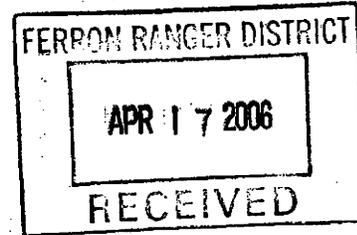




April 12, 2006

Mesia Nyman,
Responsible Official/District Ranger,
Manti-La Sal National Forest
P.O. Box 310
Ferron, UT 84523



Dear Mesia,

The Utah Environmental Congress (UEC) appreciates this opportunity to submit substantive comments on this latest 2006 Arc Land Company, SUFCO Mine exploratory drilling proposed action. We are responding to your legal notice of proposed action as well as your letter of March 8, 2006 (attachment 1). This additional year of exploratory drilling is proposed for the 2006 field season. The purpose of the drilling is to provide information necessary to characterize the geology of the area's coal reserves for coal mining.

CE category

Your letter (attachment 1) says that you are contemplating using CE #3 (i.e. category 31.2(3), FSH 1909.15). The proposed action does not fit this CE category. Regardless of that fact, when you scoped last year's proposed action you proposed to use CE #8. CE #8 is for "short-term (one year or less) mineral, energy, or geophysical investigations. At that time we commented that "it is presently obvious that the coal drilling investigations in this project area have already been on-going for at least 3 years in a row, which has resulted in over 50 drill hole action developments, and the proposal to continue with the investigations for at least a 4th year with almost another dozen drill hole developments is not an action that fits CE #8 because this is not a "short-term (one year or less) investigation." While this activity was scoped in 2005 under CE #8, the Forest ended up issuing a Decision Memo authorizing CE of the activity under CE#3. Last years exploratory drilling did not fit either CE category, nor does this years proposed coal drilling activities in the area.

More NEPA issues

The proposed drilling, water diversion, pipeline, and road work activities for 2006 that are described in attachment 1 are a continuation of last years activities, which were almost exactly the same, and are located in the same area. With attachment 2 we have included the Forest's DM from 2005. Note from that DM and the map included in it in particular, that this is the same water diverting, pipeline work, road

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Mine # 5/041/0002
File Incoming
Record # 0049
Doc. Date 4.12.06
Recd. Date 4.17.06

maintenance/construction/reconstruction work, and drilling work that was approved last field season in the exact same place. UEC's comments on the 2005 proposed action are hereby incorporated entirely into these comments and included with attachment #3 because they outline significant, key issues that bear just as much –if not more- on this year's proposed drilling activities as they did on the same activities in the exact same areas last summer. Further, as outlined in these incorporated and attached comments on coal drilling, road work and water line diversion work in this area, this is part of larger interagency actions for: (1) multi-year, interagency coal drilling exploration and associated road construction/reconstruction/maintenance and water diversion/pumping and, (2) development of Forest Service, BLM, and State mineral and other resources. This exploration and development, which is illegally compartmentalized via yearly CE, includes decisions that approve development and exploration of mineral resources that results in perennial allocations of one resource to the detriment of a host of other surface resources. This includes perennial decisions that already have, and will continue to accrue additional, irreversible and/or irretrievable commitments of various resources. For example, as outlined in the incorporated comments (attachment 3), the coal drilling activities have already (and now will continue) to include road construction/reconstruction inside IRA. Surface hydrology, wetlands, and streams –not to mention migratory bird, raptor, sensitive species, MIS, big game, small game, and non game wildlife have already incurred cumulative impacts from the annually categorically excluded coal mining surface activities in this specific Muddy Coal area. Further, these activities are out of the scope of, and these annual impacts were not contemplated, disclosed, or analyzed in the Forest Plan FEIS, nor has this been addressed in any site-specific EA or EIS.

Further, this project area is home, at last count (circa 50 birds), to the single largest concentration of sage grouse in the state, and possibly the larger region. This area includes well known sage grouse lek area. The proposed action includes heavy equipment work and road (re)construction right through this keystone sage grouse lek area. Forget the fact that the Forest continues to illegally compartmentalize the impacts of coal activities affecting the surface resources in this area. The fact that this crucially important sage grouse habitat and population will be notably impacted by this year's proposed surface coal mine drilling activities alone triggers significant impacts and concerns requiring preparation of an EIS. This is also in violation of the Forest Plan direction for wildlife conservation, species diversity, species viability. This is also in violation of the MBTA, NFMA, FSM 2600-2700, as well as Conservation Agreements for sage grouse and other TES species, at risk species, species of concern and species of interest.

Direct/indirect/cumulative impacts to FSH 1909.15 Ch. 30.3 listed 'resource conditions' and NEPA's human environment

This is yet year in a row that this action is proposed to be repeated in the same area. It also appears that this drill hole development and investigation action has been on-going prior to that. In reality, we believe the Forest has been, and now continues to, compartmentalize the larger action for annual drill hole and coal mine surface activities.

The cumulative impacts of the year-after-year drill hole development action have been (and is being) compartmentalized, and have yet to be adequately disclosed or analyzed. We believe if this is adequately done the analysis will indicate that there are obviously cumulatively significant impacts to FSH's 'resource conditions' as well as NEPA's human environment.

Further, there are yet additional past, present, and reasonably foreseeable actions in the area that contribute to the total significance of the cumulative degree of the impacts that will be incurred as a result of this proposed action. Some of these actions, and the resource conditions and aspects of the human environment impacted, are addressed in the comments included in attachment one. Some of the more obvious actions that contribute to the cumulative significance of the impacts include the road maintenance work done in recent years re-doing some of the cut and fill on the roads in the south end of the project vicinity. Additional actions with additional cumulative effects include the subsidence effects of the subsidence coal mining that has occurred, is occurring, and will occur for decades more; natural and mine-caused slumping, sliding, and land slides; beetle kill and the resulting decreased integrity of the forest's root system that holds the erosive soils in place, and surface water, spring, wetlands, and aquatic habitat losses and impacts.

At the minimum, due to the significant degree of the effects (direct, indirect, and cumulative) to the FSH 1909.15 Ch. 30's listed 'resource conditions' that trigger presence of extraordinary circumstances, it is clear at this point that an EIS is obviated. The effects analysis (both that supports determinations regarding the degree of potential effects to FSH 'resource conditions' and NEPA's environment) must also disclose and account for the reasonably foreseeable other action (many of which are related). The most obvious FSH-listed resource conditions that will be directly/indirectly/cumulatively impacted that must be analyzed include TES/MIS resources, wetlands, streams, springs, IRA, big game habitat, sage grouse, migratory bird resources, and archeological and historic sites/properties. These resource conditions, all of which are present in the project area, are present and are (or will incur with the proposed action) cumulatively significant impacts from past, present, and reasonably foreseeable actions-most of which are directly related to this and other coal exploration and development activities that effect the non-mineral surface resources – surface resources which the Forest has and continues now to fail to conserve and protect.

If you have some preliminary or final environmental analysis of the significance or degree of the direct/indirect/cumulative effects of this perennial surface coal mine drilling activity on the FSH-listed 'resource conditions' (and the environment) that clarify this concern, we ask for an opportunity to review that before a decision is made, and if the effects analysis makes sense and is supported we would like to send you a letter withdrawing this concern with CE'ing the proposed action. If you do not send this environmental analysis to our office prior to making a decision to continue the coal mine drilling activities into this field season, we request that you mail that to our office concurrent with the decision documents if/when they are signed.

In the bigger picture, it is simply obvious that a programmatic coal mine drilling EIS is needed. It makes sense in this programmatic EIS to include all coal drilling on the Wasatch Plateau portion of the Forest, including the perennial and literally never-ending helicopter coal mine surface drilling work. Because that takes some time, in the short term it is obvious that one possible best course of action is to prepare an EA (if not an EIS) for this year's continuation of the coal mine surface drilling, water diversion, and road (re)construction operations.

Approval of the proposed action as is will necessitate an amendment to the Forest Plan/FEIS/ROD direction, standards, guidelines, and mitigation measures for TES and other wildlife, MIS. Other Forest Plan direction may also need to be amended with approval of the proposed action. Page 5 of the Record Of Decision (ROD) (incorporated by reference) that approves the current Forest Plan/FEIS states, "During implementation, when various projects are designed, site-specific analysis will be required. Analyses may take the form of Environmental Assessments [40 CFR 1508.9], environmental Impact Statements [40 CFR 1508.11], or categorical exclusions [40 CFR 1508.4]. The Supervisor may amend the Forest Plan in accordance with 36 CFR 219.10(f) [1982]. Any resulting documents will be tiered to the FEIS, pursuant to 40 CFR 1508.28 [1982]." This analysis is going to be tiered to the Forest Plan FEIS. Page 14 of the Forest Plan ROD states, "Maintaining visual quality objectives, viable populations of wildlife management indicator species" ... are all examples of standards and guidelines which act as mitigation measures." It goes on to state, "Mitigating measures, stated as standards and guidelines, are intended to be adopted and enforced in project level activities" A Forest Plan amendment is necessary because mitigation measures committed to in the Forest Plan ROD would need to be waived with a Forest Plan amendment to approve the proposed action.

Other.

Another concern mentioned above is that no clear, identifiable project area boundary has been identified or presented. We recommend that the Forest identify and provide a clear and reasonably defined project area boundary. We recommend this because on similar projects where presence/absence or effects analysis determinations are based on 'presence/absence of', or 'some/no effects from' the proposed action "in the project area" but no project area boundary is identifiable (or if the project area boundary is unclear or does not include all of the proposed action), the determinations make no sense. Identifying a clear project area boundary now that includes all of the helicopter flight paths and landing pads/facilities needed would alleviate this.

How has past harvest and forest management and mine exploration/development in this area affected current compliance with Forest Plan stipulations, standards and guidelines, including those relating to goshawk, sage grouse, migratory birds, protected raptors and lynx and subsidence and aquatic resources? How will the proposal work towards attaining and/or moving further away from meeting standards and guidelines, including

those for goshawk and lynx? How does the proposed action move the area towards DFC and PFC?

Have past mine exploration/development/management and/or harvest treatments lead to current attainment of standards and guidelines and other direction for old growth in the affected management areas? What is the current percentage, by management area and/or stand of forest/watershed, of old growth forest stands in the project area? What is this number when using Hamilton, 1993, old growth criteria for Intermountain Region Forests? The positive and/or negative effects of the proposed action in meeting old growth criteria and standards should be addressed as a significant issue in the analysis. What types of site-specific surveys have been used to determine that each stand meets (or does not meet) Hamilton's criteria? How and to what extent does the proposed action promote or delay attainment of old growth stands (and standards) in the project area, and Forest Plan management area? This basic data and analysis should be concisely summarized and presented in the EA or environmental analysis.

We believe that the degree of the direct, indirect, and cumulative impacts resulting from the proposed action and past management in the area currently may rise to significance under NEPA and FSH direction. Another BE and an BA needs to be prepared and used to inform the development of the range of alternatives (if any), including the proposed action in the EA that should be prepared. Failure to do this may be inconsistent with the ESA, as well as FSM/FSH, NFMA, and Forest Plan direction relating to maintaining and improving populations and habitat for TEPCS species' populations and their habitat.

Surveys for TECPS plants, amphibians, and mollusks should be completed in the treatment units and down-watershed to inform the effects analysis. Surveys for boreal toad habitat and populations should be conducted in this effort.

The FSM/FSH states that the supervisor needs to determine the distribution, status, and trend of sensitive species and their habitats. Projects need to maintain and improve the distribution status and trend of sensitive species and their habitats. Data from site-specific surveys need to be used to inform the analysis of the effects (positive and negative) to the distribution, status, and trend of sensitive species and their habitats.

The proposed action needs to be consistent with Forest-wide Forest Plan direction as well as the direction specific to the management areas needs to be addressed and adhered to. The proposed action is not be consistent with some of this management area-specific direction, as well as some of the Forest wide direction. An EA/EIS is needed as well as a Forest Plan amendment. However, we recommend denying the applicant's request pending a programmatic EIS.

