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United States  
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Intermountain Region

324 25<sup>th</sup> Street  
Ogden, UT 84401

File Code: 1570-1  
#03-04-00-0003  
Date: JAN 03 2003

Craig Axford  
Utah Environmental Congress  
1817 S. Main, Suite 10  
Salt Lake City, UT 84415

CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED

Dear Mr. Axford:

In accordance with 36 CFR 215.17, I have reviewed the project record, the Environmental Impact Statement and the Record of Decision for the Pine Tract/Link Canyon Project located on the Manti-LaSal National Forest. Forest Supervisor Elaine Zieroth made the decision. My review focused on the project documentation and the objections raised in the appeal you filed. I have also considered the recommendations of the Appeal Reviewing Officer regarding the disposition of your appeal. A copy of that recommendation is enclosed.

**APPEAL DECISION**

I am affirming Forest Supervisor Zieroth's decision on all issues in your appeal. I find that all activities documented in the Record of Decision and the Final Environmental Impact Statement are in compliance with applicable laws, regulations, and policy. A more detailed explanation of the response to your appeal issues is enclosed.

This decision constitutes the final administrative determination of the United States Department of Agriculture under 36 CFR 215.18 (c).

Sincerely,

CATHRINE L. BEATY  
Appeal Deciding Officer  
Deputy Regional Forester

Enclosures





United States  
Department of  
Agriculture

Forest  
Service

Intermountain Region

324 25<sup>th</sup> Street  
Ogden, UT 84401

File Code: 1570-1

Date: January 8, 2003

Subject: Appeal Reviewing Officer Recommendations  
Pine Tract/Link Canyon Appeal #03-04-00-0003  
To: Appeal Deciding Officer

This is my recommendation on the disposition of the Utah Environmental Congress Appeal of the October 9, 2002 Record of Decision by Elaine J. Zieroth, Forest Supervisor Manti-LaSal National Forest. The decision was to consent to the reopening of the west portal (of the old Link Canyon Mine) contained within the Pine Tract Project as submitted to the Utah Division of Oil, Gas and Mining as an amendment to the SUFCO Mining and Reclamation Plan.

### PROJECT SUMMARY

In a 1999 Record of Decision (ROD), the Forest Service consented to the issuance of the Pines Tract Lease, which is the primary decision point for the Forest Service. Once a lease is issued, operational decisions are made by the BLM and State with the concurrence of the Forest Service. In this case, through a stipulation attached to the 1999 Pines Tract lease, the Forest Service retained further authority relative to subsequent actions related to this lease. Therefore, the Forest Service has a decision to make relative to this proposed action.

The project to reopen the west portal is intended to enhance safety within the SUFCO Mine by providing an emergency escape way. This portal was closed by demolition (explosives) in the 1950s by the Link Canyon Mine to prevent oxygen from entering abandoned workings. Introduced oxygen within the exposed coal seam may cause spontaneous combustion. The current seal at this portal appears to have been effective in preventing oxygen from entering the mine workings.

Upon reopening this portal, and encasing the interior to control oxygen exposures, it will provide fresh air ventilation (intake) for safe mining operations, the aforementioned emergency escape way for mining personnel, mine access to the Link Canyon power substation and electrical power to the underground workings.

Construction actions needed to reopen the portal include: an earthen entryway pad (0.14 acres of disturbance); a pad access road 100 feet long (0.09 acres of disturbance); and an overhead powerline from the existing Link Canyon substation, 420 feet in length (0.04 acres of disturbance). The proposed construction area is contained within a previously disturbed (1950s) mining area. The current proposal would disturb less than 0.3 acres with no reconstruction of the Link Canyon Road.

A downstream riparian area, established within the past 20 – 50 years as a result of the one (1) gpm outflow from this portal, is non-supporting of amphibians or mollusks due to water temperature and low dissolved oxygen content and is classified as non-wetland with seasonal



flow (non-flow periods observed). This flow supports approximately one-half (0.5) acre 800 feet ( $\pm$ ) downstream from the portal. The portal pad will disturb approximately 0.08 acres of the 0.5 acres and will not affect the 1-gallons per minute (gmp) flows. To mitigate cattle impacts a fence would be constructed separating an up canyon spring / watering trough from the riparian area to prevent erosion.

### APPEALS SUMMARY

One appeal was filed.

