



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  
04-0694

July 8, 2004

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

Dear Ms. Carlton:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of May 10, 2004 announcing your intent to conduct, with the Bureau of Land Management (BLM) State Office, an Environmental Analysis on the Genwal Resources, Inc. (Genwal) application to add 120 acres to Federal Coal Lease UTU-68082, for the Crandall Canyon Mine. The Utah State Director of BLM must decide whether or not to modify the lease. The Forest Supervisor of the Manti-La Sal National Forest (Forest) must decide whether or not to consent to the lease modification by BLM, and prescribe lease stipulations needed to protect non-mineral resources. The Office of Surface Mining (OSM), Reclamation and Enforcement, is participating as a cooperating agency. We are providing the following comments for your consideration in your analysis.

Pursuant to the Migratory Bird Treaty Act (MBTA)(16 U.S.C. § 703) and the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742a – 742j, not including 742 d-1), in Section 1 of this letter we identify issues that should be addressed relative to fish and wildlife resources for this project. Section 2 of this letter addresses your responsibilities under section 7 of the Endangered Species Act (ESA) of 1973, 16 U.S.C. § 1536.

Section 1.

In the fall of 2003 (e-mails, September 23 and December 22, 2003), Diana Whittington of our office suggested to several members of an interagency coal team, including Forest Service personnel, that involved agencies should conduct a cumulative effects analysis of the loss or relocation of perennial surface waters from mining subsidence. We appreciate the support we have received from your staff regarding this issue, because it has broad implications for fish and wildlife resources.

*Incoming  
d/015/0032  
Copy Ann, Wayne,  
Susan, Justin, Joe*

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DIV. OF OIL, GAS & MINING

In a response to a request from Diana Whittington (email from John Krummel, January 15, 2004), researchers from the environmental Assessment Division of Argonne National Laboratory provided the following preface to an outline for a cumulative effects analysis:

Coal mining operations in small watersheds can impact existing streams and their associated riparian areas and wetlands. Perennial water sources, such as springs, can be completely lost, subsidence can eliminate viable stream reaches, and canalizations and the use of culverts can alter the existing water balance and dynamics of a small watershed. Changes in the water balance and dynamics of a watershed can then affect ecosystems that depend on the water. These ecosystems include the riparian zone adjacent to the affected stream, associated wetlands, fish populations and macro-invertebrates (e.g., benthic organisms such as mollusks) in the stream, ungulates and other mammals and birds in the vicinity of the impacted reach, and the occurrence and severity of fires.

In addition, loss or relocation of perennial surface water may affect terrestrial species that lack mobility. Such species include mollusks, amphibians, and floral species that are either riparian or seep-obligate.

During a conversation between Diana Whittington of our office and Karl Boyer from the Forest (June 24, 2004), we learned that the area under consideration for mining in this current lease addition presents conditions that may lead to loss of perennial surface water from mining subsidence. According to Mr. Boyer, there are numerous springs in the lower quarter of the 120-acre addition, and the overburden in most of the lower half of the addition is less than 200 feet. In general, areas with shallow overburden will be more prone to surface cracks from subsidence, and thus more prone to loss of surface water. Also, given the close proximity of the coal seam to the surface, there may be an increased risk to wildlife from contamination of water that seeps through the subsidence cracks and then resurfaces quickly.

In a follow-up email (July 1, 2004), Mr. Boyer relayed the information that 86 acres of the 120-acre proposed lease expansion are dominated by the aspen plant community, with the aspen stands mostly open, with short, scrubby trees. These aspen stands are in the immediate vicinity of the springs and seeps that might be affected by mining subsidence. Loss of these springs and seeps may result in loss of the aspen stands, a primary breeding habitat for a Service Bird of Conservation Concern, the red-naped sapsucker. In addition, aspen stands provide high-value habitat for big game species such as elk and mule deer.

The Service appreciates the continued efforts of the Forest to conserve and protect perennial surface waters. In light of the aforementioned value of perennial surface waters to fish and wildlife resources, we recommend that any mining permitted be limited to mining for non-subsidence in areas where loss of springs or seeps may occur.

Section 2. Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T) and endangered (E) species that may occur within the area of influence of your proposed action.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
EMERY		
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.

<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* 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 pro-actively 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.

Common Name

Scientific Name

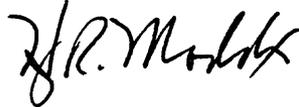
EMERY

Colorado River Cutthroat Trout

*Oncorhynchus clarki pleuriticus*

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

Sincerely,



Henry R. Maddux  
Utah Field Supervisor

cc: UDWR – SLC and Price (Attn: Craig Walker)  
OSM- Denver (Attn: Ranvir Singh), 1999 Broadway, Suite 3320, Denver, Colorado  
80202  
BLM Sate Office (Attn: Stan Perkes) and Price FO (Attn: George Tetrault)  
UDOGM (Attn: Pam Grubaugh-Littig)