



United States Department of the Interior
FISH AND WILDLIFE SERVICE

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

In Reply Refer To:

FWS/R6
ES/UT
07-FA-0137

January 27, 2012

To: Bureau of Land Management, Kanab Field Office, 318 North 100 East, Kanab, Utah, 84741 (Attn: Keith Rigtrup)

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, West Valley City, Utah

Subject: Alton Coal Tract Lease By Application Draft Environmental Impact Statement, DES-11-51

We reviewed the subject draft environmental impact statement (DEIS) prepared by your office to analyze and disclose the impacts of leasing and mining coal reserves in the Alton Coal Lease By Application (LBA) tract. Alton Coal Development, LLC (the applicant) proposes to extract coal by using surface mining methods and transport the extracted coal to Cedar City, Utah by truck. The Bureau of Land Management (BLM) will use the analysis in the EIS to decide whether to a) hold a competitive, sealed-bid lease sale for the tract; b) hold a competitive, sealed-bid lease sale for a modified tract; or c) reject the lease application and not offer the tract for sale at this time.

We recommend that you reject the lease application and withdraw the tract for sale. We believe that mining activity under any of the action alternatives will result in:

- the extirpation of the Alton-Sink Valley greater sage-grouse lek and the Alton greater sage-grouse population;
- direct adverse effects to birds of unknown origin that visit Alton-Sink Valley for wintering habitat; and,
- indirect adverse effects to the Hoyt Ranch greater sage-grouse population to the north.

Proposed measures to observe seasonal restrictions for construction in a portion of the brood-rearing habitat in the project area do not address disturbance during the wintering season and loss of extensive wintering habitat. Finally, we believe the action alternatives are in direct conflict with goals and objectives outlined in the Utah Greater Sage-Grouse Management Plan (UDWR 2009) and the Color Country Greater Sage-grouse Conservation Plan (Frey et al. 2008), coal planning screening criteria in the 2008 BLM Kanab Resource Management Plan, the recently

finalized Greater Sage-Grouse Interim Management Policies and Procedures (BLM IM No. 2012-043), and extensive federal, state and local efforts to restore and enhance habitat for this population.

We submit the following additional comments for your consideration.

General Comments

Greater sage-grouse (Centrocercus urophasianus)

As referenced in the DEIS, the Alton-Sink Valley greater sage-grouse lek represents the southernmost active greater sage-grouse lek in North America. The Alton population exclusively uses this lek and nesting, brood-rearing and wintering habitats in the Alton-Sink Valley area. The Alton-Sink Valley area is not isolated, however, as birds from the Hoyt Ranch population six miles to the north move to the Alton-Sink Valley lek to breed. In addition, greater sage-grouse of unknown origin visit Alton-Sink Valley and use wintering habitat in the project area. Therefore, the Alton-Sink Valley area provides habitat for resident sage-grouse as well as important habitat connectivity for surrounding populations. In addition, the loss of this southernmost sage-grouse population would result in range constriction for the species.

The DEIS presents a No Action alternative and two action alternatives for analysis. Under Alternative B (the proposed action) and Alternative C, mining activity would directly disturb 62-67% and 54-59% of crucial greater sage-grouse brooding habitat respectively. A more limiting factor however is the elimination of wintering habitat. Mining activity under either alternative will directly disturb and eliminate a large portion of wintering habitat for the Alton-Sink Valley population as well as birds from outside the area. The document does not disclose the acreage of wintering habitat that would be eliminated under either alternative or analyze the effects of that loss to the local population and birds from outside the area. We believe that loss is significant and irreversible.

The DEIS discloses that the Alton greater sage-grouse population will likely undergo short-term or long-term displacement or loss under the proposed action and could experience the same fate under Alternative C. The potential effects to the Alton sage-grouse population under Alternative C are somewhat reduced because of seasonal construction restrictions on a portion of occupied brood-rearing habitat, however operation of the mine will impact the population year-round. The document does not disclose likely effects to birds from the Hoyt Ranch population that visit Alton-Sink Valley during the breeding season under either action alternative.