Under authority of the MBTA, it is unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. Take is defined (50 CFR 10.12) as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. Proscription against killing birds, contained in the MBTA and the Eagle Protection Act, applies to both intentional and unintentional harmful conduct and is

not limited to physical conduct normally exhibited by hunters and poachers [U.S. v. Moon Lake Electric Association, Inc. (98-CR-228-B; 10th Circuit 1998)]. When taking of raptors, their parts, nests, or eggs is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. If that is the case we urge denying the requested activities. On July 18, 2000, the United States Court of Appeals for the District of Columbia Circuit held in Humane Society v. Glickman, 217 F. 3d 882 (D.C. Cir. 2000), that the MBTA applies to Federal agencies. The United States had previously taken the position that the MBTA only applied to individuals, and not to the Federal Government [Sierra Club v. Martin, 113 F 3d 15 (11th Cir. 1997); Newton Cty Wildlife Assn v. U.S. Forest Service, 113 F 3d 110 (8th Cir. 1997)]. Since the Federal Government decided not to appeal Humane Society v. Glickman, and because all Federal agencies are subject to the jurisdiction of the D.C. Circuit, the Forest must adhere to this decision. Executive Order 13186 reinstated the responsibilities of Federal Agencies to comply with the Migratory Bird Treaty Act of 1918 (MBTA). The Executive Order establishes a process for Federal Agencies to conserve migratory birds by avoiding or minimizing unintentional take and taking actions to benefit species to the extent practical. The EO, while not eliminating the possibility of violations of the MBTA, is designed to assist Federal Agencies in their efforts to comply with the MBTA.

It is illegal to take bald or golden eagles, alive or dead, or any part, nest, or egg thereof. "Take" includes to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb (50 CFR 22.3). The proposed action may do just this. Golden eagles are also MIS, and their population is below the Forest Plan minimum viable population number, so you simply cant approve any additional actions that may degrade their habitat, nests, or individual eagles. Recent case law [U.S. v. Moon Lake Electric Association, Inc. (98-CR-228-B; 10th Circuit 1998)] concluded that proscription against killing birds, contained in the MBTA and the Eagle Protection Act, applies to both intentional and unintentional harmful conduct and is not limited to physical conduct normally exhibited by hunters and poachers.

The Eagle Protection Act was amended in 1978 to authorize the Secretary of the Interior to publish regulations that may permit the taking of golden eagle nests that interfere with resource development or recovery operations. Thus, the Service provides for the issuance of permits to "take" inactive golden eagle nests that interfere with resource development or recovery operations if the taking is compatible with the preservation of the area nesting population (50 CFR 22.25). The area nesting population is determined as the number of pairs of golden eagles known to have attempted nesting during the preceding 12 months within a 10-mile radius of a golden eagle nest (50 CFR 22.3). The Eagle Protection Act applies to Federal Agencies as well as individuals. 15 Conservation Strategies of E.O. 13186 that you need to strictly adhere to include:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

- (2) restore and enhance the habitat of migratory birds, as practicable;
- (3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;
- (4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;
- (5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;
- (6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;
- (7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;
- (8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;
- (9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;
- (10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird

resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such data (e.g. the Cornell Laboratory of Ornithology);

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and

international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and

(15) develop partnerships with non-Federal entities to further bird conservation.

The Forest Service and BLM must start to comply with the Eagle Protection Act, and the MLSNF and the BLM is not doing that.

This and all actions implementing the Forest Plan are tiered to the Forest Plan/FEIS/ROD. Please let us know in writing if this proposed action is being analyzed and implemented pursuant to the Forest Plan/FEIS/ROD that is promulgated exclusively under the 1982 NFMA regulations, or if the 2005 NFMA regulations are being used for planning, analysis, and approval of this proposed action. If implementation is pursuant to the 2005 NFMA regulations, how do you resolve the problem of there being NO standards for Forest Plan implementation under the new regulations? For example, that will violate the Forest Plan, and direction for goshawk, lynx, wolverine, sage grouse, BCT/CRCT, other species with conservation agreements, and requirements for projects when TES species are present. Given that the Forest has not implemented an EMS with a minimum scope that includes the "land management planning process," implementation of this action could not possibly be consistent with the 2005 NFMA implementing regulations. When you do get around to developing an EMS it is plain as day that one of the environmental aspects of your operation is the coal exploration and extraction program. However, you have no such approved EMS. In light of this and because the 2005 NFMA regulations are illegal, we recommend using the current Forest Plan and the regulations upon which it is based and implemented for approval and analysis of this proposed action.

This is a project and proposed action that proposes to directly impact wildlife individuals and populations as well as to manipulate and alter major structural components of wildlife habitat, alter soil stability and change the vegetative habitat conditions/quality.

Before doing this significant action, the Forest needs to modify the proposed action such that it will not reduce wildlife populations to less than the minimum viable populations. Pursuant to USDA Departmental Regulation 9500-4 wildlife monitoring activities will need to be conducted to determine if you are meeting (and will still meet) population and habitat goals for all existing wildlife and plants in the area.

Since water-related habitat for mollusks, amphibians and native forbes/grasses and sage habitat, there must be an analysis of these impacts. There also needs to be a rigorous presentation and analysis of the effects to TES and proposed sensitive flora and fauna. Original surveys must be conducted in the project area prior, during, and after the project. These issues should be treated as driving issues that inform the development of the proposed action and alternatives. What selected MIS are being used in the analysis and monitoring of the proposed action?

In the attached comments on last August/fall's portion of the coal mine drilling activities, we raised comments on the road construction, reconstruction, temporary road construction, and related road management activities. While definitions at 36 CFR§212.1 have changed, the Roads Policy in the CFR remains the same. Further, the Roads Policy remains unchanged—including the 2001 definitions of road construction- in FSM 7710-7712. This portion of the FSM underwent the Administrative Procedures Act's formal notice and comment procedures, which means the resulting Directives have the force and effect of law, are accorded that weight by the Courts, and are binding and must be followed. The exact same basic road construction and reconstruction concerns arise with this year's proposed activities. Additional concerns now exist by the OHV activities that will be approved with the proposed action. These OHV activities are not proposed to be authorized through the land management travel planning process and are subject to notice, comment and appeal along with the rest of the proposed activities for 2006. Please mail notices to our office.

We thank you for this opportunity to provide comment on this proposed action. We look forward to seeing how this proposal develops. Please keep us on this and all mailing lists for your District. Please mail us hard copies of all future environmental documents and decision documents to our office as soon as each is available. UEC continues to be an interested party. Please make sure the UEC is added to all mailing/contact lists for this action, whether the lists are related to NEPA, ARA, NFMA, SMCRA and/or any other rules, regulations, or statutes.

Sincerely,



Kevin Mueller,
Executive Director



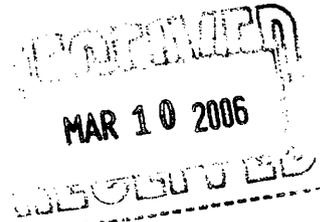
United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Ferron/Price Ranger District
Ferron Work Center
115 West Canyon Road
P.O. Box 310
Ferron, UT 84523
Phone # (435) 384-2372
Fax # (435) 384-3296

Atch #1



File Code: 2820-4/1950-1
Date: March 8, 2006

Dear Interested Party:

The Ferron/Price Ranger District, Manti-La Sal National Forest is evaluating the possible environmental effects of a proposal from Ark Land Co., SUFCO Mine to conduct exploratory drilling on the School and Institutional Trust Lands Administration (SITLA) Muddy Coal Tract in Sevier County, Utah. The drilling is proposed for the 2006 field season and would consist of drilling two exploratory holes. Location of the proposed project is in T20S, R5E, Sections 32 & 33 and T21S, R5E, Sections 4, 5, 6, 7, 8, & 9, (SLB&M) (Muddy Creek area).

The proposed project would utilize truck-mounted core drilling rigs and would access the two drill pad locations via National Forest Trail 025 (Big Ridge Trail). The trail would be temporarily widened to an approximate width of 12 feet and two temporary access spur roads and drill pads would be constructed. Total surface disturbance for the project would be less than 5 acres. Since the project, as proposed, would have minimal disturbance to land and resources, it is anticipated that it may be categorically excluded from further NEPA analysis (EA or EIS) under category 31.2(3), Forest Service Handbook, 1909.15.

The purpose of the drilling is to provide information necessary to characterize the geology of the area's coal reserves for mine plan development. Drilling would occur on lands in which the United States Forest Service (USFS) administers the surface; the coal estate is owned by SITLA. The District Ranger must decide whether or not to issue a Special Use Permit authorizing construction and drilling activities. If a permit is issued, the District Ranger must decide what additional terms and conditions would be required to protect non-coal resources.

You are invited to comment on the proposed action. The proposed project will not be appealable by the public under 36 CFR 215 rules but would be appealable by the proponent under 36 CFR 251 rules. Comments received, including names and addresses of those who comment, will be considered part of the public record for this project and will be available for public inspection.



Please send written comments to: Mesia Nyman, Responsible Official/ District Ranger, PO Box 310, Ferron, Utah 84523; phone: 435-636-3501, fax: 435-637-4940; e-mail: twlloyd@fs.fed.us. E-mailed comments must be submitted in MS Word (*.doc) or rich text format (*.rtf). Comments may also be delivered to the above address during regular business hours of 8:00 a.m. to 4:30 p.m., Monday-Friday, excluding federal holidays. The opportunity to comment ends 30 days following the date of publication of the public notice in the *Emery County Progress* (March 14, 2006) and the *Richfield Reaper* (March 15, 2006).

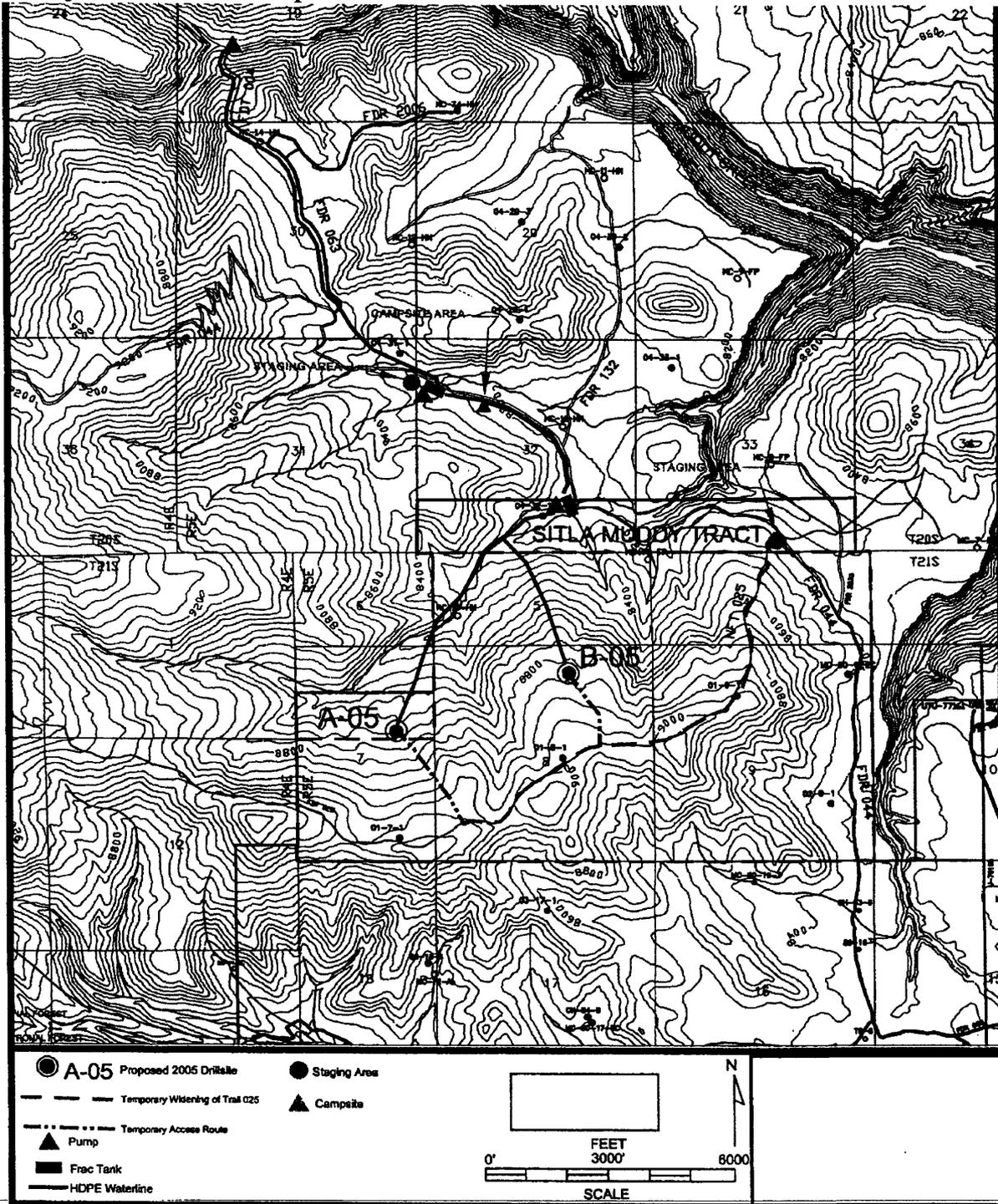
Sincerely,



MESIA NYMAN

Attachment: Project Location Map

Project Location Map



Attachment
#2

Decision Memo
for
ARK LAND COMPANY
2005 COAL EXPLORATION
SITLA Muddy Coal Tract

USDA Forest Service, Intermountain Region
Manti-La Sal National Forest
Ferron-Price Ranger District
Sevier County, Utah

I. INTRODUCTION

The Manti-La Sal National Forest has evaluated a proposal submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC – SUFCO Mine, to conduct coal exploration and reclamation activities in the summer of 2005. A total of 6 holes are proposed using helicopter assisted wireline core drilling (Attachment 1, General Location Map). Two holes (A & B) are proposed to be drilled on the School and Institutional Trust Lands Administration (SITLA) Muddy Coal Tract. Additionally, four holes (C, D, E, & F) are planned in unleased coal north of the SITLA tract, under an exploration license. The surface of both areas is National Forest System Lands administered by the Manti-La Sal National Forest. Total surface disturbance would be less than 5 acres. The exploration area is located approximately 10 miles northwest of Emery, Utah, in Sevier County.

