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From: Joe Helfrich
To: Ingrid Campbell
Date: 7/9/2012 11:19 AM
Subject: Fwd: FW: FWS Concurrence Letter
Attachments: 12_I_0177_20120521_E.pdf; Quitchupah_Fisheries_summary_4_24_12.doc; SUFCO_Fisheries_Internal_FNF_Memo_5_9_12.pdf; WatershedsRequiringConsultWithCities_FWS_8_11_10.pdf

>>> "Whelan, James E -FS" <jwhelan@fs.fed.us> 07/09/2012 10:45 AM >>>

Joe, I attached the information I provided to Kevin with the email he sent you in which he responded to me. This information is an internal FNF project area fisheries summary dated 4/24/12, an internal FNF memo to the Forest Supervisor dated 5/9/12, and the watershed consultation map provided from the FWS to the FNF dated 8/11/10 (which we actually received in April, looking back on it).

I also provided 3 maps to FWS - 2 vicinity ones - one showing the project in relation to the FNF boundaries and one in relation to the Muddy/Dirty Devil River, and one map of the particular block proposed for undermining. If you would like I can send them - they are just a little bigger so I left them off for now.

I can also provide the references/field survey reports I mention in the 4/24 summary if desired.

Let Kevin and I know if this works for your office or you need any more. Thanks.

From: Kevin_McAbee@fws.gov [mailto:Kevin_McAbee@fws.gov]
Sent: Friday, July 06, 2012 3:13 PM
To: Joe Helfrich
Cc: Whelan, James E -FS
Subject: Re: FWS Concurrence Letter

joe - I gave Jim this email concurrence back in May. Let me know if this is not adequate and we need to do more.

Kevin

(See attached file: 12_I_0177_20120521_E.pdf)

' src="file:///C:/DOCUME~1/OGMUSER/LOCALS~1/Temp/XPgrpwise/"Joe Helfrich"
<joehelfrich@utah.gov>

"Joe Helfrich" <joehelfrich@utah.gov>
07/03/2012 05:14 PM

To

"Jim Whelan" <jwhelan@fs.fed.us>

cc

"Kevin McAbee" <Kevin_McAbee@fws.gov>

Subject

FWS Concurrence Letter

Hi Jim,

We keep trading voice mails so I thought I would try an "E" mail.

We are in need a concurrence letter from the FWS to complete the Section 7 consultation required by our regulations for compliance with the endangered species act. In order for that to happen Your agency needs to make a finding which I believe you have done. Then that finding needs to find its way into a letter to the FWS requesting concurrence with your finding, FWS will reply with a letter of concurrence and copy our agency. Call when you can, I will be in Monday through Thursday next week. Kevin McAbee at the FWS also knows the Section 7 protocol, and he can be reached at 801 975-3330 ext 143.....Joe, hope you are doing well

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Kevin McAbee /R6/FWS/DOI
05/21/2012 11:19 AM

To "Whelan, James E -FS" <jwhelan@fs.fed.us>
cc pjewkes@fs.fed.us, Betsy Herrmann/R6/FWS/DOI@FWS,
Paul Abate/R6/FWS/DOI@FWS, Laura
Romin/R6/FWS/DOI@FWS
bcc
Subject Re: SUFCO S Fork Quitcupah.under-mining concurrence

James,

The U.S. Fish and Wildlife Service concurs with your determination that Canyon Fuel Company's under-mining of the South Fork Quitcupah Creek will have no effect to the endangered fish species of the Upper Colorado River Basin. Because of possible impacts to water resources, such as alteration of flows, we consider the affected area for this project to be the location of undermining at South Fork Quitcupah Creek downstream to Lake Powell. Alterations to water resources in this affected area would have no effect to federally listed fish species because the action area does not impact designated critical habitat or occupied habitat. Also, the Upper Colorado River Basin Endangered Fish Recovery Program has no record of the action area being historical habitat for the endangered fish species.

We appreciate your thorough investigation of this project's potential impact to threatened and endangered fish species. We agree with you and the Utah Division of Wildlife Resources that this project may still impact downstream populations of sensitive native species through alteration of water resources, and therefore the flows of downstream reaches should be monitored.