#### **Utah Environmental Congress**

The appeal, dated November 22, 2002 by the Utah Environmental Congress, and received by the Regional Forester on November 25, 2002, asserts that the Manti-LaSal National Forest violated the National Environmental Policy Act by: misapplying NEPA's tiering provisions (appellant issue I A); failing to prepare a cumulative effects analysis (I B); failing to meet the mandate of the National Forest Management Act in reference to collecting data on management indicator (MIS) species (II A) and failing to consult on threatened and endangered (TE) species within the area (III); failing to follow the Manti-LaSal National Forest Plan (IIB); and acting arbitrarily and capriciously (IV).

The Appellants requested that the decision be remanded and a programmatic Environmental Impact Statement be prepared for all coal, oil and gas activities on the Wasatch Plateau.

### FINDINGS

I have reviewed the record for decision, and I have considered the above listed arguments presented in the Utah Environmental Congress appeal. My review focused on assertions by the Utah Environmental Congress that the Manti-LaSal violated their Forest Plan, failed to consider the Canada lynx, and relied upon an EIS that did not consider the proposed actions.

#### ISSUE 1

**The Manti-LaSal National Forest violated their Forest Plan, the National Environmental Policy Act by misapplying NEPA tiering provisions and is relying on an Environmental Impact Statement that did not consider the proposed actions.**

The Record of Decision on the Environmental Impact Statement for the Manti-LaSal National Forest and the Resource Management Plan (Forest Plan) was signed in November of 1986. Regulations (36 CFR 219.11 (d)) require monitoring of the Forest Plan implementation. The Manti-LaSal National Forest is in compliance with this regulation and published their "Forest Plan Monitoring and Evaluation Report 1992 - 2000" in October of 2001. There were significant findings as a result of this update and review, bringing the Forest into further compliance with the regulation. On May 3, 2002, the Forest published their intent to revise their 1986 Forest Plan

in the Federal Register. In accordance with regulations (36 CFR 219), the Forest stated "the current Plan will remain in effect and continue to be implemented until the Plan is revised."

The Forest Plan is being administrated within the guidelines of the National Forest Management Act. It is not reasonable to expect the Forest to cease activities (fire suppression, recreation, resources management including mining, etc.) until a new Plan is in place or a review is concluded. Nor is it reasonable to expect that the Southern Utah Fuel Company (SUFCO) halt all activities previously submitted and approved under the FEIS while the Forest Plan is under revision since the intent of the Plan has not significantly changed. In light of the recent review and intent to update, demonstrating the Forest's actions and recognition of areas in need for improvement or changes within the scope of the Plan, the Appellant's claim that the Manti-LaSal National Forest Resource Management Plan (Forest Plan) is out of date and the Forest is not following the Plan is not substantiated.

The Appellant's assertion that the project is being inappropriately being tiered to the Environmental Impact Statement is unfounded. The potential for this action was addressed in the January 29, 1998 Federal Register Notice of Intent to Prepare a Third-Party Environmental Impact Statement. Specifically noted in the Supplemental Information section of the notice was "portal facilities would be required at the coal outcrop in Link Canyon". Further supporting the dismissal of the Appellant's charge on this issue is the Final Environmental Impact Statement, which allows for a water discharge rate of over 100 gpm and land disturbance of 100 acres at the closed portal site. The proposed project to reopen the portal will maintain the seasonal 1 gpm recorded with a total land disturbance of less than 0.3 acre and provides for restoration of the landscape, the reclosing of the portal, and removal of the powerline at closing (projected 2008). This project is similar to the development that was originally evaluated, but with less disturbance than what is potentially available to the SUFCO for future operations under the FEIS.

## ISSUE 2

**The Manti-LaSal National Forest had failed to prepare a cumulative effect analysis.**

This project is well within the original scope of activities put forth in the FEIS and is within the scope of the cumulative effects that were identified in the EIS.

*so why  
was NEPA?*

## ISSUE 3

**The Manti-LaSal National Forest failed to consider management indicator (MIS) and threatened and endangered (TE) species (specifically the Canada lynx) within the area by failing to collect data.**

The Forest documented compliance with the Endangered Species Act of 1973 (as amended), on page 3-124 of the Pine Tract Project FEIS in consultation with the United States Fish and Wildlife Service and the Utah Natural Heritage Program (administered by the Utah Department of Wildlife Resources and the Nature Conservancy). The Forest concluded that TE and MIS did not occur in the candidate area for the Pine Tract Project or on the 0.3 acre to be modified for this project.

On September 18, 2002 the Forest Service, UDWR and the USFWS conferred on the status of the Canada lynx on the Wasatch Plateau. The USFWS stated that "no LAU's had (or have) been established on the Manti La-Sal National Forest because the Forest contains only marginal habitat." and "there was still no need to establish a LAU on the Manti La-Sal National Forest".