The SITLA tract encompasses approximately 2,554 acres. The two drill holes (A & B) will be located in Sections 5 and 7, T. 21 S., R. 5 E., SLM, on the north facing slope of Big Ridge. Drill holes A & B will be plugged and abandoned upon completion. A staging area will be set up at the junction of National Forest Trail (NFT) 025 and Forest Road 50044. The drill sites will be accessed by NFT 025 and a temporary ATV trail to each drill site. Both holes will be drilled with a track mounted drill rig.

The exploration license area encompasses approximately 840 acres. Drilling will occur in Sections 30, 31, and 32, T. 20 S., R.5 E., SLM. A staging area will be set up along Forest Road 50044 in Section 32. Two of the holes (C & D) will be drilled by a track mounted drill rig and accessed by temporary ATV trails. One hole (F) is located adjacent to Forest Road 50244 and another (E) is located along an existing trail; both of these will be drilled with a truck mounted drill rig and will be completed as water monitoring wells.

Portable containers will be used on-site to hold water for drilling and drilling fluids; mud pits will not be required. Approximately 3 ¼ miles of plastic pipe will be used to transport water to the drill sites. Rock cores will be obtained from the Upper and Lower Hiawatha Coal Seam at each drill site and will be logged by an on-site geologist. Cores and drill cuttings will be hauled to an approved disposal site. Four of the exploration holes will be plugged and abandoned following completion; two will be completed as water monitoring wells. Disturbance of topsoil will be limited to minor hand excavation for leveling and drill placement.

II. DECISION

I have decided to authorize occupancy of National Forest System (NFS) lands for the coal exploration project in the SITLA Muddy Tract by issuing a Special-Use Permit to Ark Land Company subject to the terms and conditions of the permit and provisions of the plan as altered by the attached stipulations (Attachment 2). SITLA has approved the coal exploration project within their coal estate. I have also decided to consent to BLM's approval of the SUFCO 2004 Coal Exploration License subject to conditions for the protection of non-mineral interests (Attachment 2).

It is my determination that this decision may be categorically excluded from preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under Forest Service Handbook 1909.15, Chapter 30, Section 31.2(3): "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land." This category was determined appropriate because the area affected by this decision is less than 5 acres, there are no extraordinary circumstances related to the project, and surface uses would remain essentially the same.

The proposals, with stipulations, would provide adequate protection of Forest resources. The proposal is consistent with all Forest Plan requirements. The Forest Plan anticipated the exploration for and development of coal resources and provides programmatic direction and stipulations for the coal program. The Pines Tract EIS evaluated drilling as a related activity.

My decisions will be implemented via transmittal of this Decision Memo to BLM and SITLA with authorization letters and issuance of the Special-Use Permit to Ark Land Company.

III. DECISION RATIONALE

The BLM is responsible for administration of Federal coal under the Mineral Leasing Act of 1920, as amended, and Federal Regulations in 43 CFR 3410. The BLM State Director must decide whether or not to approve the Coal Exploration License. Prior to approval of the Coal Exploration License, the BLM must receive Forest Service (FS) consent along with conditions for protection of non-coal resources as required by the Federal Coal Lease Amendments Act of 1975 that amended the Mineral Leasing Act.

SITLA, the coal estate owner for the Muddy Tract area has an outstanding right to occupy National Forest System land for the purpose of exploring for and developing its coal estate. Therefore, authorization of surface occupancy is non-discretionary under Federal Regulations 36 CFR 251. However, the District Ranger must issue a special-use permit authorizing surface occupancy of NFS lands and can require mitigations to minimize the effects to other resources in the area.

This decision was made after careful consideration of the proposal, public involvement, and the entirety of the supporting record. No one fact or single piece of information led to the decisions. Rather, a combination of factors contributed to it. The key considerations are discussed in the following sub-parts.

Attainment of Agency Goals:

The general purpose and need for this project is to accomplish the following goal of the Forest Plan: "Provide appropriate opportunities for and manage activities related to locating, leasing, development, and production of mineral and energy resources." (Forest Plan, p. III-4). Another related goal of the Forest Plan is: "Manage geologic resources, common variety minerals, ground water, and underground spaces (surficial deposits, bedrocks, structures, and processes) to meet resource needs and minimize adverse effects."

The project-specific purpose and need of the proposed action is to permit Ark Land Company to acquire data on the available coal resources on the SITLA Muddy Coal Tract to provide access to Federal and non-Federal mineral estates on National Forest System lands with outstanding rights, while protecting non-mineral resources of the National Forest consistent with Forest Service policy and Forest Plan direction.

The decision wholly meets the project's purpose and need.

Absence of Extraordinary Circumstances:

Existing resource conditions and potential extraordinary circumstances have been considered in making the decisions.

Threatened, endangered, and sensitive species or their critical habitat. The project will not affect any Threatened and Endangered Species (Biological Assessment, Project File). A goshawk survey was conducted on June 6 and 7, 2005 to determine if there were any active nests within ½ mile of the proposed drill holes. No nests were located (Biological Evaluation, Project File).

Floodplains, wetlands, or municipal watersheds. The project will not affect floodplains, wetlands, or municipal watersheds.

Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas. There are no wilderness, wilderness study areas, or National Recreation Areas in the project area.

Inventoried Roadless Areas. None of the dill holes are within an Inventoried Roadless Area. Road construction is not authorized for this project. Nearly 1 mile of 3" plastic pipe will be placed on the ground surface and a water pump will be placed near Muddy Creek in the Muddy Creek-Nelson Mountain IRA. These will be placed by horse and/or helicopter. The effects will be short term and negligible.

Research Natural Areas. The project area is not located within any Research Natural Areas (RNAs).

Native American religious or cultural sites, archeological sites, or historic properties or areas. Surveys have been completed and professional archaeological staff have determined

that the project does not have the potential to affect historic properties. Consultation with Native American groups has disclosed no religious or cultural sites.

Relationship to Public Involvement. Public comments were sought and considered throughout the planning process for this project. One response was received in the form of a letter from the Utah Environmental Congress (UEC). The UEC expressed their belief that the scope of the project excludes it from a categorical exclusion and that an EA is required. A copy of UEC's comment letter and Forest Service responses are included in the project file.

IV. PUBLIC INVOLVEMENT

Legal notices describing the proposal and requesting comments were published in the Sun Advocate (Price, Utah) and the Emery County Progress (Castle Dale, Utah) on April 26, 2005. A legal notice was also published in The Richfield Reaper (Richfield, Utah) on April 27, 2005. Letters describing the proposal and requesting comments were mailed to 14 interested individuals and agencies on April 26, 2005. One response (from UEC) was received (Project File) and is described in the Decision Rationale section above. Native American consultation was conducted and no specific issues were identified.

V. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

To the best of my knowledge, the decision complies with all applicable laws and regulations. In the following, the association of the decision to some pertinent legal requirements are summarized.

National Forest Management Act of 1976: The Forest Plan was approved November 5, 1986, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Forest. The National Forest Management Act requires all projects and activities to be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project (pp. III 64-66). The decision will be consistent with the Forest Plan.

National Historic Preservation Act: The area was surveyed for potential historic, archaeological, and paleontological resources. None were found and the potential effects have been determined to be negligible. The negative report was sent to the Utah State Historic Preservation Office (SHPO) for review and concurrence. However, no comment was received from SHPO within the legally mandated 30-day comment period, thus indicating no concern from their office regarding the project. Should any unanticipated cultural or paleontological resources be encountered during the implementation of this project, all work would stop until assessment of the finding could be made. No Native American religious concerns have been identified.

Endangered Species Act: The Biological Assessment/Biological Evaluation (Project File) has disclosed that this project will not result in impacts to threatened, endangered, or

sensitive plant or animal species. Therefore, there is no need to further evaluate threatened, endangered, or sensitive plant or animal species.

National Environmental Policy Act: The entirety of documentation for this project supports that the project analysis complies with this Act.

Environmental Justice: Based on experience with similar projects on the Ferron-Price Ranger District, it is believed that this project would not have any disparate impacts on individual groups of peoples or communities. Implementation of this project will produce no adverse effects on minorities, low-income individuals, Native Americans or women. No civil liberties will be affected.

VI. IMPLEMENTATION DATE AND APPEAL OPPORTUNITY

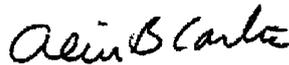
Implementation of these decisions may occur upon approval of the Coal Exploration Plan by BLM (Federal Leases), issuance of the Special-Use Permit (Muddy Tract/SITLA Coal), and issuance of the Road-Use Permit (both project areas), and not prior to July 15, 2005.

This decision is not subject to appeal by the public in accordance with the Code of Federal Regulations Title 36 part 215.12(f). This decision is subject to appeal by the applicant under Code of Federal Regulations Title 36 part 251.

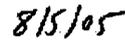
VII. CONTACT PERSON

For additional information concerning the Forest Service decision, please contact Karl Boyer or Dale Harber at the USDA Forest Service, Manti-La Sal National Forest (address: 599 West Price River Drive, Price, UT 84501; Telephone: 435-637-2817).