Thanks for your effort on this Project,

Kevin

Kevin McAbee
Ecologist, Aquatic Endangered and Sensitive Species
US Fish and Wildlife Service
Utah Ecological Services Field Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

office: 801-975-3330 ext 143
fax: 801-975-3331

<http://www.fws.gov/utahfieldoffice/>

"Whelan, James E -FS" <jwhelan@fs.fed.us>



"Whelan, James E -FS"
<jwhelan@fs.fed.us>
05/14/2012 02:55 PM

To "Kevin_McAbee@fws.gov" <Kevin_McAbee@fws.gov>
cc "Whelan, James E -FS" <jwhelan@fs.fed.us>
Subject SUFCO S Fork Quitcupah under-mining concurrence

Re: Forest Service File Codes 2820/2670

To: Kevin McAbee, Aquatic Biologist, Utah Ecological Services Field Office, 2369 Orton Circle, Suite 50, West Valley City, Utah 84119

Dear Kevin,

The Manti and Fishlake National Forests are working with the Bureau of Land Management (BLM) and Utah Division of Oil, Gas and Mining (UDOGM) on a lease modification for a block located on South Fork of Quitchupah Creek. I contacted you in December 2011 regarding this project, in particular with regard to downstream fisheries, water depletion, and potential effects of the lease modification. In addition to you, I also contacted Justin Hart and Dan Keller of the Utah Division of Wildlife Resources for information.

This block is part of the SUFCO Mine operated by Canyon Fuel Company, LLC. The original permitting for the mine did not include under-mining of the South Fork of Quitchupah Creek. Upon recent request from the SUFCO mine, the BLM has undertaken the lease modification to allow this under-mining. This particular lease block occurs on the boundary between and includes land administered by both the Fishlake and Manti National Forests. This is not technically a "Decision" by the Manti or Fishlake National Forests, but we have been asked by UDOGM to ensure the lease modification would not result in any effects to threatened or endangered species.

As noted in my phone call with you, there is no occupied fish habitat in the section of stream to be under-mined, nor are there any sensitive amphibians known to use the area. There are speckled dace in downstream reaches on mainstem Quitchupah Creek, and considerably downstream below irrigation diversions and Highway 10 there are other native fish. Quitchupah Creek drains into Muddy Creek that drains into the Dirty Devil which drains into Lake Powell. SUFCO Mine does have contingency plans should any sections of the undermined stream channel be determined to have subsided in a manner that is capturing surface stream flow. This will help protect riparian values and downstream users. Monitoring of the stream flow is planned immediately prior to, during, and for a period after under-mining. Should stream flow capture occur, response measures would involve bentoniting of the stream channel. If that measure is not sufficient alternative measures such as piping the creek over stream cracks/losing reaches or concrete grouting would be utilized.

Our understanding based on my phone call with you is that since any impacts from the proposed undermining would occur in Quitchupah Creek, which ultimately drains into the Dirty Devil, any impacts from this specific project are considered to occur downstream of occupied and designated critical habitat for Colorado River T&E fish and the determination is thus "No Affect" for these fishes. *UDOGM has asked that we obtain written documentation from the FWS that this is the case for their files .*

To assist your review I have included the following materials: An internal FNF memo regarding the project and fisheries dated 5/9/12; supplemental fisheries information for the project area dated 4/24/12; a general vicinity map showing the project in relationship to the Fishlake National Forest boundary; a map showing the project in relationship to the greater Muddy Creek drainage (adapted from Keller and Birdsey 2010 "Three Species Conservation in Utah's Southeastern Region during 2010"); and a map of the specific block proposed for undermining. The project is located in the North Fork of Quitchupah Creek HUC6, number 140700020102. The project is located in Section 24 of T21S, R4E.

Should you need any additional information or copies of the references cited in the supplemental fisheries information report, please feel free to contact me.

Sincerely,
/s/ James E. Whelan
James E. Whelan
Forest Fisheries Biologist

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Forest
Service

Fishlake National Forest
Supervisor's Office
Fax: (435) 896-9347

115 East 900 North
Richfield, UT 84701
Phone: (435) 896-9233

File Code: 2820/2670
Route To:

Date: May 9, 2012

Subject: SUFCO mining South Fork Quitcupah Creek

To: Forest Supervisor

Following our conversation in December 2011 regarding potential Threatened and Endangered (T&E) fish species effects from the proposed mining under South Fork of Quitcupah Creek, I contacted Utah Division of Wildlife (UDWR) and U.S. Fish and Wildlife Service (USFWS) biologists. Original design, analysis, and consultation for the SUFCO Mine did not include under-mining of the South Fork of Quitcupah Creek, which would be allowed under the lease modification. To further clarify the potential impacts and need for consultation due to this change I talked to Justin Hart and Dan Keller from the southeastern UDWR region in Price and Kevin McAbee from the SLC office of the USFWS in December 2011. I recently had a follow-up contact with Kevin McAbee, who provided a map by email on 4/19/12 showing designated critical habitat in Utah for Federally listed Colorado River fish (by HUC 4 dated 8/11/2010). On 4/24/12 I updated the fisheries and aquatic species information summary originally prepared in 2011 for the SUFCO South Fork Quitcupah Creek project area, including referencing Forest field trip reports and the UDWR survey reports.

The conversations and materials described above have clarified the situation with regard to the Fishlake National Forest (FNF). All of the eastern side of the FNF drains ultimately into the Dirty Devil River which connects to the Colorado River within Lake Powell. As such, any impacts from the FNF are considered to occur downstream of occupied and designated critical habitat for Colorado River T&E fish and the determination is thus "No Affect". While the undermining is technically a lease modification and not a formal "decision" this memo and attached information [FWS map dated 8/11/10, project area fisheries summary dated 4/24/12, and vicinity and mining area maps] thus serves as Forest Service documentation that no affect will occur to threatened or endangered aquatic species from this project.

There are no fish in this drainage on the Fishlake National Forest, and no Forest Service aquatic sensitive or MIS species downstream of the FNF, so there will be "No Impact" to Forest Service sensitive aquatic biota, or FNF aquatic MIS resident trout or aquatic macroinvertebrates. While the undermining is technically a lease modification and not a formal "decision" this memo and attached information thus serves as Forest Service documentation that no impacts will occur to aquatic Forest Service R-4 sensitive species or FNF aquatic MIS species from this project.



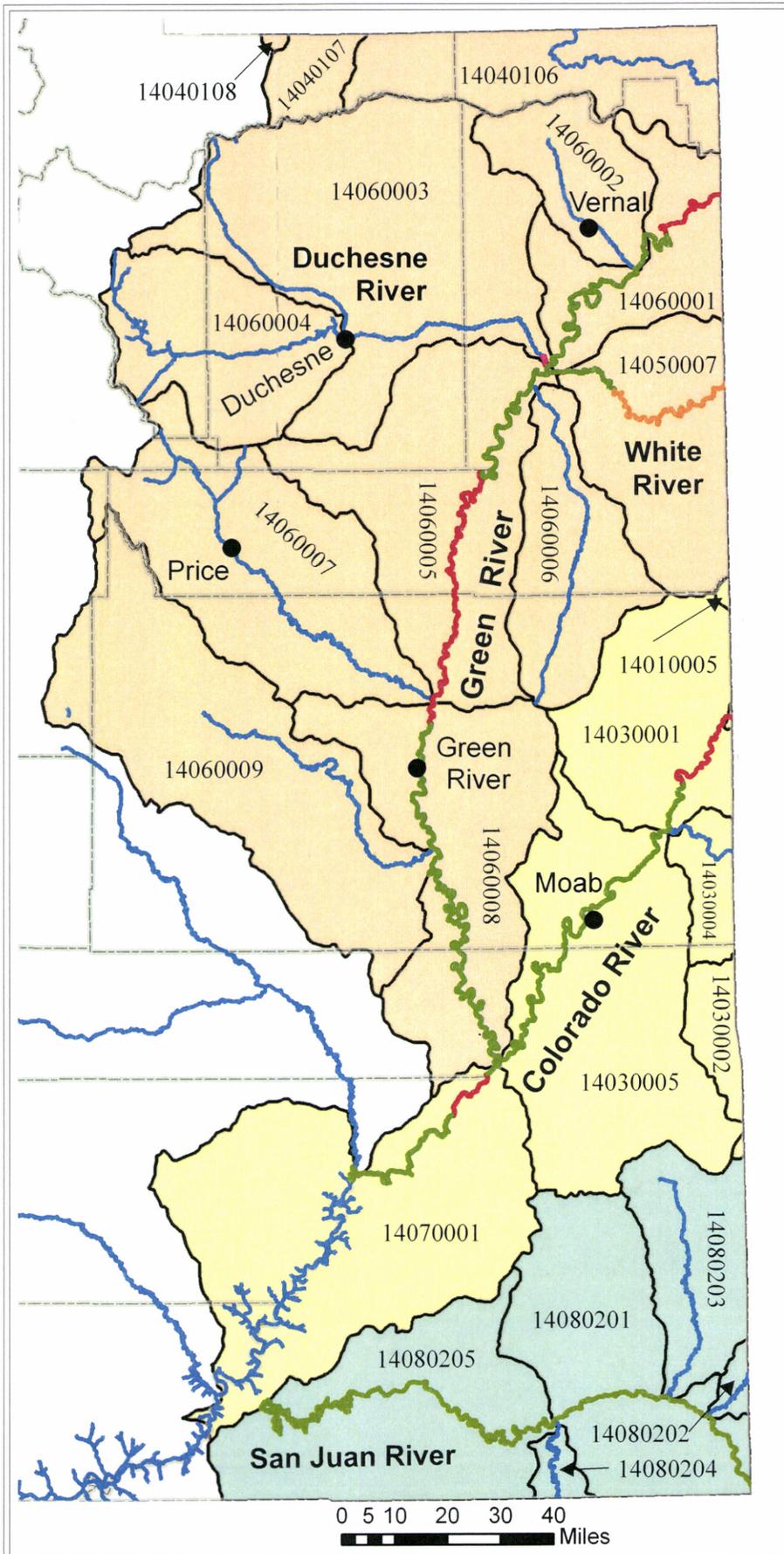
There are state conservation fish species, which do have potential for being petitioned for listing as a T&E species in the future, which occur downstream of the Forest on BLM administered and other lands. Thus water depletion could be of concern to these species, as well as water users/water right holders below the FNF. In addition, water loss could affect riparian vegetation and the terrestrial species it supports on the FNF. For these reasons, I support the proposed stream flow monitoring and water replacement plan which includes bentoniting the stream channel if water loss is found, with piping or concrete grouting as potential additional steps. The Forest hydrologist should be involved in the water monitoring and any water loss planning or mitigation discussions.