These extensive losses of greater sage-grouse brood-rearing and wintering habitat are unacceptable in light of multiple local, state and federal initiatives to conserve greater sage-grouse populations in Utah. In the Utah Greater Sage-grouse Management Plan (UDWR 2009), the Utah Division of Wildlife Resources (UDWR) identifies a number of objectives and strategies to conserve the species by protecting and improving habitat. These objectives include the protection, maintenance, enhancement and restoration of currently occupied sage-grouse habitat to improve continuity and distribution. Loss of the Alton population as a result of coal

mining and associated land disturbance directly conflicts with the objectives and strategies outlined in this plan.

The Color Country Greater Sage-grouse Conservation Plan (Plan) (Frey et al. 2006) is a product of the Color Country Adaptive Resource Management Local Working Group (CoCARM), whose members include representatives from state and federal land management and resource agencies, non-governmental organizations, private industry, and private landowners. It was developed in response to a mandate by the UDWR and provides guidance and recommendations to meet an overall goal to maintain and, where possible, increase sage-grouse populations and improve habitat conditions in the Color Country. Mining activity and associated land disturbance at the Alton site conflict with strategies in the Plan to minimize effects of new land developments on sage-grouse populations. In addition, such activity negates the habitat improvements and population monitoring already in progress in and adjacent to the project area.

The Kanab Resource Management Plan (BLM 2008) outlines a number of protective measures for greater sage-grouse that must be followed on federal lands subject to surface disturbance related to coal mining. We understand that to except, waive or modify these measures, the BLM must demonstrate that less restrictive measures could be developed to protect the resource of concern and that operations could be conducted without causing unacceptable impacts. Despite proposed seasonal construction restrictions under Alternative C, we do not believe that operations can be conducted under any of the action alternatives to avoid unacceptable impacts to greater sage-grouse. We maintain that mining activity under any of the action alternatives will result in the extirpation of the Alton-Sink Valley sage-grouse lek and the Alton sage-grouse population.

The recently released BLM IM No. 2012-043 provides interim conservation policies and procedures for ongoing and proposed authorizations that affect greater sage-grouse and its habitat. The proposed coal mining tract includes breeding, late brood-rearing and winter habitat for the Alton population. In addition, the DEIS discloses that there is bird movement from Hoyt's Ranch to the Alton-Sink Valley lek during the breeding season as well as movement from unknown locations to Alton-Sink Valley in winter. Consequently, we believe that the areas proposed for mining under the Proposed Alternative and Alternative C represent Preliminary Priority Habitat (PPH) as described in IM 2012-043. The proposed leasing decision imposes more than minor adverse effects and will not cumulatively maintain or enhance greater sage-grouse PPH. We understand that in such cases, the proposed lease will be forwarded to representatives of the BLM, UDWR and USFWS for review of proposed mitigation. We request that upon review of our comments to the DEIS, the BLM communicate to us its procedural intent under IM 2012-043.

Finally, the DEIS references a number of habitat improvement projects and monitoring efforts initiated by the BLM, UDWR, Utah State University Extension and Southern Utah University. In 2005, for example, this group initiated radio-telemetry studies. That same year, the BLM removed 99% of pinyon-juniper and conducted revegetation on 1700 acres in the Alton-Sink Valley area. The public resource expenditure for these efforts should be disclosed in the document and evaluated relative to the public benefit of the proposed project.

Threatened and Endangered Species

Please be aware that informal or formal consultation under Section 7 of the Endangered Species Act (ESA) may be required depending on which alternative you choose. You may reference our scoping letter, dated March 14, 2007, which more specifically outlines your responsibilities as a federal agency. Current species lists can be obtained from the U.S. Fish and Wildlife Service website: <http://www.fws.gov/utahfieldoffice/endSpp.html>.

Specific Comments

Section 1.8.1.1.2 Purpose and Need, Conformance with BLM Land-Use Planning, Application of Unsuitability Criteria, page 1-12

This section addresses seven unsuitability criteria in the coal screening procedure and discloses the BLM decision for each. We recommend that you clearly state and support your decision regarding the suitability of federal lands within the LBA tract relative to Unsuitability Criterion Number 15. Your decision is currently not clear. You should consider the recently published BLM IM 2012-043 and the most recent data regarding greater sage-grouse occupancy in all areas of the tract.