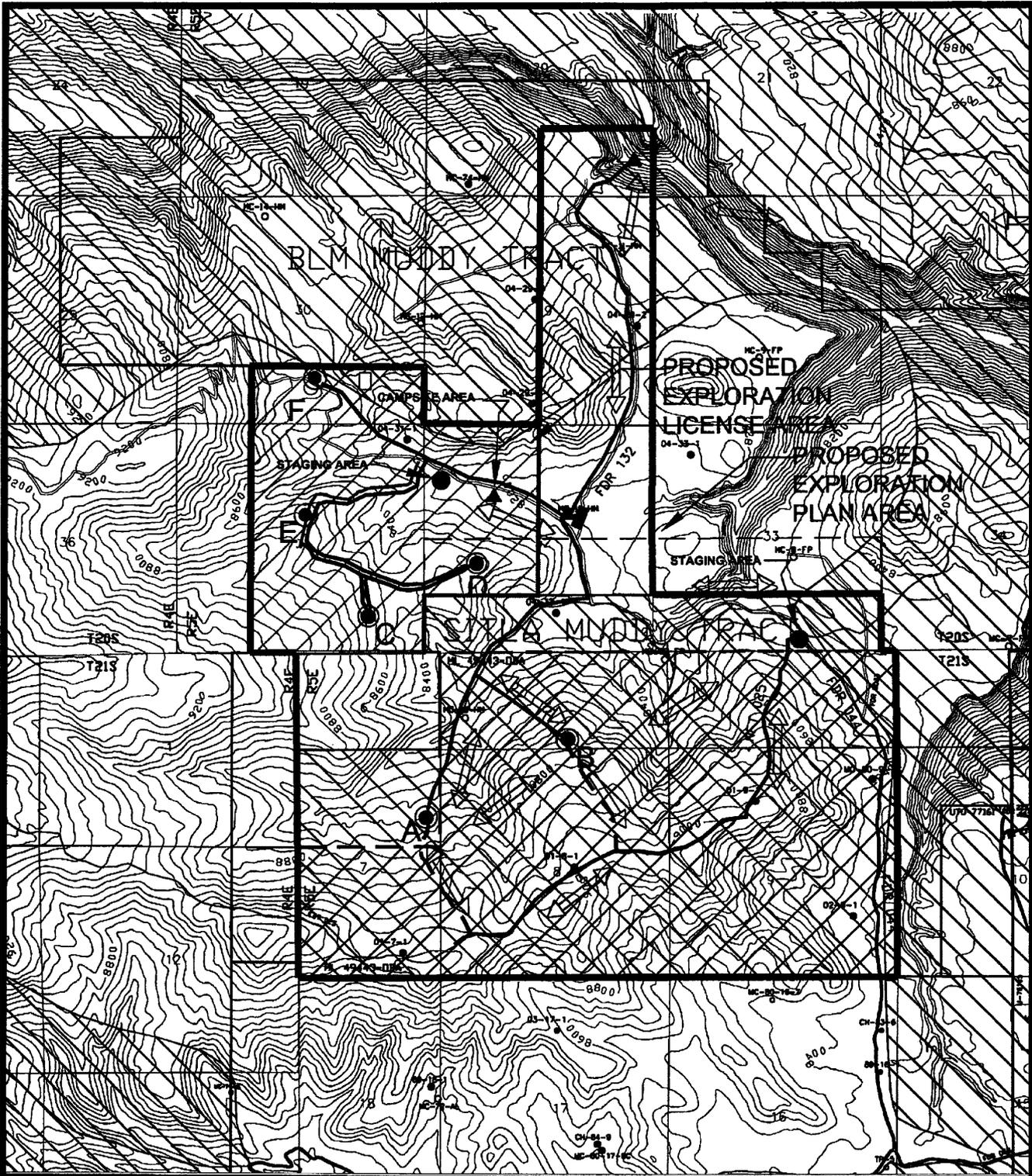
VIII. SIGNATURE AND DATE



Alice B. Carlton
Forest Supervisor
Manti-La Sal National Forest



Date



	Proposed 2005 Drillsite		Pump		Inventoried Roadless Area	<p>MAP 1</p> <p>0' 3000' 6000'</p> <p>SCALE</p>	<p>ARK LAND COMPANY</p> <p>PROPOSED EXPLORATION LICENSE, 2005</p> <p>REVISION 1</p> <p>DRILL HOLE LOCATION AND ACCESS ROUTE LAYOUT</p>
	Proposed License Area		Frac Tank		Approx. Helicopter Routes		
	Temporary Access Road Construction		Staging Area		HDPE Waterline		
	Improvement of existing Wheeltrack		Campsite				
	Trail 025-Access route with Track Rig/Track Vehicle/ATV						
	Temporary ATV/Track Rig Access Trail						

ATTACHMENT 2

FOREST SERVICE STIPULATIONS

SUFCO 2005 COAL EXPLORATION DRILLING PROJECT

Stipulations to be included in the Coal Drilling Permit/License

1. A pre-work meeting including the responsible company representative(s), contractors, and the Forest Service must be conducted at the project location prior to commencement of operations. Site-specific Forest Service requirements will be discussed at this time.
 2. A Road Use Permit must be obtained from the Forest Service before equipment is transported onto National Forest System lands. No construction may begin prior to approval. Any modifications or changes to approved locations and conditions are also subject to review and approval.
 3. All surface disturbing activities including reclamation must be supervised by a responsible representative of the permittee/licensee who is aware of the terms and conditions of the projects permits/licenses. A copy of the appropriate permits/licenses must be available for review at the project site and presented upon demand to any Forest Service official.
 4. The Forest must be notified 48 hours in advance that heavy equipment will be moved onto National Forest System lands and that surface disturbing activities will commence.
 5. Establishment of campsites and staging areas on National Forest System lands in support of this project is subject to Forest Service approval.
 6. The Forest Service must be notified of any proposed alterations to the plan of operations. Any changes to the existing plan are subject to Forest Service review and approval.
 7. Fire suppression equipment must be available to all personnel working at the project site. Equipment must include at least one hand tool per crew member consisting of shovels and pulaskis and one properly rated fire extinguisher per vehicle and/or internal combustion engine.
 8. All gasoline, diesel, and steam-powered equipment must be equipped with effective spark arrestors or mufflers. Spark arresters must meet Forest Service specifications discussed in the "General Purpose and Locomotive (GP/L) Spark Arrester Guide, Volume 1, April, 1988"; and "Multi-position Small Engine (MSE) Spark Arrester Guide, April, 1989". In addition, all electrical equipment must be properly insulated to prevent sparks.
 9. The permittee/licensee will be held responsible for damage and suppression costs for fires started as a result of operations. Fires must be reported to the Forest Service as soon as possible.
 10. The Forest Service reserves the right to suspend operations during periods of high fire potential.
 11. Water needed in support of operations must be properly and legally obtained according to Utah State water laws. The location of diversions, if on National Forest System lands, are subject to Forest Service review and approval. Water diversion structures, if needed, must be constructed as specified by the Forest Service.
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12. Unauthorized off-road motorized travel, other than along the approved access routes, is prohibited.
 13. Section corners or other survey markers, including claim corners, in the project area must be located and flagged for preservation prior to commencement of surface disturbing activities. The removal, displacement, or disturbance of markers must be approved by the proper authority. Replacement will be done by the proper authority at the expense of the permittee/licensee.
 14. If cultural or paleontological resources are discovered during operations, all operations which may result in disturbance to the resources must cease and the Forest Service must be notified of the discovery.
 15. Gates must be closed after entry unless otherwise specified.
 16. The permittee/licensee will be held responsible for all damage to fences, cattleguards, resource improvements, roads, and other structures on National Forest System lands which result from their operations. The Forest Service must be notified of damages as soon as possible.
 17. Operations must be coordinated with grazing permittees to prevent conflicts.
 18. Harrassment of wildlife and livestock is prohibited.
 19. Topsoil (soil "A" horizon) must be stripped from excavated areas and stockpiled for use during reclamation. Topsoil stockpiles will be located to minimize contamination or loss. Subsoil and rock material will be stockpiled seperately.
 20. All drilling fluids, mud and cuttings must be contained on the project site in portable containers until removal and disposal at an authorized site.
 21. During drilling operations all trash, garbage and other refuse must be properly contained on the project site prior to disposal at authorized sites.
 22. All significant water encountered during drilling must be reported to the Forest Service, including the depth and formation at which it was encountered, and an estimate of the flow.
 23. If any of the drill holes encounter artesian groundwater flow, the District Ranger must be notified prior to plugging the hole to determine whether or not the Forest Service would elect to establish a permanent water development at the site.
 24. All drill holes must be plugged in accordance with Federal and State regulations.
 25. The permittee/licensee must clean up and remove all drilling equipment, trash, garbage, flagging, vehicles and other such materials from National Forest System lands.
 26. Disturbed areas must be reclaimed by the end of the 2005 field season. Exceptions require Forest Service approval.
 - 27 Drill rigs and heavy equipment (not including water trucks) must not be transported in or out of the project area during the opening of the general elk hunt nor during the opening weekend of
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the general deer hunt and during holiday weekends. Water trucks must be preceded by a pilot vehicle when hauling water for the project during the above noted periods.

28. Contaminated soil and gravel must be stripped and hauled off Forest prior to site reclamation.
29. Drill sites must be reclaimed by selectively backfilling excavated materials, topsoil last, such that the disturbed area is replaced to its approximate original contour. The disturbed area must be seeded with the specified seed mix.
30. Upon completion of the project, compacted soils (access routes, staging areas, camping areas) must be scarified and seeded with the specified seed mix.
31. All disturbed drainages must be replaced to their approximate original configuration when the project area is reclaimed.
32. The reclaimed access routes must be signed and blocked off to discourage vehicle access by the public.
33. Reclamation efforts will be diligently pursued to insure that a minimum ground cover is established on all disturbed areas which is equal to or greater than the surrounding undisturbed areas. Revegetation will be considered successful when 90% of the predisturbance ground cover is re-established over the entire disturbed area, with no noxious weeds. Adjacent undisturbed areas will be used as a basis for comparison of ground cover. Of the vegetative ground cover, at least 90% must consist of seeded or other desirable species. The 90% of predisturbance ground cover must be maintained for three years.
34. The seed mix to be used for reclamation will be as follows:

		<u>Pounds PLS/acre</u>
Western Wheatgrass	Elymus smithii	2
Basin Wild Rye	Elymus cinereus	1
Intermediate Wheatgrass	Elymus hispidus	2
Yellow Sweet Clover	Melilotus officinalis	1
"Rambler" Alfalfa	Medicago sativa	1
Blue Leaf Aster	Aster glaucodes	0.25
Lewis Flax	Linum lewisii	0.50
Small Burnet	Sanguisorbia minor	1
Silvery Lupine	Lupinus argentius	1
True Mahogany	Cercocarpus montanus	1
Bitterbrush	Purshia tridentata	1

This seed mix must be 99% pure live seed containing a maximum of 1% weeds, none of which are noxious.

35. The permittee/licensee shall take all reasonable and appropriate measures to prevent the introduction and proliferation of exotic plants and/or noxious weeds for all operations on the land surface. Heavy equipment, drilling equipment, transport vehicles, and the helicopter must be cleaned of mud and debris that could potentially transport noxious weed seeds prior to entering the National Forest. The permittee/licensee will be held responsible for control and eradication of exotic species and noxious weed infestations found to be a result of this project,

until acceptance by the Forest Service of vegetative restoration.

36. The permittee/licensee will pay the marketable value for any timber cut down during the project.
37. Outside berms will not be constructed on any roads.
38. Stipulation for Lands of the National Forest System Under Jurisdiction of the Department of Agriculture.

The licensee/permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of the Interior, (2) uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by a permit/operating plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

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

Telephone No. (801) 637-2817

who is the authorized representative of the Secretary of Agriculture.

39. Road construction is not authorized on this project. Drill sites A, B, C, and D will be accessed only by foot, horse, helicopter, ATV's, and track mounted drill rig. The track mounted drill rig will make only one trip in and one trip out for each drill hole. Pick-ups and other vehicular traffic are not authorized into drill sites A, B, C, and D. Drilling equipment that cannot be transported on the track mounted drill rig will be transported to the drill sites (A, B, C, & D) by either ATV or helicopter. Trips into and out of the drill sites by ATV should be kept to a minimum.
 40. No improvement other than spot removal of obstructions will take place on the access routes to be used for the drill sites. Upon completion of operations, the access routes will be ripped and seeded with caution necessary to minimize disturbance to vegetation. Barriers consisting of roughened surface, rocks, logs, and earthen berms will be constructed sufficient to preclude future unauthorized traffic.
 41. Project operations will be restricted to the time period between July 15 and November 1 to prevent effects to big-game and sage grouse.
 42. The water pipe placed in Muddy Creek will have a screen placed around the intake to prevent fish from being drawn into it.
 43. The helicopter is restricted to flying within the designated flight lines as shown on Attachment
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1, General Location Map (project map). Any deviation from the flight lines shown on the project map must be requested by the operator and approved in advance by the Forest Service.

Stipulations to be Included in the Road Use Permit

44. Roads must not be used when they are wet and susceptible to damage.
45. The permittee is responsible for repair of any damages to roads which are caused by his operations.
46. All traffic must maintain safe speeds commensurate with existing conditions.
47. Roads must be watered if dust becomes a problem or if excessive loss of road material occurs.



May 25, 2005

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

Dear Ms. Carlton,

The Utah Environmental Congress (UEC) appreciates this opportunity to provide scoping comments in response to your letter of April 26th regarding a SUFCO/Arch Coal proposal to conduct additional coal exploration and reclamation activities in the summer of 2005 in the Muddy Creek watershed. Please maintain the UEC as an interested party on this and all other proposed actions on the Manti-La Sal NF.

The map attached to the scoping letter indicates a clear intention to authorize temporary and or long term use of some roads or routes that are not currently classified or temporary roads. Granting use through any permit or authorization approving the current proposed action, even if temporary, for the unclassified roads and other routes that are not classified roads in the area is an activity that constitutes new road construction per the National forest transportation system CFR direction at 36 CFR§212.

