agencies that identify threats to a species and implement conservation measures to proactively conserve and protect species in decline. Threats that warrant a species listing as a sensitive species by state and federal agencies and as threatened or endangered under the ESA should be significantly reduced or eliminated through implementation of the Conservation Agreement. Project plans should be designed to meet the goals and objectives of these Conservation Agreements.

<u>Common Name</u>	<u>Scientific Name</u>
EMERY COUNTY	
Colorado River Cutthroat Trout	<i>Oncorhynchus clarki pleuriticus</i>

#### ADDITIONAL COMMENTS:

In addition to your request for an updated species list, your letter also invited our comments on other aspects of this proposal. We appreciate the opportunity to comment on an ongoing issue, that of loss or displacement of perennial or intermittent surface water due to the effects of mining subsidence. Portions of the South Crandall Lease underlie the middle reaches of Crandall Creek which may contain Colorado Cutthroat trout, a Conservation Agreement Species. In addition, a conversation between Diana Whittington of our office and Joe Helfrich from your office (October 7, 2003) revealed there is at least one spring on the tract, Little Bear. Both intermittent reaches of streams and springs can provide valuable habitat for amphibians and mollusks. In addition, a cumulative loss of intermittent and perennial surface waters may alter ecosystem types and functions. We recommend you minimize impacts to Crandall Creek and other surface waters. In particular, we recommend you mine for non-subsidence in the portion of the creek that lies under Crandall Creek.

Although Mr. Helfrich noted in the October 7 conversation that the proponent has offered to install a water treatment facility downstream of the tract if activities result in a downstream depletion, we believe this will not adequately mitigate impacts if they occur. Nor will it meet the consultation requirement relative to depletion from the Colorado River. We recommend you coordinate the development of mitigation alternatives with UDWR and our office.

If we can be of further assistance, or if you have any questions, please feel free to contact Diana M. Whittington of our office at (801)975-3330 extension 128.

Sincerely,

A handwritten signature in black ink, appearing to read "H.R. Maddux". The signature is written in a cursive style with a large initial "H" and "M".

Henry R. Maddux  
Utah Field Supervisor

cc: OSM - Denver (Attn: Ranvir Singh)  
UDWR - Salt Lake City (Attn: Frank Howe), Price (Attn: Craig Walker)  
Manti LaSal National Forest, Price Ranger District (Attn: Pam Dobson)