As noted in the foregoing, the Forest has complied with all federally mandated requirements in respect to MIS and TE rendering the Appellant's argument without merit as there is no indication that this project will result in the loss of species viability.

#### ISSUE 4

The appellant requests that new Environmental Impact Statements be prepared for the Wasatch Plateau.

The specific project being appealed is adequately analyzed in the 1999 Pines Tract Project FEIS and the supplemental site-specific information addressed in the 2002 Record of Decision. This project is a minor part of the overall development of the Pine Tract coal lease, which was issued in 1999. Furthermore, the project is consistent with the Manti-LaSal Forest Plan. I believe that the analysis conducted on this project is sufficient. A programmatic EIS is outside the scope of the project and is not necessary.

#### ISSUE 5

**The Forest decision is arbitrary and capricious.**

Given the overall project record, environmental analysis and decision rationale, I do not feel that the Forest acted in an arbitrary or capricious manner.

#### RECOMMENDATION

I believe that the Forest made a very comprehensive effort to inform all parties of the intended activities, worked within the framework of the Pines Tract Project Final Environmental Impact Statement and other applicable regulations, publicly documented the process, considered the health and safety aspect of mine personnel, the minimal impact to the land, and no indications for loss of species. I therefore recommend that you affirm the Forest Supervisor's Record of Decision dated October 9, 2002.

/s/ Robert W. Kuhn

ROBERT W. KUHN  
Appeal Reviewing Officer

## PINES TRACT – LINK CANYON PROJECT

Appeal # 03-04-00-0003

### Utah Environmental Congress

### INTRODUCTION

The history and background of the Link Canyon proposal provides important perspective for the October 9, 2002 Record of Decision (ROD).

The 1999 Pines Tract Project Final Environmental Impact Statement (FEIS) analyzed two reasonably foreseeable scenarios for mine development in Link Canyon. In the first, if Canyon Fuels Company LLC (SUFCO) obtained the Pines Tract lease, mining of the tract would be from their existing, adjacent Convulsion Canyon Mine, with no coal production portal facilities in Link Canyon. In the second, if another company obtained the lease, it would have to develop a new mine production portal in Link Canyon at the old Link Canyon Mine portal area (“Eastside Portal”). The FEIS analyzed the direct, indirect, and cumulative effects of both scenarios in Chapter 3 under the affected resources. This analysis was site-specific.

The 1999 ROD made no decision for site-specific actions in Link Canyon. It deferred that decision “to later decision making.”

In the 1999 ROD (January 1999), the Forest Service consented to the issuance of the lease, which is the primary decision point for the Forest Service. Once a lease is issued, operational decisions are made by the BLM and State with the concurrence of the Forest Service. In this case, through a stipulation attached to the October 1999 Pines Tract lease, the Forest Service retained further authority relative to subsequent actions related to this lease. Therefore, the Forest Service has a decision to make relative to this proposed action.

Before 1999, in a separate action, SUFCO had proposed, as part of their mine and reclamation plan for the Convulsion Canyon Mine, a breakout on the west side of Link Canyon (“Westside Portal”) for mine ventilation, as an emergency escape route, and for a power source into the mine. A mine plan amendment that authorized the Westside Portal, a power substation in Link Canyon, and a power line to the substation was approved based on a 1998 Environmental Assessment (EA).

After 1999, SUFCO obtained the Pines Tract lease. Between 1998 and 2002, SUFCO constructed the power line and substation in Link Canyon, but was unable to construct the Westside Portal because the coal bed between their mine and Link Canyon’s west wall was too hot (1999 ROD p. 9). This “changed condition” created the need for an alternate breakout location.

The 2002 ROD therefore analyzed a change in the Link Canyon plans: to develop a breakout on the east side of Link Canyon (Eastside Portal), in the same location analyzed in the 1999 FEIS for a new mine in Link Canyon (at the old Link Canyon Mine portal). The Eastside Portal location is a previously disturbed area. The old Link Canyon Mine portal would be reopened, a short access road segment constructed, and an electrical line would be extended from the existing substation.

The impacts to all resources from reopening the Eastside Portal would be substantially less than were analyzed in the 1999 FEIS for a new mine. The FEIS analyzed a 100 acre new mine production portal in Link Canyon. The 2002 ROD approved the <0.3 acre Eastside Portal (0.14 acre portal pad, 0.04 acre overhead power line, plus 0.09 acre portal pad access road). The effects of the scaled-down 0.3 acre project are completely contained within the effects of the 100 acre development analyzed in the 1999 FEIS. Thus, the 2002 ROD was based on the 1999 FEIS and took into account the very minor direct, indirect, and cumulative effects of the proposed disturbance for the Eastside Portal.