Section 1.8.1.1.2 Purpose and Need, Conformance with BLM Land-Use Planning, Application of Unsuitability Criteria, page 1-13

We do not agree with the assumption that an exception, modification, or waiver to Unsuitability Criterion Number 15 would be granted in the event of a lease. As described in Table 1.3, the BLM may only except, waive, or modify greater sage grouse measures SSS-54, SSS-55 and SSS-56 under certain conditions that have not yet been met. We believe it may not be possible to meet these conditions. It is impossible to replace the Alton-Sink Valley greater sage-grouse population in the event it is displaced or lost. We recommend, therefore, that you re-evaluate this assumption.

Section 2.3.2.4 Proposed Action and Alternatives, Preliminary Mine Plan, Blasting, page 2-8

To avoid impacts to wildlife associated with blasting, we recommend that you require a wildlife-specific blasting plan as a special lease stipulation for the tract. The plan should include:

- measures to avoid and minimize noise impacts to sensitive terrestrial and aquatic wildlife resources during sensitive time periods (e.g. breeding season);
- measures to ensure the removal of blast debris from waterbodies; and,
- measures to ensure compliance and effectiveness of avoidance/minimization measures.

Section 2.4.2.3 Proposed Action and Alternatives, Alternative C, Preliminary Mine Plan, Sage-Grouse Timing Restrictions, page 2-15

We understand that Alternative C eliminates Block NW from the tract, and includes seasonal restrictions in Block S of the tract. Because the boundaries of Block S are not delineated in maps 1.2 – 4.2, we are unable to determine the application and effectiveness of this measure.

Section 2.5.1.7 Proposed Action and Alternatives, Management and Considerations Common to Each Action Alternative, Permit Approvals, Regulatory Compliance, Mitigation, and Monitoring, Table 2.3 Regulatory Compliance or Mitigation Required by Federal, State or Local Law and Stipulations, page 2-18

To improve the reader's understanding of federal, state, and local law that affects mitigation requirements and compliance, we recommend that you expand the table to include the entity responsible for the various mitigation requirements. It is unclear, for example, which federal, state or local entity will require baseline and annual wildlife monitoring surveys or the development and enforcement of appropriate vehicle speed limits to minimize wildlife mortality. This information is necessary to evaluate the effectiveness and likely success of these requirements.

Section 2.7 Comparison of Alternatives, Table 2.4, page 2-37

This table provides a summary of impacts by alternative. It is assumed this table will be referenced by the BLM in its decision-making process, perhaps exclusively as the decision-maker may not read the entire document. It is critical therefore that (s)he understands where irreversible loss of sensitive wildlife will occur. We recommend that you expand this table to include irreversible impacts to special status species. For example, you should disclose your determination that the Alton-Sink Valley greater sage-grouse population will likely be displaced or lost under the action alternatives. You should also disclose that there will likely be adverse effects to the threatened Utah prairie dogs under the action alternatives.

Section 3.15.2 Affected Environment, Vegetation, Vegetation Communities in the Tract, page 3-68

The Utah Comprehensive Wildlife Conservation Strategy (UDWR 2005) describes the ten most at-risk habitat types (out of 24) in Utah and assigns priority based on relative abundance, degree of threat faced by each habitat type, trends in abundance and condition, number of sensitive species for which the habitat is important, and vertebrate biodiversity. Of the 8 habitat types that occur within the project corridor, five are listed among the top ten most at-risk habitat types by the UDWR. These habitat types are sagebrush shrublands (shrub-steppe), mountain brush (mountain shrub), meadow, mountain riparian, and sagebrush/grassland communities.

In the FEIS, we recommend that you specifically reference the Utah Comprehensive Wildlife Conservation Strategy to disclose trends in abundance and condition for the five key habitat types that exist within the project area. For example, mountain riparian habitat covers just 0.2 percent of Utah's land area and is currently stable, but stressed due to human activities including

energy development, invasive plants and improper grazing practices. Wet meadow habitat covers less than 0.1 percent of Utah's land area, is very rare in Utah, and on the decline across the state due to land development, drought, improper grazing practices and OHV use, and water development (UDWR 2005).

Section 3.15.2.8 Affected Environment, Vegetation, Vegetation Communities in the Tract, Sagebrush/Grassland (treated), page 3-70

Treated sagebrush/grassland communities represent 750 acres in the project area. We recommend that you disclose the purpose for treatment in this section, when the lands were treated, and where they are located. We believe this information is important to understand the lost expenditure of public resources and how the lands may be currently used by special status species.