Some of new road construction would even be inside IRA. The analysis of impacts from this and compliance with law/regulation would require at least an environmental assessment in and of itself. Significance under NEPA can be triggered even just by the possibility of a proposed action being in violation of law/regulation. We remind the Forest of the following road-related definitions:

“Classified Roads. Roads wholly or partially within or adjacent to National Forest System lands that are determined to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.” 36 CFR§212.1

“Unclassified Roads. Roads on National Forest System lands that are not managed as part of the forest transportation system, such as unplanned roads, abandoned travelways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization.” 36 CFR§212.1

“New Road Construction. Activity that results in the addition of forest classified or temporary road miles.” 36 CFR§212.1

“Road Reconstruction. Activity that results in improvement or realignment of an existing classified road as defined below:

(1) Road Improvement: Activity that results in an increase of an existing road's traffic service level, expands its capacity, or changes its original design function.

(2) Road Realignment: Activity that results in a new location of and existing road or portions of an existing road and treatment of the old roadway.” 36 CFR §212.1
(Emphasis added)

We remind the Forest that unclassified roads are not, by definition, under permit or authorization. The proposal described in the scoping letter to authorize use of unclassified roads with this decision and associated permits or authorizations clearly indicate that segments of unclassified road must be added as classified or temporary road to approve the currently proposed action. (Conversely, to permit authorized use of an unclassified road [without designating it as a temporary or classified road] would be in violation of the transportation system regulations at 36 CFR §212 and FSM 7710-7712 direction.) The description of new road construction (temporary and/or classified) that would occur with the proposed action needs to be clearly disclosed, and the effects analysis needs to be completed in an environmental document before approving the proposed action.

Furthermore, the road construction (temporary and/or classified) inherent to the proposed action (but not clearly disclosed) is also inconsistent with the Roadless Area Conservation Rule and recent Bush administration interim directives for roadless area conservation. This may need to be a decision that is signed by the Chief of the Forest Service due to the road construction in IRA.

The past, present, and reasonably foreseeable cumulative impacts of this project and in the affected watersheds and habitat areas will potentially cause long lasting and cumulatively significant environmental impacts. The markedly out of date macroinvertebrates MIS data for the muddy creek watershed clearly indicates that existing impacts in the watershed had resulted in sub-standard water quality and below standard aquatic MIS population trends. Given that cumulative impacts in the area may be significant an Environmental Impact Statement (EIS) and not merely an EA is required. At this point the environmental impacts of the proposed project are unknown, but the proposed stream diversions (for at least the third year with this action) may cause individually and/or cumulatively significant impacts. A recent federal court has explained that “an EIS must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor. To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient”. League of Wilderness Defenders - Blue Mts. Biodiversity Project v. Marquis-Brong, 259 F. Supp. 2d 1115 (D. Or. 2003).

The proposed stream diversions and wastewater from the action raise many questions with respects to how stream flow and quality will be impacted. If stream flow is to be compromised in any way through stream water displacement, loss of water, the human

environment will deteriorate. The proposed action could cause potential adverse effects to area wildlife, fish, and vegetation, which all depend on a reliable source of water. Aquatic wildlife of particular concern includes macroinvertebrates, amphibians, and mollusks. At this point there are likely impacts to macroinvertebrates a Manti La Sal National Forest management indicator species, which would result from the diversion of Muddy creek and loss of surface water from its' tributaries. There are also unanswered questions about the extent of potential harm to local as well as downstream populations of trout and TES fish or their habitat. A detailed analysis will be necessary to determine the extent of impacts to aquatic species in the project area and downstream.

Full analysis of threatened and endangered species as well as consultation with U.S. Fish and Wildlife Service should be conducted for potentially impacted T and E aquatic species or their habitat. The project area is in fact near active Golden eagle MIS, goshawk MIS, other protected raptors, or other avian TES wildlife that would be impacted by the ground based and helicopter activities directly, indirectly, and cumulatively. This needs to be disclosed and analyzed before approving this action, closely monitored during implementation. Also, appropriate, proven-effective mitigation measures need to be required in the decision document if this proposed action is approved.

The construction of the drills, waste water, and particularly the many water diversions and ancillary facilities would likely cause the elimination and/or damage to riparian vegetation thereby decreasing habitat for wildlife that depends on riparian vegetation.

Big games species in particular rely on habitat in the area. UDWR identifies this area as critical value big game habitat. Mule deer and Rocky mountain elk (among others) are both management indicator species for the Forest. The Forest Service must comply with applicable law and regulations incorporated into the Forest Plan (and its FEIS) direction, fish and wildlife direction, and conduct a quantitative analysis of population trends of these MIS prior to project approval and development 36 C.F.R. §§219.19 and 219.26 as relied upon in the Forest Plan and its FEIS. The Forest Service needs present population data for the MIS and must use this data to determine relationships between the habitat impacts and population changes. Such data must be provided and evaluated in a site-specific EA or EIS for the project. Specifically, any site-specific analysis must address the impacts of development to MIS, MIS populations, and MIS habitat. The Forest has not been collecting aquatic MIS trend data in the affected watershed using the three indices required in the Plan, and what old data does exist demonstrates that the water quality and aquatic MIS trend data is below standards and Forest Plan direction. This action to further dewater muddy creek and disturb the highly erosive soils in the drainage will add cumulatively to the sub-standard conditions.

Because this project will occur on Forest Service lands, compliance with the Manti-La Sal Land Resource Management Plan (LRMP) is required and conformity with the requirements NF's LRMP must be demonstrated. The Manti La Sal LRMP requires

protection of deer/elk habitat and their water sources.¹ The Manti-La Sal National Forest ranks first out of all six Utah National Forests in potential to produce big game. The LRMP requires that habitat be maintained for minimum viable populations of vertebrate wildlife species. Id. at III-22. This requires that habitat and habitat diversity improvement or at least maintenance of the status quo. Id. Specifically vegetative composition should be maintained to at least 50% of current habitat (1980) for existing wildlife. Id.

The project as currently proposed will remove and impact vegetation and also degrade habitat quality for wildlife thereby eliminating some suitable habitat for area species. The value of riparian vegetation and habitat cannot be understated particularly in this relatively dry region of the state. Due to the dewatering of surface waters caused by this mine in recent years in the adjacent box canyon (see attached pictures from 9-2004 showing loss of surface water and contaminated water that returns), the cumulative impacts to aquatic, riparian, TES and MIS resource conditions must be disclosed. An estimated 60-70% of western bird species (Ohmart 1996) and as many as 80% of wildlife species in Arizona and New Mexico (Chaney et al. 1990) and in southeastern Oregon (Thomas et al. 1979) are dependent on riparian habitats. Because of this riparian ecosystems are considered to be important repositories for biodiversity throughout the west. A.J. Belsky, A. Matzke, S. Uselman, 1999.

Riparian zones provide key service for all ecosystems, but are especially important in dry regions, where they provide the main source of moisture for plants and wildlife, and the main source of water for downstream plant, animal, and human communities. (Meehan et al. 1977, Thurow 1991, Armour et al. 1994). Rooted streamside plants retard streambank erosion, filter sediments out of the water, build up and stabilize streambanks and streambeds, and provide shade, food, and nutrients for aquatic and riparian species. (Weingar 1977, Thomas et al. 1979, Kauffman and Kruegar 1984). In short the elimination of riparian vegetation will cause irreversible impacts that harm the long term integrity of this area. We recommend that any component of this project that would have any impacts to the watershed, hydrology and aquatic habitat be eliminated from consideration.

To what extent water has been utilized or will be utilized as a consumptive use is unknown and should be analyzed in any EA or EIS. Regardless, water diversion in this instance (and consumptive use practices) could threaten downstream Colorado River endangered fish including the Colorado pikeminnow, humpback chub, bonytail chub, and razorback sucker. The US Fish and Wildlife Service considers depletion of water in the Colorado River drainage a threat to the existence of these endangered fish.

Aside from potential problems created by stream alteration and waste water issues, there is reason to believe that water quality standards are not being met or would be impaired directly, indirectly or cumulatively. The removal of vegetation, the use of roads through heavy equipment, and potential oil and waste water spills could all cause water quality to

¹ "In areas of historic water shortages during the dry season of the year develop water as appropriate."
"Manage key deer and elk habitat so as to minimize disturbance during the period of use." LRMP at III-20.

deteriorate. This project could easily cause water quality standards to deteriorate further than they currently have. The reviewing agency will need to show how the proposed project will comply with all applicable water quality standards. Failure to do so will cause the lead agency to violate the federal Clean Water Act as implemented by the state of Utah.

The lead agency may also need to comply with other provisions of the Clean Water Act based on the proposed stream diversion. This may include compliance with §404 of the CWA or some additional stream alteration permit. Stream alteration permits are typically obtained from the state engineer's office although in certain instances the U.S. Army Corp of Engineers may need to approve the permit. These permits must be obtained prior to release of a draft EA or EIS. Further, the impacts of the diversion (and compliance with the CWA) must be analyzed in the EA or EIS.

The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). "The word 'integrity' . . . refers to a condition in which the natural structure and function of ecosystems [are] maintained." H.R. Rep. No. 92-911, at 76 (1972); see also Minnehaha Creek Watershed Dist. v. Hoffman, 597 F.2d 617, 625 (8th Cir. 1979). The legislative history of the Clean Water Act, in turn, defines "natural" as "that condition in existence before the activities of man invoked perturbations which prevented the system from returning to its original state of equilibrium." H.R. Rep. No. 92-911, at 76. "Any change induced by man which overtaxes the ability of nature to restore conditions to 'natural' or 'original' is an unacceptable perturbation." H.R. Rep. No. 92-911, at 77.

According to Congress, a primary goal of the CWA is to maintain the natural structure of streams. Such an interpretation is supported by case authority which holds that the "Clean Water Act should be construed broadly to encompass deleterious environmental effects of projects." Riverside Irrigation Dist. v. Andrews, 568 F. Supp. 583, 588 (D. Colo. 1983), aff'd 758 F.2d 508 (10th Cir. 1983). Taking a live stream and channeling it through an artificial diversion violates the natural structure of the stream. As one recent case stated:

The Clean Water Act (CWA) was "a bold and sweeping legislative initiative," United States v. Commonwealth of P.R., 721 F.2d 832, 834 (1st Cir. 1983), enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a)(1994). "This objective incorporated a broad, systematic view of the goal of maintaining and improving water quality: as the House report on the legislation put it, 'the word "integrity" . . . refers to a condition in which the natural structure and function of ecosystems [are] maintained.'" United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 132, 106 S.Ct. 455, 462 (1985) (quoting H.R.Rep. No. 92-911, at 76 (1972) U.S. Code Cong. & Admin.News 1972, at 3744). Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1294 (1st Cir. 1996).

Under the CWA, states must adopt water quality standards for all water bodies within the state. 33 U.S.C. § 1313.

These standards include three components: (1) designated uses for each body of water, such as recreational, agricultural, or industrial uses; (2) specific limits on the levels of pollutants necessary to protect those designated uses; and (3) an antidegradation policy designed to protect existing uses and preserve the present condition of the waters.

National Wildlife Fed'n v. Browner, 127 F.3d 1126, 1127 (D.C. Cir. 1997) (citing 40 C.F.R. §§ 131.10 - 131.12).

“A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.” 40 C.F.R. § 131.2. EPA implementing regulations define designated uses of water as “those uses specified in water quality standards for each water body or segment whether or not they are being attained.” 40 C.F.R. § 131.3(f). The minimal designated use for a water body is the “fishable/swimmable” designation. See 33 U.S.C. § 1251(a)(2).

Thus, in any EA or EIS prepared for the project the lead agency must (1) determine the designated uses for creeks in the area; (2) analyze the specific limits on the levels of pollutants necessary to protect those designated uses; and (3) and demonstrate how multiple stream diversions comply with the anti-degradation policy designed to protect existing uses and preserve the present condition of the waters.

The U.S. Supreme Court has squarely held that:

The text [of the CWA] makes it plain that water quality standards contain two components. We think the language of § 303 is most naturally read to require that a project be consistent with *both* components, namely, the designated uses *and* the water quality criteria. Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.

PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700, 714-715, 114 S.Ct. 1900 (1994)(emphasis in original).