## **APPEAL ANALYSIS**

***APPEAL ISSUE 1: The Manti-LaSal National Forest has violated the mandate of the National Environmental Policy Act (NEPA).***

***A. The Manti-LaSal National Forest misapplies NEPA's tiering provisions and must develop a programmatic EIS.***

### **RESPONSE:**

#### **Tiering**

Tiering is the coverage of general matters in broader environmental analysis, allowing narrower environmental analysis to focus on site-specific issues (40 CFR 1508.28). The benefit of tiering is that it avoids rehash of broad issues at the site-specific level. Specifically: tiering helps the lead agency "focus on the issues which are ripe for decision and exclude from consideration issues already decided or not ripe" (40 CFR 1508.28 (b)).

An example of tiering is the relationship between a broad programmatic analysis in a Forest Plan Environmental Impact Statement, and the specific analysis in a project environmental impact statement (EIS) or environmental assessment (EA). The project EIS or EA tiers to the Forest Plan EIS.

#### **Programmatic EIS**

In this case, the Manti-LaSal Forest Plan FEIS (1986) is the programmatic document, and the 1999 Pines Tract Project FEIS is the site-specific document. The project FEIS tiers to the Forest Plan FEIS. This is an example of correct application of NEPA's tiering provision as provided by the Council on Environmental Quality's NEPA implementing regulations.

The FEIS for the Manti-LaSal Forest Plan is a programmatic EIS. It analyzes programmatic management direction, rather than site-specific, approved in the Forest Plan Record of Decision (1986). It provides a programmatic analysis of environmental effects of coal exploration and development on 12 resource areas (pp. IV-71 through 73).

The Manti-LaSal Forest Plan (1986) allocates the bottom of Link Canyon to "MMA," a Minerals Management Area, with emphasis on leaseable mineral development. (See 1999 FEIS, Figure 3-12.)

The Manti-LaSal National Forest has recently initiated a Forest Plan Revision process that will review and analyze the management situation including issues pertaining to coal development, and may provide new programmatic direction to update the 1986 Forest Plan direction. Therefore, one process of developing a programmatic EIS to address energy leasing is already underway. To begin a separate broader programmatic analysis of effects on the Wasatch Plateau as suggested would largely overlap this analysis.

**Segmentation:**

The question of segmentation is not an issue in this case. Segmentation generally refers to splitting one single proposed activity into two or more component proposals to avoid large-scale environmental analysis. This project is a case where one FEIS was followed by two (or more) ROD's addressing entirely different aspects of the overall project proposal: consent to lease (1999 ROD), and consent to amend the operating plan to allow a breakout portal in Link Canyon specifically (2002 ROD). This is a case of sequential decision making, not segmentation of analysis. It is appropriate for two (or more) records of decisions to be based upon one environmental impact statement. ✓

The incremental effects of the less-than 0.3 acre Link Canyon breakout project would not rise to the level that would trigger the need for a cumulative effects analysis of coal, oil, and gas development across the entire Wasatch Plateau.

**Cumulative Effects:**

Objections to the cumulative effects analysis for the overall Pines Tract Project FEIS and ROD (1999) are outside the scope of this specific decision on the Link Canyon breakout portal (2002). Such objections would have been appropriate immediately upon release of the 1999 ROD. The available record indicates that no administrative appeals were filed against that 1999 decision, under either 36 CFR 215 or 36 CFR 251.

The Pines Tract FEIS (1999) does analyze and disclose the cumulative effects of development of the formerly proposed breakout on the Westside of Link Canyon. In particular, see Appendix B, Table B.3, "Past, Present, and Reasonably Foreseeable Future Actions," under the column titled "Anticipated Effects." The same effects can be readily extrapolated the short distance away to the proposed breakout portal on the eastside of Link Canyon.

The Biological Evaluation and Biological Assessment disclose the direct, indirect, and cumulative effects (or lack of such effects) of the proposed action on threatened, endangered, and sensitive species and Species of Concern in the affected area. (See Exhibits 36 and 37, respectively.)

The statement in the Pines Tract FEIS (p. 1-14) that "no new facilities would be needed" in Link Canyon was a true statement at the time it was made in 1999. However, since then, a changed condition has occurred. This change is described in the Introduction section above, and in the 2002 ROD (pp. 9-10).