Section 3.15.4 Affected Environment, Vegetation, Special Status Species, page 3-71

The following threatened, endangered and candidate plant species are known to occur in Kane County, Utah: Kodachrome bladderpod (*Lesquerella tumulosa*), Las Vegas buckwheat (*Eriogonum corymbosum* var. *nilesii*), Siler pincushion cactus (*Pediocactus sileri*), and Welsh's milkweed (*Asclepias welshii*). We recommend that you determine whether suitable habitat for these species exists within the project area. If suitable habitat exists, we recommend that you conduct surveys to determine presence or absence. Surveys should follow protocol established in the *Utah Field Office Guidelines for Conducting and Reporting Botanical Inventories and Monitoring of Federally Listed, Proposed and candidate Plants* (U.S. Fish and Wildlife Service, 2011).

Section 3.17.1 Affected Environment, Wildlife and Special Status Species, Regional Overview, Table 3.33, Wildlife and Special Status Animal Species with Potential to Occur on the Tract, page 3-83

Habitat for Mexican spotted owl (*Strix occidentalis lucida*), a threatened species under the ESA, may exist within the tract. We recommend that you add this species to Table 3.33 and determine habitat suitability across the site.

Habitat for Southwest willow flycatcher (*Empidonax traillii extimus*), an endangered species under the ESA, may exist within the tract. We recommend that you add this species to Table 3.33 and determine habitat suitability across the site.

Section 4.1.3 Environmental Impacts, General Analytical Assumptions, Guidelines, and Notes, page 4-3

We do not agree with the assumption that all required regulatory actions, mitigation and monitoring measures, and lease stipulations identified in Table 2.3 would be successfully implemented under the action alternatives. For example, we are unaware of a regulatory mechanism or lease stipulation that requires annual wildlife monitoring, therefore there is no assurance that appropriate wildlife monitoring will be conducted.

Section 4.15.1 Environmental Impacts, Vegetation, Impact Indicators, Thresholds, and Analysis Assumptions, page 4-101

There is no identification of thresholds in this section. We recommend that you establish vegetation impact thresholds to inform your alternatives comparison of alternatives and leasing decision. For example, one can reference the at-risk status of existing vegetation communities in the Utah Comprehensive Wildlife Conservation Strategy (UDWR 2005) and use that information to determine if, and to what extent, additional losses of at-risk vegetation communities are acceptable. At a minimum, the document should disclose how the action alternatives may affect existing trends (declining, stable, or increasing) in at-risk vegetation communities.

Section 4.15.4 Environmental Impacts, Vegetation, Potential Mitigation Measures, page 4-117

We have reviewed the protective measures for vegetation described in this section as well as in the Management and Considerations Common to Each Action Alternative section of Chapter 2. While we agree that the application of these measures will help reduce the amount and severity of weed infestations during the life of the mine, and help to restore native vegetation communities during reclamation, we do not believe that you have adequately addressed the short-term elimination of hundreds of acres of pinyon-juniper woodlands, sagebrush/grassland, perennial grasses, mountain brush, and rabbitbrush. These communities will be eliminated from the landscape for the life of the mine as well as the time necessary for successful reclamation (approximately 35 years).

For those vegetation communities that are currently stressed or declining statewide (see comments for Section 3.15.2), we recommend that you require compensatory mitigation for 35 years of loss. We support the implementation of conservation actions identified in the Utah Comprehensive Wildlife Conservation Strategy (UDWR 2005) as potential compensatory mitigation. Such action would also help mitigate short-term habitat loss for migratory birds, raptors, and other sensitive wildlife species that will be displaced or lost from the tract.

Section 4.17.1 Environmental Impacts, Wildlife and Special Status Species, Regulatory Framework and Lease Stipulations, Regulatory Framework, page 4-132

We recommend that you add two items to this section:

- Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds"; and,
- U.S. Department of the Interior Bureau of Land Management and U.S. Fish and Wildlife Service Memorandum of Understanding (2010) to promote the conservation of migratory birds.

Section 4.17.1.2 Environmental Impacts, Wildlife and Special Status Species, Lease Stipulations, page 4-133

We recommend that you specify the entity responsible for compliance and enforcement of the measures. We additionally recommend that you specify how and when details for each measure would be finalized. If you choose to lease the tract for mining, we wish to review and provide comments to these standard (and special) lease stipulations prior to your Record of Decision.