/s/ James E. Whelan
JAMES E. WHELAN
Forest Fisheries Biologist

Enclosure

cc: Jason E Kling

Attachment 1: Designated Critical Habitat in Utah for Federally Listed Colorado River Fish



Legend

Critical Habitat

- Colorado Pikeminnow
- Razorback Sucker
- Razorback Sucker, Colorado Pikeminnow
- Razorback Sucker, Colorado Pikeminnow, Bonytail Chub, Humpback Chub
- Major Rivers (non-critical habitat)

Utah County Boundaries

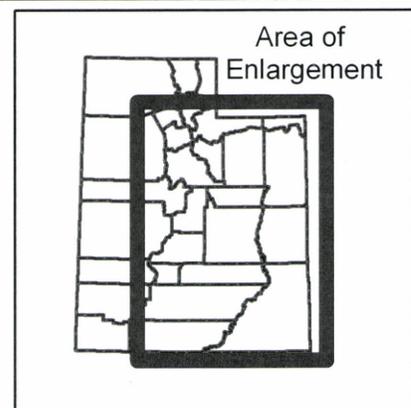


Watersheds requiring consultation* (Recovery Program, Mainstem River)

- San Juan River Basin Recovery Implementation Program, San Juan River
- Upper Colorado River Endangered Fish Recovery Program, Green River
- Upper Colorado River Endangered Fish Recovery Program, Upper Colorado River

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

Created by Kevin McAbee using FWS & USGS data.
August 11, 2010



Fisheries surveys on or downstream of the Fishlake N.F.

This portion of the Forest and downstream waters is actually within the Utah Division of Wildlife Resources (UDWR) southeastern region, while our Cooperative Aquatic Biologist program/workplan is with the UDWR southern region. Due to limited aquatic resources, it has not been well surveyed by the Forest under the CAB program; thus southeastern region UDWR personnel were contacted in December 2011 regarding the South Fork of Quitchupah under-mining project.