The statement in the 2002 ROD (p. 2) that "Future resource management proposals within the area would have to be considered on their own merits in subsequent decision making," is correct and consistent with the proper NEPA and decision making process for this coal development

project. The 1999 FEIS analyzes leasing and the conceptual mine development, the 1999 ROD made the decision to consent to leasing, that decision has been implemented, and the 2002 ROD made the decision to approve the Mining and Reclamation Plan Amendment specifically to reopen the old Link Canyon Mine portal.

While the 1999 FEIS analyzed a breakout at Box Canyon in the north part of the lease (Muddy Canyon), the current proposal for a breakout on the eastside of Link Canyon is a separate and independent proposal from that. They are not mutually exclusive. In addition, the effects of a breakout in Link Canyon were previously analyzed in a 1998 EA (Exhibit 46 of the Appeal Record) titled "EA for Utah Power and Light, A PacifiCorp Company, 69 KV Transmission Line to Serve the SUFCO Mine and Canyon Fuel Co. LLC Associated Link Canyon Breakout and Substation."

#### **Link Canyon Portal:**

As for the question of whether the proposed Link Canyon Portal is located within the Pine Lease Tract Project Area, in the 1999 FEIS, the Pines Tract Project Map, Figure III-2 has an arrow labeled "Link Canyon Mine" that points to the eastside portal within the boundaries of the line labeled "Lease Boundary" on the map legend. Other maps and descriptions in the record consistently state that the proposed Link Canyon portal is within the Project Area analyzed within the Pines Tract FEIS (1999) (for example, p. 3-238).

#### **Link Canyon Powerline:**

As for the question of whether the proposed powerlines running from the substation to the portal involves land outside the Pines Tract project area analyzed within the 1999 FEIS, the proposed powerline from the existing substation in Link Canyon to the proposed breakout (Eastside Portal) lies within the Reasonably Foreseeable Development Scenario (RFDS) area analyzed within the FEIS. See the RFDS referenced on pp. XIV-XVII in the 1999 FEIS. See p. 3-328 in the FEIS. See FEIS Figure 3-2 and compare with 2002 ROD, Map 1 and Map 2.

#### **Link Canyon Road**

As for the allegation that a portion of the Link Canyon Road is outside the project area analyzed within the FEIS, the Link Canyon Road is an existing road. The 1999 FEIS analyzed area inside and outside the Pines Tract project area. See the RFDS referenced on pp. XIV-XVII in the 1999 FEIS.

#### **Summary**

The 1998 EA previously analyzed the effects of developing a Link Canyon breakout portal and extending the powerline to the portal. The 1999 FEIS analyzed the effects of a large 100 acre mine production portal facility at the eastside portal in Link Canyon including a mine portal, a powerline, access road, and extensive surface disturbance (pp. XIV-XVII in 1999 FEIS).

The 2002 ROD approved a less-than 0.3 acre portal facility at the same eastside portal including a mine portal, 100 foot new road, and powerline.

Therefore, the effects of the Link Canyon breakout portal project were fully and adequately considered in three separate analyses--the 1998 EA, the 1999 FEIS, and the 2002 ROD.

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE 1 (CONTINUED):**

***B. The Manti-LaSal National Forest has failed to prepare cumulative effects analysis.***

(Also see discussion above titled "Cumulative Effects.")

Cumulative effects are the impacts that result from the action when added to other past, present, and reasonably foreseeable future actions (40 CFR 1508.7).

In the 1999 FEIS, Appendix B provides the starting point for the cumulative effects analysis by listing on a 10-page table (Table B.1) the "Past, Present, and Reasonably Foreseeable Future Actions."

Then the FEIS for each affected resource in Chapter 3 has a section titled "Cumulative Effects" which analyzes and discloses the combined effects from "past actions, current effects from present actions, and anticipated effects from reasonably foreseeable future actions" (FEIS p. 3-105).

As the 1999 FEIS states, that document analyzed and disclosed the direct, indirect, and cumulative effects of a breakout development on the west side of Link Canyon. "The future actions include the development of ... a powerline and substation in Link Canyon... (Appendix B). The anticipated impacts include impacts that have been analyzed above [direct and indirect effects] for the development of the Pines Coal Tract, and the surface disturbance associated with a proposed powerline and substation in Link Canyon. The surface disturbance associated with the breakout would include 0.17 acres at the breakout mostly in rock outcrop area with a scattering of pinyon-juniper woodlands. The construction of the powerline would disturb 22.5 acres of pinyon-juniper woodlands. The cumulative impacts would be 140.5 acres short-term disturbance, 19.17 acres of long-term disturbance, and 38 acres permanently lost to road construction" (FEIS p. 3-105 to 106, cumulative effects to vegetation).