The action cannot violate state and federal antidegradation regulations. According to federal regulation, applicable antidegradation policies “shall, at a minimum, be consistent with . . . [e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1). Under this regulation, “**no activity is allowable . . . which could partially or completely eliminate any existing use.**” PUD No. 1, 511 U.S. at 718-19, 114 S.Ct. at 1912 (emphasis added)(citing EPA, Questions and Answers on Antidegradation 3 (Aug.

1985)). Thus, any activity which would even *partially* eliminate those uses in affected creeks is not permitted.

Under the CWA, the minimum designated use for navigable water is the “fishable/swimmable” designation, which “provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(2). But the protection is not limited to streams which support fish: A water body composed of solely plants and invertebrates is also protected under the antidegradation policy. Bragg v. Robertson, 72 F. Supp.2d 642, 662 n.38 (S.D. W. Va. 1999) (citing EPA, Water Quality Standards Handbook § 4.4). Under federal regulations, limited degradation is permitted only where (1) the quality of the water exceeds levels necessary to support the fishable/swimmable use designation, and (2) the quality of water necessary to protect all existing uses is maintained. 40 C.F.R. § 131.12(a)(2).

By creating artificial stream diversions, which by their very nature cannot support aquatic life, SUFCO Mine and/or the Forest would potentially violate the antidegradation policy. The quality and quantity of water necessary to protect existing aquatic life and other designated uses **must** be maintained and such demonstration must take place in any EA or EIS developed for the project. See 40 C.F.R. § 131.12(a)(2). Because artificial diversion of the stream would essentially turn the relevant portion of this living stream into a dead stream, incapable of supporting plants, fish and other wildlife, proposed diversions potentially violates the antidegradation policy under the Clean Water Act and is therefore, likely unlawful. An EA/EIS is clearly indicated.

Pursuant to the National Historic Preservation Act and Manti La Sal special coal lease stipulations the lead agency will be required to survey for historic sites that are eligible for listing on the National Register for Historic Properties. If surveys indicate that such sites exist consultation and other procedures pursuant to §106 must occur.

Special coal lease stipulation #3 requires a study to quantify existing surface resources. The study should locate, quantify, and demonstrate the interrelationship of the geology, topography, surface and groundwater hydrology, vegetation and wildlife. There has been regular flow data recorded in the project area; however it is unknown whether the above study has been completed. This study is very important because it will help determine whether area wildlife and vegetation have an adequate water supply to maintain their viability.

For this project environmentally preferable alternatives to the proposed action likely exist that have not yet been developed that would maintain the stream course in its current state and avoid impacts to water quality, quantity, aquatic habitat, riparian habitat, wetlands, TES and MIS wildlife populations/habitat. Stipulation six of the coal lease would support selection of the environmentally preferable alternative.² Because where

² Stipulation 6: “Where alternative sites are available, and each alternative is technically feasible, the alternative involving the least damage to the scenery and other resources *shall* be selected....”

alternatives exist that would protect the area environment to a greater degree than the proposed alternative the environmentally preferred alternative should be chosen.

Pursuant to stipulation seven the lessee will be required to establish a monitoring system that is to provide a continuing record of change over time on how mining impacts the area environment.³ It is currently unclear whether the monitoring system in place measures how mining has impacted surface hydrology and vegetation and TES/MIS wildlife populations.

It is not consistent with the direction of the NEPA regulations or the FSH to CE this project from analysis and public disclosure in an environmental document (EA/EIS). Some of these issues were addressed earlier in these comments, but not specifically in terms of impacts to extraordinary circumstances and FSH direction. This project area has valuable habitat for (and may have populations of) TECPS species. This is critical big game habitat, a particularly important resource condition that will (and not just may) be cumulatively impacted by the proposed action. This constitutes an extraordinary circumstance. Furthermore significant state and/or federal dollars have already been spent to conserve/improve this critical and high value habitats and populations of TES resource conditions in the watershed.

Also, we comment that parts of the project area is identified by the UEC as qualifying roadless, undeveloped area, and by the Manti-La Sal NF as partially inside a IRA. This also involves impacts to this resource that cumulatively may be significant. New road construction and use, as well as the proposed drill pads, waste substances, helicopter use, and drill facilities will undoubtedly impact/effect this roadless resource condition. Pursuant to FSH 1909.15 chapter 30 section 30.3 this proposed action must not be categorically excluded because it will have impacts on several resource conditions that will result in extraordinary circumstances. Furthermore, the impacts on the TES, IRA, wetland, and other listed resource conditions (FSH) may easily be directly, indirectly, and cumulatively significant. An EIS is indicated, not categorical exclusion.

In terms of the NEPA regulations, this proposed action may have significant cumulative effects on the human environment, especially TEPCS, MIS, and big game, as well as potential wilderness area, and wetlands and aquatic/riparian communities and downstream water uses.

Cumulative impacts to Colorado River cutthroat trout habitat and other T and E fish habitat in this watershed also, may be cumulatively significant.

³ Stipulation 7: "The lessee shall be required to establish a monitoring system to locate measure and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data."

The cumulative effects analysis must account for the past, present, and reasonably foreseeable cumulative effects from the current SUFCO subsidence mining as well as very reasonably foreseeable expansions of this mine in the muddy creek watershed. Please read attachments that outline just a few of the existing and reasonably foreseeable coal mining actions in this muddy creek area.

Tiering this decision to the Forest Plan EIS will not meet requirements for cumulative effects analysis of the currently unprecedented level of coal exploration on the Forest because the Forest Plan lacks an adequate programmatic cumulative effects analysis of current levels of coal exploration and extraction on the Forest. This further underlines the need to proceed with an EIS.

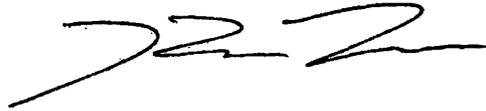
The Migratory Bird Treaty Act (MBTA) makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs.⁴ Executive Order 13186 issued in January of 2001 re-instituted the responsibilities of Federal agencies to comply with the MBTA. It's well known that many migratory bird species are currently declining across the intermountain west, and the proposed action may result in cumulatively significant impacts to and taking of migratory bird resources. We recommend the Forest conduct a rigorous evaluation using the newest data and research to minimize impacts to migratory birds (and their habitat), including a focus on species on the 2002 List of Birds of Conservation Concern and species that are listed among the Partner's in Flight Priority Species. To help meet responsibilities under Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), the UEC recommends that you conduct activities outside critical breeding seasons for migratory birds, minimize temporary and long-term habitat losses, and mitigate all unavoidable habitat losses. If your activities occur in the spring or summer, we recommend you conduct surveys for migratory birds to assist you in your efforts to comply with the Migratory Bird Treaty Act (16 U.S.C. 703-712) and E.O. 13186. If some portion of your mitigation includes off-site habitat enhancement, it should be in-kind and either within the watershed of the impacted habitat or within the foraging range of the habitat-dependent species. To be in compliance with the language and intent of the MBTA and EO 13186, and NEPA's mandate for rigorous analysis, the environmental analysis must disclose and rigorously analyze how the proposed activities would or would not be in compliance with the Migratory Bird Treaty Act and Executive Order 13186. The Forest has been instructed to "develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations." (EO 13186 § 3) We are not aware of any current MOUs. Please demonstrate within the environmental analysis for this project that such an MOU has been developed and entered into with the USFWS. Because this is such an important issue that should inform the public and the decision maker, we request a copy be provided within or as an appendix to the final document, and not simply included in the project file.

We also request an opportunity to provide comments on the site-specific environmental document and any supporting scientific/specialist reports before a decision has been

⁴ 16 U.S.C. § 703-712.

made. Failure to provide the environmental document (EA/EIS) for comment before a decision is made would be in violation of the NEPA. The regulations implementing the ARA do not conflict with or override this NEPA requirement. We thank you for the opportunity to comment on this project, and look forward to receiving a copy of the EA or EIS when it is released so that we may comment on the NEPA environmental analysis.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mueller', written in a cursive style.

Kevin Mueller,
Executive Director

9-2004 pictures of cumulative impacts from this mine to EF box canyon creek (tributary to muddy creek), located on the east side of the scoping letter map.



Surface water is gone, even after mitigation. Picture from 9-24-2004



Heavily degraded and contaminated water that resurfaced downstream from this mine's impacts. 9-24-2004.



Possible goshawk MIS swooping over trashed EF Box canyon stream. 9-24-2004



State of Utah

Department of
Natural Resources

Division of
Oil, Gas & Mining

ROBERT L. MORGAN
Executive Director

LOWELL P. BRAXTON
Division Director

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

April 6, 2004

Ms. Alice Carlton, Forest Supervisor
Manti-La Sal National Forest
899 West Price River Drive
Price, UT 84501

Subject: Muddy Creek Area Notice of Intent to Prepare an Environmental Impact Statement to discuss the effects of Coal Mining within the Muddy Creek Area

Dear Ms. Carlton:

I am writing to encourage you to not proceed with your stated intent (Federal Register (FR) V. 69, No. 44, Mar. 5, 2004) to prepare an Environmental Impact Statement (EIS) that would analyze the effects of coal mining in the Muddy Creek Area, Sevier and Sanpete Counties, Utah. For the reasons enumerated below, proceeding with this action may at a minimum be an arbitrary action on the part of the Manti La-Sal National Forest, and may also be a redundant action that violates the spirit of Executive Order 13211 (May 18, 2001) and Executive Order 13212 (May 18, 2001) which are intended to expedite environmentally sound energy development.

1. The Manti-La Sal National Forest does not have unilateral authority to conduct NEPA activity for projects related to coal mine development. This authority is delegated under the Surface Mine Reclamation and Control Act (SMCRA) to the Office of Surface Mining, Department of The Interior. USDA Forest Service roles with respect to coal mine permitting are established by law, and there is no current federal coal mine permitting action in the Muddy Creek environs that mandates NEPA at this time. If such were the case, the USDA would not be the lead agency, as is asserted in your Summary.
2. Your comment in the FR that there are greater than 6,000 acres of federal coal leases in the Muddy Creek environs notwithstanding, there is no federal coal leasing action before the Department of The Interior that warrants NEPA activity by the Bureau of Land Management (BLM) at this time. As you know, NEPA calls for environmental analysis of any "major Federal actions significantly affecting the quality of the human environment". (42USC 4332(c)) However, if a BLM coal leasing action were contemplated, the lead

Ms. Alice Carlton, Forest Supervisor
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agency for such activity would be BLM, not USDA Forest Service. USDA Forest Service's role in a BLM leasing action is clearly defined, and such BLM action is not pending for the Muddy Creek Environs at this time. The FS EIS that is the subject of this comment is not justified or supportable on the basis of some future BLM coal leasing activity.

3. Federal coal leases in the Muddy Creek environs that were conveyed to Utah's School and Trust Lands Administration (SITLA) in the May 8, 1998 School Land Exchange Act do not require NEPA analysis prior to mining, because the terms of the exchange establish the coal as state coal, which is not subject to NEPA. Your published proposal to conduct an EIS is not supportable on the basis of there being leased SITLA coal in the Muddy Creek environs, nor is your assertion that because after mining the lands revert to BLM, an EIS by the FS is currently justified. The position that NEPA is not needed for coal acquired under the May 8, 1998 School Land Exchange Act is further established at Recital 5 of the January 5, 1999 Memorandum of Understanding between USDA-Forest Service and SITLA.
 4. While your assumption that mining in the Muddy Creek environs will be underground, and that surface disturbances for the new areas to be mined will be limited to exploration drilling may be correct, this drilling will be conducted under the authority of the BLM, not USDA Forest Service. BLM will be responsible for the environmental analysis, when a specific activity is proposed. There are established procedures that ensure BLM will seek your input if and when exploration drilling is actually proposed. Your Mar. 2004 FR assertion that NEPA is necessary to analyze the environmental effects of drilling that has not even been proposed lacks logic and authority. Ultimately the authority to conduct analysis of exploration drilling is BLM's, not USDA FS's.
 5. The authority under the Mineral Leasing Act for the Forest Service to impose conditions for surface protection is established. However, since there is no federal action on Muddy Creek coal tracts, it is reasonable to question what the need for an EIS is at this time.
 6. Prior to mining coal in the Muddy Creek environs or elsewhere in Utah for that matter, an operator must obtain a mining and reclamation permit from the Utah Division of Oil, Gas and Mining
-

Ms. Alice Carlton, Forest Supervisor

Page 3

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under authority delegated to Utah by the Secretary of the Interior. USDA Forest Service involvement in such permitting activity is prescribed by law, as are the actions that trigger NEPA. There are no such actions proposed for the Muddy Creek environs at this time, but should such action be proposed, the authority for NEPA action would not be USDA Forest Services'. The Forest Service lacks the authority to propose an EIS for unspecified future coal mining and reclamation permitting activity.