Convulsion Canyon, mainstem Quitchupah Creek, and lower Water Hollow were field checked by the Forest Fisheries Biologist and Hydrologist during planning for the Quitchupah road project on August 22, 2001. Small fish were seen, but electroshocker troubles prevented their capture and identification. Follow-up field visits were made by Forest fisheries seasonal on August 20, 2003 and September 28, 2004. This included spot shocking of the stream on the Forest and immediately below. An additional field visit to discuss the Quitchupah road project included traveling down to the diversion structure. No fish were found on the Forest in Convulsion Canyon in any of the field visits; a large stabilized head cut prevents fish movement upstream onto the Forest. Portions of the riparian habitat on the Forest in Convulsion Canyon looked productive and valuable, however. In places old downcutting is clearly evident but has been stabilized by vegetation. Speckled dace were found in mainstem Quitchupah Creek and Water Hollow just up from the confluence with Quitchupah Creek (Whelan 2005, Whelan 2004).

The South Fork of Quitchupah Creek was surveyed by the southeastern region UDWR office in 2004. They surveyed a station just upstream of the road crossing, which is barely on the Fishlake National Forest. No fish were found at this station. (Walker and Birdsey 2005). Just a little ways downstream of the road crossing the stream moves onto the Manti-LaSal National Forest. There are steep gradient sections on South Fork Quitchupah Creek below the Fishlake N.F. that would likely preclude dace from moving upstream onto the Fishlake N.F.

The North Fork of Quitchupah Creek was surveyed by the southeastern region UDWR office in 2004. They surveyed a station just upstream of the road crossing. This is just north of the Fishlake National Forest. No fish were found at this station (Walker and Birdsey 2005).

Speckled dace were found during these same surveys downstream near the confluence with mainstem Quitchupah Creek. As noted above, speckled dace have also been observed on the mainstem in this general area by Fishlake National Forest personnel doing spot-shocking. It is unknown how far up the North Fork Quitchupah Creek tributary dace go. There are steep gradient sections on North Fork Quitchupah Creek that would likely preclude dace from moving upstream into the upper stream reaches.

The 2004 UDWR surveys went considerably downstream on the Muddy drainage looking for native fish species (Walker and Birdsey 2005).

The southeastern region UDWR office repeated many of the stations sampled in the Muddy River drainage in 2010, but did not resample the upper headwater Quitchupah stations on the Fishlake and Manti National Forests (Keller and Birdsey 2010).

Bluehead sucker and flannelmouth sucker, state species of concern with potential to be petitioned for listing, occur further downstream on Quitchupah Creek. UDWR personnel contacted in December 2011 indicated that use by these fish species was below Highway 10, and that small changes in waterflow in the

upper creek would not likely affect their current distribution. They did indicate that these native fish probably ranged much higher before diversions were installed to allow summer irrigation, and may have historically occurred near the Fishlake National Forest boundary.

Boreal toads on the Fishlake N.F.

No boreal toads are known to occur on or anywhere in the general vicinity of South Fork of Quitcupah Creek.

The area has received only cursory surveys, primarily by the southeastern region UDWR office. Boreal toads are considered unlikely in the general area, however, as the nearest known populations are near Joes Valley, approximately 20 miles to the north, and Thousand Lake Mountain, approximately 25 miles to the south.

Aquatic macroinvertebrates on the Fishlake N.F.

Language in the Fishlake National Forest Forest Plan indicates that aquatic macroinvertebrates, as a standard and guideline, apply only to trout bearing streams. As such, they would not apply to the South Fork of Quitcupah Creek on the Fishlake N.F. Note, however, that the UDWQ has listed Quitcupah Creek further downstream as impaired, in part due to state water quality definitions for supporting uses that include aquatic macroinvertebrates.

Water flow off the National Forest and downstream fisheries

All of the eastern side of the Fishlake National Forest drains ultimately into the Dirty Devil River which connects to the Colorado River within Lake Powell. As such, any impacts from the Fishlake N.F. are considered to occur downstream of occupied and designated critical habitat for Colorado River T&E fish and the determination for any Colorado River T&E fish is thus "No Affect" (Kevin McAbee, USFWS biologist, personal communication Dec 2011).

Interestingly, within basins feeding streamflow into Colorado River T&E critical fish habitat further north on other Forests, the mitigation for water depletion is highly formalized and defined. If water is depleted it does not matter in these areas whether there is a river/stream disconnect due to diversions or dry stretches, it must still be mitigated (Kevin McAbee, USFWS biologist, personal communication Dec 2011).