In addition, the Biological Evaluation and Biological Assessment disclose the direct, indirect, and cumulative effects (or lack of such effects) of the proposed action on threatened, endangered, and sensitive species and Species of Concern in the affected area.

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE II: The Forest Service has failed to meet the mandate of the National Forest Management Act**

***A. The Manti-LaSal National Forest has failed to collect monitoring data as required by NFMA.***

**RESPONSE:** The Forest has conducted appropriate monitoring for MIS/TES species and used this data to determine cumulative effects of the proposed action within the project area.

The Biological Assessment (BA) and Biological Evaluation (BE) for the Link Canyon Portal Project (Exhibits #37 and 36 respectively of the Appeal Record, dated October 2002) evaluate the 11 federally listed and 16 regionally sensitive species and 2 other species of concern potentially affected by the project. Five of the six management indicator species, identified in the Forest Plan (p. III-31), are evaluated in the Pines Tract Project FEIS (p. 3-107 thru 3-112; 3-117 thru 3-122). The sixth, Abert squirrel, is found only on the Monticello District in Utah, not in Sevier County, where the project area is located (FLRMP, p. III-33). Thus Abert squirrel was not analyzed for this project proposal. Potential effects have thus been evaluated for all required species. Most of these species do not occur within the project area.

In order to display the adequacy of monitoring data, surveys and evaluations for each MIS, threatened, endangered, and sensitive species relative to the proposed action are summarized below.

**Federally listed species:**

The U.S. Fish and Wildlife Service determined which federally threatened and endangered species would be evaluated.

Canada lynx was not analyzed for this project because it is not included in the list of species provided by FWS to the Forest (2002 BA, p. 3). It is not included on the list because the scientists charged with the responsibility to develop a conservation strategy for Canada lynx determined that there is no suitable habitat for lynx on the Forest (Canada Lynx Conservation Assessment and Strategy, 2<sup>nd</sup> edition, August 2000, p. 4-1). At a meeting on September 17, 2002, it was decided by representatives of FWS, Utah Department of Wildlife Resources, and Forest Service that the hair sample found in the Joe's Valley area on the Manti-LaSal NF does not change the status of lynx on the Forest. Further evidence of lynx on the Wasatch Plateau would be necessary for a change in status to be made (Exhibit 33 of the Appeal Record – message to file from Rod Player, dated September 18, 2002).

During surveys, the endangered Colorado pikeminnow, bonytail chub, humpback chub and razorback sucker were not found within or near the project area and have never been located on the Forest, though they are present in drainages that receive water originating on the Forest. Though the project area occurs near the headwaters of Muddy Creek, which ultimately drains into the Lake Powell segment of the Colorado River, the project was determined to have no effect on listed species or their designated critical habitats. This determination is based on the fact that the project area is such a great distance from endangered fish habitats that the minor amount of sediment produced by the proposed action (less than one acre-foot) would not affect occupied habitat (2002 BA, p. 7).

Surveys have established that the southwestern willow flycatcher, Utah prairie dog, last chance townsendia, heliotrope milkvetch, Wright fishhook cactus, and western yellow-billed cuckoo, all federally listed species, would not be affected by the proposed action because there is no suitable habitat for these species within the project area (2002 BA, p. 4-7)

Sensitive species:

Bat survey and habitat assessments were conducted in the Link, Muddy Creek, and Box Canyon areas in 1997. Spotted bats were detected during the surveys. The closest suitable roost sites were noted more than a mile from the project area (2002 BE, p. 4). No Townsend's big-eared bats or their sign were noted in the area. No suitable day roosts or hibernacula were found. However, shallow caves that could possibly be used as summer refugia for small numbers of male or non-reproductive female big-eared bats were identified in Box Canyon, more than one-half mile from the project area (2002 BE, p. 5). Since construction activity would be temporary (3-4 weeks) and little human activity would take place after construction, it was concluded that operations were not likely to have any effects on spotted or Townsend's big-eared bats (2002 BE, p. 4, 5). It was concluded that the proposed project may impact individual spotted or Townsend's big-eared bats, but would not likely contribute to a trend towards federal listing or loss of viability of either species.

Surveys for flammulated owls determined that there is no nesting habitat within the project area. Since the proposed action would not alter forest structure, it would not result in loss of nesting or foraging habitat for flams. Since the project is to be completed outside the nesting season and far removed from nesting habitat, it was determined that it would be unlikely that construction activity would trigger nest abandonment (2002 BE, p. 5).