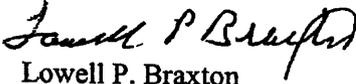
7. At the time of any coal reclamation permitting activity, USDA Forest Service will be involved in the permit review. That review provides the Manti La-Sal National Forest an opportunity to analyze potential impacts of such mining on non-mineral resources and to recommend action where appropriate under the law. Since there currently is no proposed coal mining for the areas in question, there is no opportunity to do more than a speculative analysis of impacts to non-mineral resources at this time. Lacking a federal mandate for NEPA at Muddy Creek a programmatically appropriate approach might be to put the energy into your Forest Management Plan, which will of course be a subject of separate NEPA action.
8. The list of agency decisions in the "Agency Decisions" section in your FR announcement includes decisions that are not the direct purview of USDA Forest Service. To request public comment on these future decisions by other agencies (specifically mining and reclamation plans that are not your direct responsibility) appears to me to be a clear abuse of discretion on the part of the Manti La Sal National Forest.

Undertaking any NEPA activity is an expensive, time consuming action for your agency, and for state and federal agencies that will be linked to the NEPA process when such is mandated. I appreciate your offer to include the Division of Oil, Gas and Mining as a cooperating agency, and we will work in this capacity should this EIS go forward. However, such activity deserves careful consideration and needs to be supported by the force of law, and I question the legal basis for your action as noted in this letter. As an aside, you have provided no analysis to support the option of an EIS over other options available to you under NEPA if and when such analysis may be justified.

Ms. Alice Carlton, Forest Supervisor
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In conclusion, for reasons stated above, Manti La-Sal National Forest's decision to proceed with NEPA activity for future Muddy Creek coal activities (when there is currently no enabling federal action) needs to be seriously evaluated. I recommend this NEPA analysis be withdrawn pending a triggering federal action as anticipated under law. Thank you for the opportunity of providing these comments.

Sincerely,


Lowell P. Braxton
Director

LPB:mep
cc: Dale Harber
Jack Troyer

June 7, 2004

Mesia Nyman, District Ranger
Ferron/Price Ranger District
115 West Canyon Road
P.O. Box 310
Ferron, UT 84631

Re: Proposed Muddy Coal Area drilling

Dear Ms. Nyman:

These comments are being submitted on behalf of Utah Environmental Congress and the Wildlaw Southwest offices respectively. These comments pertain to the anticipated impacts that may result from the exploratory drilling in this area. Our groups are monitoring this project carefully as it moves through the NEPA process. Previously we commented on the notice of intent to prepare an EIS for the Muddy Creek Coal Tract. We understand that these projects are being treated as separate projects, and this current project will be categorically excluded under NEPA. Whether this is appropriate or not is debatable, we nevertheless incorporate our previous comments by reference.

It is our understanding that this form of exploratory drilling through helicopters is relatively benign in terms of environmental impacts. The Forest Service is well aware that they are required to analyze cumulative impacts pursuant to NEPA. *See* 40 C.F.R. §1502.16(a) and 40 C.F.R. §1508.25(a)(2).

"Cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-Federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time". 40 C.F.R. §1508.7.

While this individual project may not by itself affect the environment in any significant way it may impact the environment cumulatively. This project is substantially related to the decision to lease this area for coal mining, which will be leased through a competitive bidding process. There will also be cumulative impacts from the nearby SUFCO Pines Tract mining project as this mine provides access to the Muddy Creek coal tract. There is a strong case to be made that the exploration drilling and the main project are "connected actions" under NEPA.

"Actions are connected if they:

- Automatically trigger other actions which may require environmental impact statements.
 - Cannot or will not proceed unless other actions are taken previously or simultaneously.
-

- Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. §1508.25(a)(1).

The EIS that is to be prepared for the Muddy Creek Coal project is a connected action to the currently proposed exploratory drilling because they are related parts of the same action. Obviously the primary mining project will not proceed unless the proposed exploration drilling precedes the primary project. For these reasons the projects are connected and should be analyzed together in the EIS.

It is contrary to NEPA to compartmentalize a project into smaller parts so that significance is avoided. Agencies must consider whether "the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or breaking it down into small component parts." 40 C.F.R. §1508.27(7). The significance of this current project is largely irrelevant because it is a vital part of a significant action under NEPA, and therefore should be analyzed through the EIS.

Notwithstanding the relative innocuous nature of this project this area and the Manti La Sal in general characteristically contain a high concentration of wildlife. With regards to potential to produce big game in Utah the Manti La Sal is number one compared to the other six Utah National Forests. Manti La Sal LRMP at II-29. We would recommend cumulative analysis of wildlife including all Manti La Sal management indicator species, threatened and sensitive species, and any other species found in the area.

Although surface impacts are thought to be minimal for this project, cumulatively the surface impacts to wildlife could be significant. The project's use of helicopters could impact birds and frighten other wildlife such as big game. Appropriate mitigation measures should be implemented to reduce such impacts. The LRMP provides that the habitat needs of cavity nesting birds, raptors, and small mammals are to receive special attention. LRMP at III-22. Of particular concern are Golden eagles, a Manti La Sal sensitive species, which may exist in the project area and would be susceptible from the impacts of helicopters.

We believe that the proposed drilling could cumulatively have an impact on geologic resources. Before this project occurs it would be appropriate to conduct a geologic inventory and geotechnical investigation of the area in question pursuant to the MLS LRMP. See III-34. It is unknown whether sensitive geologic conditions exist in this area, but geologic resources in the project area could be impacted through drilling, and so these resources should be analyzed pursuant to the LRMP.

This area is also characterized by a high concentration of culturally and historically significant artifacts. Pursuant to the MLS LRMP and the National Historical Preservation Act a full cultural resources survey should be conducted to ensure compliance under the law. If culturally significant resources are found in the project area

then consultation and the procedures listed under §106 of the NHPA should be implemented accordingly.

We thank you for the opportunity to comment on the drilling exploration project and would respectfully request copies of all future environmental documents so that we may have an opportunity to comment on them.

Sincerely,

Joel Ban
Wildlaw Southwest



1-801-466-4057

Manti-La Sal National Forest

Ferron/Price Ranger District
Ferron Work Center
115 West Canyon Road
P.O. Box 310
Ferron, Utah 84523



-Joel

To: VEC
From: Tom Lloyd
Subject: ARK Land
Date: Jun 1, 2004
Time: _____

Number of pages (including cover): 2

Fax #: (435) 384-3296

Telephone #: (435) 384-2372 or 384-2505

Comments: Faxed copy of Public
Notice Paper of Record — Per
your special request



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Ferron/Price Ranger District
Ferron Work Center
115 West Canyon Road
P.O. Box 310
Ferron, UT 84523
Phone # (435) 384-2372
Fax # (435) 384-3296

File Code: 1950/2820-4
Date: May 21, 2004

Please note ZIP CODE correction on return address
for written comments.

Dear Interested Party

Manti-La Sal National Forest (FS) and Bureau of Land Management are requesting public comments for a proposed 6-hole helicopter-assisted coal-drilling project submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC, SUFCO Coal Mine. The proposed drilling is in T. 20 S., R.5 E., Sect(s) 29, 32, and 33 in Sanpete and Sevier Counties, about 11 miles northwest of the town of Emery (see attached map). The purpose of the drilling is to gather data needed for coal reserve delineation.

Five of the holes are proposed on unleased federal portions of the proposed Muddy Coal Area (Forest Service Surface/Federal Coal). One hole is proposed on Utah School and Institutional Trust Lands Administration (SITLA) portions of the Muddy Coal tract (Forest Service Surface/SITLA Coal). The project would be completed during the summer and early fall season, 2004. Access to three of the proposed drill sites would be along existing FS roads. Helicopters would be used to fly drill equipment to the other 3 remote sites where there are no existing roads. Since, helicopter-drilling techniques are proposed, there would be minimum disturbance (<100 ft² per site).

The proposed actions are:

- Concurrence with the Ark Land 6-hole Exploration Plan. The Forest Service must decide whether or not to approve the exploration plan, and if additional conditions are needed to protect none coal resources.
- Consent to BLM issuing an explorations license for 5 holes.
- BLM would issue the Coal Exploration License
- Issuance of a Special Use Permit by the Forest Service authorizing surface occupancy within the SITLA coal estate.

All actions and activities must be consistent with the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). Issuance of a Road Use Permit would also be necessary.

You are invited to comment on the proposed actions. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include



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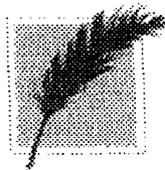
supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this solicitation, must include name, organization and address of those who comment, and will be considered part of the public record for this project.

Please send written comments to: Mesia Nyman, District Ranger, Ferron/Price Ranger District, 115 West Canyon Road, P.O. Box 310, Ferron, UT 84523; phone: (435) 384-2372, fax: (435) 384-3296. Comments may also be delivered to the above address during regular business hours of 8:00 a.m. to 5:00 p.m, Monday-Friday, excluding federal holidays. The opportunity to comment ends 14 days following the date of publication of this legal notice in the {*Sun Advocate*, Publication of Record}. For additional information call Tom Lloyd, District Geologist at 435-636-3596.

Sincerely,

MESIA NYMAN
DISTRICT RANGER
MESIA NYMAN
District Ranger

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- What is Public Notice?
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Public Notice:

LEGAL NOTICE OF PROPOSED ACTION
ARK LAND COMPANY, SUFCO MINE
NOTICE OF OPPORTUNITY FOR COMMENT
COAL EXPLORATION DRILLING.

Manti-La Sal National Forest (FS) and Bureau of Land Management are requesting public comments for a proposed 6-hole helicopter-assisted coal-drilling project submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC, SUFCO Coal Mine. The proposed drilling is in T. 20 S., R.5E., Sect(s) 29, 32, and 33 in Sanpete and Sevier Counties, about 11 miles northwest of the town of Emery. The purpose of the drilling is to gather data needed for coal reserve delineation.

Five of the holes are proposed on unleased federal portions of the proposed Muddy Coal Area (Forest Service Surface/Federal Coal). One hole is proposed on Utah School and Institutional Trust Lands Administration (SITLA) portions of the Muddy Coal tract (Forest Service Surface/SITLA Coal). The project would be completed during the summer and early fall season, 2004. Access to three of the proposed drill sites would be along existing FS roads. Helicopters could be used to fly drill equipment to the other 3 remote sites where there are no existing roads. Since, helicopter-drilling techniques are proposed, there would be minimum disturbance (<100 ft² per site).

The proposed actions are:

AFFIDAVIT OF PUBLICATION

STATE OF UTAH)

ss.

County of Carbon,)

I, Ken Larson, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State a true copy of which is hereto attached, was published in the full issue of such newspaper for 1 (One) consecutive issues, and the first publication was on the 25th day of May, 2004, and that the last publication of such notice was in the issue of such newspaper dated the 25th day of May, 2004.

Ken G. Larson

Ken G Larson - Publisher

Subscribed and sworn to before me this 25th day of May, 2004.

Linda Thayne

Notary Public My commission expires January 10, 2007 Residing at Price, Utah

Publication fee, \$ 133.12



**LEGAL NOTICE OF PROPOSED ACTION
ARK LAND COMPANY, SUFCO MINE
NOTICE OF OPPORTUNITY FOR COMMENT
COAL EXPLORATION DRILLING.**

Manti-La Sal National Forest (FS) and Bureau of Land Management are requesting public comments for a proposed 6-hole helicopter-assisted coal-drilling project submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC, SUFCO Coal Mine. The proposed drilling is in T-20-S-R-5E, Sect(s) 29, 32, and 33 in Sanpete and Sevier Counties, about 11 miles northwest of the town of Emery. The purpose of the drilling is to gather data needed for coal reserve delineation.

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The proposed actions are:

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- Consent to BLM issuing an explorations license for 5 holes.
- Issuance of a Special Use Permit by the Forest Service authorizing surface occupancy within the SITLA coal estate.

All actions and activities must be consistent with the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). Issuance of a Road Use Permit would also be necessary.

The public is invited to comment on the proposed actions. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this solicitation, must include name, organization and address of those who comment, and will be considered part of the public record for this project.