Additional information is provided by a letter from Larry Crist, Utah Field Office Supervisor, Fish and Wildlife Service letter to Daron Haddock, Coal Program Permit Supervisor for the Utah Division of Oil, Gas, and Mining dated January 22, 2010

Additional information is provided by a map from Kevin McAbee titled "Attachment 1: Designated Critical Habitat in Utah for Federally Listed Colorado River Fish" dated August 11, 2010. This map shows that the Dirty Devil watershed does not connect to critical habitat for Colorado River fish and that no consultation is needed.

While not needed for a No Affect determination on the Fishlake N.F., the USFWS can provide a concurrence letter if desired by the Forest for greater strength (Kevin McAbee, USFWS biologist, personal communication Dec 2011).

My professional opinion is that downstream effects to off-forest native fisheries from water depletion on South Fork of Quitchupah Creek would be very difficult to quantify in actual field measurements for the following reasons:

Water flow on upper South Fork of Quitchupah Creek is relatively low.

Water flow is augmented by mine outflow below the Fishlake N.F. and is thus above historic levels (quality may be affected by the outflow).

Water diversions on mainstem Quitchupah Creek below the Fishlake N.F. diverts all summer baseflow during many [normal or dry] years into irrigated fields. Thus during critical low flow summer periods no water makes it past this diversion.

Irrigation return flow then feeds back into mainstem Quitchupah Creek above (west of) Highway 10.

All fish species of concern are further downstream below (east of) Highway 10. This is a considerable downstream distance from the project area.

Water flow monitoring/modeling

For a complete understanding of water flows and fisheries in the Quitchupah drainage, which includes multiple land ownerships, land uses, and agency jurisdictions, the following information would be recommended. While continuous flow information would be best, a minimum of monthly flow data (as access allowed) over several years (ideally both wet and dry years) should be looked at for a full understanding. Adam Solt, forest hydrologist, should be involved in any discussions regarding water flow modeling or monitoring on the Fishlake N.F.

Water flow in upper South Fork of Quitchupah Creek.

Flow on North Fork of Quitchupah Creek above the mine influx.

The mine influx flow or the North Fork of Quitchupah Creek flow below the influx.

Flow on Quitchupah Creek above the North Fork confluence.

The flow at the mainstem Quitchupah diversion and the times when the diversion is operating.

The irrigation return flow on mainstem Quitchupah Creek above Highway 10.

Stream flow on mainstem Quitchupah Creek below Highway 10 where the fish species of concern are.

And, ideally, water flows from Water Hollow as a control (upper) sub-watershed not affected by current land management actions.

Actions for water capture

Discussions with the mine personnel indicated the primary mitigation measure if subsidence does lead to loss of streamflow in South Fork of Quitchupah Creek is bentoniting the stream channel. Additional measures mentioned that could be undertaken if this is found to be inadequate would be piping the stream over cracks/losing reaches or concrete grouting.

The mine indicated that the cracks from subsidence sometimes also seal themselves over time.

1st James E. Whelan

4/24/2012

References

- Crist, L. 2010. Letter to Daron Haddock, Coal Program Permit Supervisor, Utah Division of Oil, Gas, and Mining Re: Satisfying the 1996 Biological Opinion on Surface Coal Mining and Reclamation Operations for Impacts to Federally Listed Colorado River Fish Species in the Green and Colorado River Basins, Utah. Fish and Wildlife Service, Salt Lake City, UT.
- Keller, D. and P. Birdsey. 2010. Three Species Conservation in Utah's Southeastern Region during 2010. Utah Department of Natural Resources, Division of Wildlife Resources, Salt Lake City. 21pp.
- Walker, C.A. and P. Birdsey. 2005. Surveys to determine the current distributions of rountail chub, flannelmouth sucker, and bluehead sucker in the Muddy Creek drainage, during 2004. Utah Department of Natural Resources, Division of Wildlife Resources, Salt Lake City. 39pp.
- Whelan, J. E. 2004. Field Trip Report: Quitchupah Creek and Water Hollow Tributary, August 20, 2003, sampling by A. Johnson and D. Janetski. Fishlake National Forest, Richfield, UT. 3p.
- Whelan, J. E. 2005. Field Trip Report: Water Hollow Tributary to Quitchupah Creek, September 28, 2004, sampling by T. Nielson and C. Payne. Fishlake National Forest, Richfield, UT. 3p.