Raptor surveys have been conducted annually by the Utah Department of Wildlife Resources in the vicinity of the project area from 1997 to the present (DWR Raptor Survey 2002). Two peregrine falcon eyries have been found within ten miles of, but more than one mile from, the project area (2002 BE, p. 6). There are no active golden eagle nests within several miles of the proposed project area (DWR Raptor Survey 2002). A historic goshawk nest site, located approximately  $\frac{3}{4}$  mile from the project area, was monitored in the late 1990's and in 2001 and 2002. The nest is no longer visible and no nesting goshawks have been found in the vicinity of the project area during other survey efforts (2002 BE, p. 6 and DWR Raptor Survey 2002). It has been determined that the proposed action would not impact peregrines, golden eagles or goshawks because: 1) proposed ground disturbance is on such a small scale (less than 0.3 acre) that it will not cause a loss of foraging habitat for any of the 3 wide-ranging species, 2) based on the distance from peregrine nest sites and timing of project activities, the proposed action will not affect peregrine nesting success (2002 BE, p. 6), 3) there are no golden eagles or goshawks nesting near the project area, and 4) potential peregrine and eagle nest sites on escarpments (EA for Utah Power and Light, A PacifiCorp Company 69kV Transmission Line to serve the SUFCO Mine and Canyon Fuel Company, LLC Associated Link Canyon Break Out and Substation, Sevier and Emeryl Counties, 1998, no page number) would not be affected since proposed actions would not result in subsidence of cliff faces (Pines Tract Project FEIS, 1999, p. 3-119; Link Canyon Breakout Record of Decision, October 2002, p. 11).

A survey was completed by Mt. Nebo Scientific in Link Canyon in 2002 for Link Trail Columbine, amphibians, and aquatic macroinvertebrates (Survey Report, Aquatic Fauna, Link Canyon Portal Area, 2002). No Link Trail columbine, boreal toads, or spotted frogs were found within or downstream of the area of proposed disturbance (2002 BE, p. 8). Furthermore, spotted frogs have never been found on the Forest and are not expected to occur on the east side of the Manti Division, where the project is located (2002 BE, p. 7). No sensitive aquatic taxa were found within the inventory area. No amphibians or mollusks or their sign were observed. However, individuals representing at least ten families and seven genera were identified during aquatic macroinvertebrate surveys, the most dominant species being mosquitoes and true midges (Survey Report, Aquatic Fauna, Link Canyon Portal Area, 2002, p. 7).

Surveys have established that three-toed woodpeckers, Colorado River cutthroat trout, Bonneville cutthroat trout, creutzfeldt-flower, carringtons daisy, canyon sweetvetch, Maguire campion, musinea groundsel, and Arizona willow, all sensitive species, would not be affected by the proposed action because there is no suitable habitat for these species within the project area (2002 BE, p. 6-10).

Management Indicator Species:

The Manti-LaSal National Forest has identified six management indicator species as part of its Forest Plan: Elk, mule deer, macroinvertebrates, blue grouse, golden eagle, and abert squirrel. (Exhibit 40 – FLRMP FEIS, p. III-31).

Blue grouse are monitored annually by the DWR through summer inventory and harvest data (FLRMP FEIS, p. III-33). This information is available to the Forest. In addition, a survey was conducted in the project area on June 5, 2002, but no birds or sign were observed (BE, October 9, 2002, p. 11). It is stated in the BE (p. 11), and again in the Record of Decision for the Link Canyon Breakout (October 2002, p. 18), that the project area consists of pinion-juniper habitat and which is not suitable habitat for blue grouse. Thus blue grouse would not be affected by the proposed action.

Golden eagles are discussed above, under Sensitive Species, in the paragraph on raptors.

Both mule deer and elk use the proposed project area as winter range, but move out of the area for the spring and summer months (Pines Tract Project FEIS, p. 3-107). The proposed project area comprises less than 0.01% of general big game winter range in this general vicinity. As a result, effects of the project on big game species are expected to be negligible (Record of Decision for the Link Canyon Breakout, October 2002, p. 18). In addition, Stipulation #14 (Pines Tract Project FEIS, Appendix D) states that, in order to protect big game wintering areas, specific surface uses outside the mine development area may be curtailed during specified periods of the year.

Macroinvertebrates are discussed above, under Sensitive Species in the paragraph about the Mt. Nebo Scientific Survey.