Please send written comments to: Mesia Nymen, District Ranger, Ferron/Rental Ranger District, 115 West Canyon Road, P.O. Box 310, Ferron, UT 84631; phone: (435) 384-2372; fax: (435) 384-3296. Comments may also be delivered to the above address during regular business hours of 8:00 a.m. to 5:00 p.m., Monday-Friday, excluding federal holidays. The opportunity to comment ends 14 days following the date of publication of this legal notice in the (Sun Advocate Publication of Record). For additional information call Tom Lloyd, District Geologist at 435-636-3586.

Published in the Sun Advocate May 25, 2004.



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

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Phone # (435) 384-2372
Fax # (435) 384-3296

File Code: 1950/2820-4

Date: May 21, 2004

Dear Interested Party

Manti-La Sal National Forest (FS) and Bureau of Land Management are requesting public comments for a proposed 6-hole helicopter-assisted coal-drilling project submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC, SUFCO Coal Mine. The proposed drilling is in T. 20 S., R.5 E., Sect(s) 29, 32, and 33 in Sanpete and Sevier Counties, about 11 miles northwest of the town of Emery (see attached map). The purpose of the drilling is to gather data needed for coal reserve delineation.

Five of the holes are proposed on unleased federal portions of the proposed Muddy Coal Area (Forest Service Surface/Federal Coal). One hole is proposed on Utah School and Institutional Trust Lands Administration (SITLA) portions of the Muddy Coal tract (Forest Service Surface/SITLA Coal). The project would be completed during the summer and early fall season, 2004. Access to three of the proposed drill sites would be along existing FS roads. Helicopters would be used to fly drill equipment to the other 3 remote sites where there are no existing roads. Since, helicopter-drilling techniques are proposed, there would be minimum disturbance (<100 ft² per site).

The proposed actions are:

- Concurrence with the Ark Land 6-hole Exploration Plan. The Forest Service must decide whether or not to approve the exploration plan, and if additional conditions are needed to protect none coal resources.
- Consent to BLM issuing an explorations license for 5 holes.
- BLM would issue the Coal Exploration License
- Issuance of a Special Use Permit by the Forest Service authorizing surface occupancy within the SITLA coal estate.

All actions and activities must be consistent with the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). Issuance of a Road Use Permit would also be necessary.



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The public is invited to comment on the proposed actions. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this solicitation, must include name, organization and address of those who comment, and will be considered part of the public record for this project.

Please send written comments to: Mesia Nyman, District Ranger, Ferron/Price Ranger District, 115 West Canyon Road, P.O. Box 310, Ferron, UT 84631; phone: (435) 384-2372, fax: (435)384-3296. Comments may also be delivered to the above address during regular business hours of 8:00 a.m. to 5:00 p.m., Monday-Friday, excluding federal holidays. The opportunity to comment ends 14 days following the date of publication of this legal notice in the {Sun Advocate, Publication of Record}. For additional information call Tom Lloyd, District Geologist at 435-636-3596.

Published in the Sun Advocate May 25, 2004.

Public Notice ID: 2808443

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Sincerely,

Thomas W. Lloyd Sr

MESIA NYMAN
DISTRICT RANGER



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Ferron/Price Ranger District
Ferron Work Center
115 West Canyon Road
P.O. Box 310
Ferron, UT 84523
Phone # (435) 384-2372
Fax # (435) 384-3296

File Code: 1950/2820-4
Date: May 21, 2004

Please note ZIP CODE correction on return address
for written comments.

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Sincerely,

MESIA NYMAN
DISTRICT RANGER
MESIA NYMAN
District Ranger

LEGAL NOTICE OF PROPOSED ACTION
ARK LAND COMPANY, SUFCO MINE
NOTICE OF OPPORTUNITY FOR COMMENT
COAL EXPLORATION DRILLING

Manti-La Sal National Forest (FS) and Bureau of Land Management are requesting public comments for a proposed 6-hole helicopter-assisted coal-drilling project submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company, LLC, SUFCO Coal Mine. The proposed drilling is in T. 20 S., R.5 E., Sect(s) 29, 32, and 33 in Sanpete and Sevier Counties, about 11 miles northwest of the town of Emery. The purpose of the drilling is to gather data needed for coal reserve delineation.

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Published in The Richfield Reaper May 26, 2004.

June 11 Thurs

Tom 4/1/04

called Rod 4/1/04
said He will look

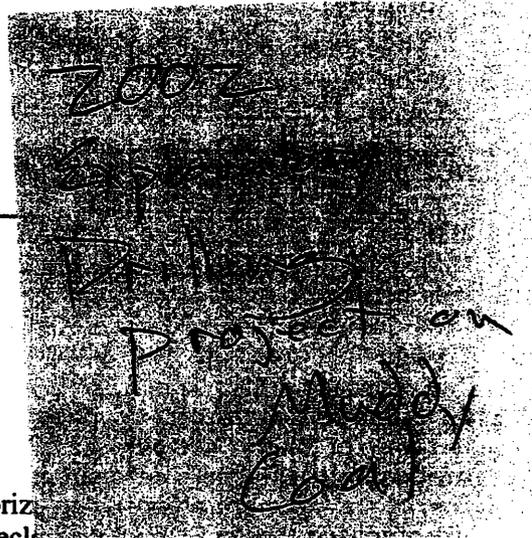
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Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest



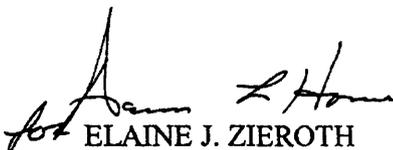
Dear Forest User:

The Manti-La Sal National Forest is proposing to authorize (Arch Coal Company) to conduct coal exploration and reclamation during the summer of 2002 on the State Institutional Trust Lands Administration (SITLA) Muddy Coal Tract and Federal Coal Leases U-63214 and U-76195. Exploration activities would consist of geologic core drilling through the use of a mud rotary system.

The exploration project would occur within Sevier County, Utah T.21S., R.5E., Sections 9, 13, and 17 (see attached map). Four exploration borings are proposed. Minor improvement of classified roads would be necessary for access to the drill sites. Two unclassified roadways, totaling approximately 6800 feet in length, will be improved to access two of the drill sites. These unclassified roadways and all of the drill pads would be reclaimed after project completion. Since no extraordinary circumstances, including inventoried roadless area entry, have been identified, the project may qualify for categorical exclusion from preparation of an Environmental Assessment and/or Environmental Impact Statement. This action would enable Ark Land Company to economically recover the available coal resources within the SITLA coal tract and the two Federal coal leases.

If you have any questions or wish to comment on the proposed action, please contact Karl Boyer at the above address and telephone number by May 31, 2002. Comments received in response to this solicitation, including names and addresses, will be considered part of the public record and will be available for public inspection.

Sincerely,


ELAINE J. ZIEROTH
Forest Supervisor

Enclosure

LERDY MEAD - DWR
Coal - Sage grouse

435-636-0274





May 9, 2002

Manti-La Sal National Forest
Elaine Zieroth
599 West Price River Drive
Price, UT 84501

Dear Elaine,

The UEC appreciates the opportunity to comment on the Ark Land Company proposal to conduct coal exploration and reclamation on the Manti-La Sal NF. The Manti-La Sal NF (ML) states that no extraordinary circumstances exist in the project area and that the project may thus qualify for categorical exclusion (CE).

The UEC believes that the project is outside the categories of actions that are listed in FSH 1909. 15 31.2. Descriptions of projects in 31.2 do not fit the scale of the proposed action. The Ark Land proposal includes development of four sites, a campsite, and construction of over one mile of road. The road construction alone precludes the proposed action from categorical exclusion. The reg's specifically state that examples of actions that could be documented in a CE include those with "construction of less than one mile of low standard road" (Service Level D, FSH 7709.56), or use and minor repair of existing road". Per the scoping letter, construction of 6800 feet of unclassified road is beyond the scope of a CE; thus, the ML must prepare an EA, at minimum, for the proposed action.

Affected Environment-The proposed action is located south of Muddy Creek at T 21S R5E, sections 9, 13, and 17. According to the map provided, this project will create traffic and impacts on an area that the ML has identified as the only known Sage grouse lek on the forest (see Ferron Ranger District scoping letter dated February 25, 2002). Given the declining populations of Sage grouse in the west, the ML must take measures to protect the only known lek on its forest. Measures and mitigation to protect this population should be determined in an environmental analysis.

Wildlife-What other wildlife species use this area? The area is listed as RNG for management direction requiring additional evaluation for big game herds and their use of the area. What surveys has the ML performed for MIS and TES species in the analysis area? Cliffs and canyon habitat suggest the likelihood for numerous species of raptors as well as the possibility of Mexican spotted owls. The development of four sites and a campsite represents a large footprint of activity. This footprint must be surveyed and monitored for wildlife species and impacts to these species should be evaluated.

Plants-The UEC has identified several plants that may be present in the project area including: *Festuca dasyclada*, *Hedysarum occidentale*, *Hymenoxys helenoides*, and *Silene petersonii*. What plant surveys have been performed for TES species? In addition, where are Wright fishhook cactus populations located in relation to the project area?

Wet areas, wetlands-In the February 25 letter, concern for the Sage grouse included a focus on wet meadow characteristics and bottomland habitat for sage grouse. How will the proposed actions impact these bottomland habitats? Two of these sites are located directly in the bottomlands. These wet areas represent extraordinary circumstances that must be further analyzed in an EA.

Archeological sites-The ML cannot proceed without comprehensive archeological surveys of the analysis area. Development of roads and trails may impact pristine sites including traffic and impacts from the proposed action.

Categorical Exclusion-As stated above, the UEC contends that the use of CE for the Ark Land action is inappropriate. The ML must confirm the presence/absence of TES species in the analysis area. The ML should survey and monitor for plants and wildlife species. The presence of Sage grouse should trigger some alarm on behalf of the ML. The UEC suggests consultation with DWR at a minimum for this declining species. The ML has recognized the importance of bottomland habitat and wet areas to Sage grouse. These wet areas also represent habitat that is critical to a unique population of Sage grouse. These

circumstances should be further analyzed in a complete EA. Archeological sites must be surveyed and impacts to these sites should be determined and disclosed.

The proposal map shows four sites and a campsite that will be developed for the exploration. How many acres will be occupied by the operation? As stated previously, the project includes more than a mile of new road construction effectively eliminating the area from the categories that can be excluded from environmental analysis. Regarding the extent of activity that is included in this proposal the UEC requests that the ML complete an EA, as it is the appropriate document for this project.

Cumulative Effects-NEPA requires agencies to consider past, present, and reasonably foreseeable impacts (40 CFR 1508.7). A reasonably foreseeable impact tied to exploration is development of the resources. This possible impact should be analyzed as part of the environmental analysis. The ML must also consider the impact of other activities that are taking place in the analysis area, including past, present, and future exploration. The extent of direct impacts from this operation should also be analyzed for this project.

-If the exploration results in development, where will the expansion be? The area is flanked by roadless areas and is unroaded; any development may impact the area.

-The ML should also determine the impacts that may occur due to road construction. Illegal ATV use will expand and penetrate deeper into the forest as a result of over a mile of road construction.

Forest Plan Standards and Guidelines-Management direction for the area in the proposed action is mostly RNG, or emphasis on the production of forage. This direction includes direction for mineral exploration to avoid impacts on big game. The Plan states, "modify, delay, or deny mineral leasing, exploration, and/or surface occupancy, where applicable, if they cause unacceptable stress on big game or unmitigated damage to their habitat" (ML Forest Plan III-62). This direction includes the following standards:

-Prohibit activities during critical periods of big-game use.

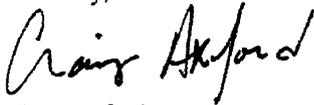
-Approved activities must be short-term and prompt reclamation must be assured.

How will the proposed action comply with the Forest Plan standards for this area? How will big game be impacted by the proposed action?

The ML must complete an programmatic EIS as the size and impact of the project do not fit under the criteria for Categorical Exclusions described at FSH 1909.15, 31.2. Road construction alone cancels any possibility of Categorical Exclusion in this case. The UEC also suggests that the ML survey and determine impacts to the Sage grouse populations that are known in the project area. The required MIS and TES surveys should accompany these surveys on the forest.

Please keep us on the mailing list for this project.

Sincerely,



Craig Axford
On behalf of UEC