Cumulative Effects

Cumulative effects of the current proposal have been considered in the ROD (Record of Decision for the Link Canyon Breakout, October 2002, Attachment 3 – Responses to Comments, 2<sup>nd</sup> page)

and project-specific BA (October 2, 2002) and BE (October 9, 2002). It is stated in the BA that "the total effects from coal mining and exploration activities in addition to past and foreseeable actions would not have harmful impacts to the local threatened and endangered species" (p. 8-9).

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE II (CONTINUED):**

***B. The Manti-LaSal National Forest has failed to follow its Forest Plan. ("... by failing to analyze Canada lynx (threatened), blue grouse (MIS) or other species in either the Pines Tract EIS, Link Canyon Project ROD or revised BE/BA makes it impossible to determine what impacts may occur to the resources or what, if any, mitigation has been applied to protect them.")***

**RESPONSE:** The 2002 BA and BE for the Link Canyon Portal Project evaluate the 11 federally listed and 16 regionally sensitive species and 2 other species of concern, including blue grouse, potentially affected by the project. Five of the six management indicator species identified in the Forest Plan, including blue grouse, are evaluated in the Pines Tract Project FEIS. The sixth, Abert squirrel, is not found in Sevier County and is therefore not analyzed. Potential impacts have thus been evaluated for all required species. For more details, refer to the response for Appeal Issue II. A.

Canada lynx was not analyzed because it is not included in the list of species provided by Fish and Wildlife Service (FWS) to the Forest. For more details, refer to the response for Appeal Issue II. A., paragraph 6.

Mitigations and Conditions of Consent, listed in Attachment 2 of the Record of Decision for the Link Canyon Breakout (October 2002), include provisions to protect and enhance the riparian area in Link Canyon.

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE III:** *The Forest Service fails to meet the mandate of the Endangered Species Act. The Manti-LaSal National Forest failed to consult with the USFWS regarding the threatened Canada lynx.*

**RESPONSE:** The Forest biologist did consult informally with the FWS after a lynx hair sample was found in the Joe's Valley area, approximately 20 miles from the proposed project area. The regional FWS representative determined that the status of lynx on the Forest was not altered by this finding. A letter to the file, written by Rod Player and dated September 18, 2002 (Exhibit 33 of the Appeal Record), documents this discussion. For more details, refer to the response for Appeal Issue II. A., paragraph 6.

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE IV.** *The Manti-LaSal National Forest has failed to meet the mandate of the Administrative Procedures Act. The Forest Service has acted arbitrarily and capriciously in violation of the APA.*

**RESPONSE:** The APA requires that agency actions must not be “arbitrary, capricious, or an abuse of discretion,” and must have a rational foundation. As discussed above for the preceding appeal issues, the documentation for the project complied with NEPA, NFMA, and ESA. Therefore there has been no arbitrary or capricious action or abuse of discretion, and thus no violation of APA.

**DECISION:** Affirm the Responsible Official.

**APPEAL ISSUE V:** *The Forest Service examined only two alternatives in detail, the proposed action and the “No Action Alternative” required by NEPA. This does not amount to a reasonable range of alternatives as defined by NEPA and CEQ Regulations. (Page 4 of the appeal).*

**RESPONSE:** NEPA requires analysis of alternatives in order to display a range of environmental consequences sufficient to support an informed decision. A reasonable alternative is one that meets the purpose and need and addresses significant issues. There is no requirement to analyze an unlimited range of slightly different alternatives. The environmental consequences of the selected alternative are within the range of the environmental consequences of the alternatives the FEIS explored.

First, in the 2002 analysis, the Forest did consider only two alternatives in detail (2002 ROD p. 4): Alternative 1 (No Action), and Alternative 2 (Consent to the Project). However, it also considered another alternative but dismissed it from further analysis (ibid): “Drill/Construct a Mine Ventilation Shaft/Escapeway from the Plateau Top Area Above Link Canyon”. The ROD also states that (p. 15) “Other locations for a mine opening were investigated and dismissed.”

Secondly, in Forest Service NEPA analysis, alternatives are generated to address the significant issues (40 CFR 1501.2(c); and Forest Service NEPA Handbook 1909.15 section 14). The Forest conducted scoping for the Link Canyon proposal, received two letters, considered the suggested issues, and analyzed them specifically as documented in Attachment 3 of the ROD. The Forest determined that “no new issues requiring detailed evaluation were identified from project-specific scoping” (ROD p. 3). Given no new issues, there was no need to develop new alternatives beyond no action and the proposed action.

Therefore, the two alternatives considered in the ROD represent an adequate range of alternatives for this specific project and decision.

**DECISION:** Affirm the Responsible Official.