To help meet responsibilities under Executive Order (E.O.) 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), we recommend that you stipulate certain measures to avoid and minimize disturbances. For example, the lessee should conduct pre-construction nest surveys; ensure ground-disturbing activities occur outside critical breeding seasons for migratory birds, and provide compensatory mitigation for unavoidable impacts. Mitigation should include the option for off-site, in-kind habitat compensation.

Please note that the standard lease stipulations disclosed in this section are not included in Table 2.3 Regulatory Compliance or Mitigation Required by Federal, State or Local Law and Stipulations.

Section 4.17.6.3.2.5 Environmental Impacts, Alternative B: Proposed Action, Impacts on Special Status Species Occurring in the Tract Analysis Area, Raptor Species, page 4-149

This section references special lease stipulations to minimize adverse impacts to raptor species during the breeding season. We recommend that you disclose where these special stipulations are found in the document. Table 2.3 does not identify any standard or special lease stipulations for wildlife. Section 4.17.1.2 only discloses standard lease stipulations.

We agree that the proposed action would result in direct adverse impacts to wintering, foraging and nesting habitat for raptors, including bald and golden eagles. In light of BLM's responsibilities under E.O. 13186, we recommend enforceable compensatory mitigation to replace lost raptor habitat. We are available to assist you in the determination of appropriate compensatory mitigation.

These comments also apply to Section 4.17.6.3.2.5 for Alternative C.

Section 4.17.6.3.2.6 Environmental Impacts, Alternative B: Proposed Action, Impacts on Special Status Species Occurring in the Tract Analysis Area, Other Bird Species, page 4-149

Migratory birds are protected under the Migratory Bird Treaty Act (MBTA), part of the regulatory framework that governs implementation of the proposed action. In the spirit of Executive Order 13186 and the U.S. Department of the Interior Bureau of Land Management and U.S. Fish and Wildlife Service Memorandum of Understanding (2010), we recommend that you include a special lease stipulation that requires compensatory mitigation for loss of migratory bird habitat. Areas identified as Bird Habitat Conservation Areas (Intermountain West Joint

Venture 2005) are potential conservation and restoration opportunities for offsite, in-kind habitat compensation.

These comments also apply to Section 4.17.6.3.2.5 for Alternative C.

Section 4.17.7.2.2.3 Environmental Impacts, Alternative B and Alternative C, Impacts on Special Status Species occurring in the Coal Haul Transportation Route Analysis Area, Utah prairie dog, page 4-160

We appreciate the use of existing roads to move coal between the tract site and Cedar City, Utah. Despite this use, adverse impacts to Utah prairie dogs from increased traffic are likely to occur. We generally agree with the effects analysis provided in this section; however, we recommend that you expand your description of adverse impacts to include mortality from vehicle strikes. The increased amount of truck traffic on these roads will increase the potential for all wildlife mortality, including Utah prairie dogs and greater sage-grouse. Also, please be aware that under the action alternatives, mitigation will likely be necessary to compensate for adverse impacts to Utah prairie dog.

Section 4.17.11 Environmental Impacts, Wildlife and Special Status Species, Irreversible and Irretrievable Commitments of Resources

We recommend that you disclose the irreversible loss of the Alton-Sink Valley greater sage-grouse population in this section. As stated in Section 4.17 on page 4-132, when species are lost, displaced, or experience habitat alteration, there is limited potential for relocation or reestablishment elsewhere. We agree. It is highly unlikely that the Alton-Sink Valley greater sage-grouse population will survive disturbance associated with 35 years of coal mining and reclamation, and it is equally unlikely that the population will relocate then return to the area post-reclamation.

Section 4.18 Cumulative Impacts

The timeframe for analysis of cumulative impacts is limited to twenty years. Mining is proposed for 25 years and the DEIS assumes a minimum 10 years for reclamation. We recommend that you increase the timeframe for analysis to at least 35 years.

Appendix A, Map 1.2 – Map 4.2

We recommend that you clearly define the boundaries of the no-coal zone, Block NW, Block S and Block Sa in the FEIS. Without delineations of these blocks, it is impossible for the reader to determine where reduced tract acreage exists in Alternative C, and the amount and location of lands subject to seasonal restriction.

We appreciate the opportunity to provide these comments. For further assistance, please contact Amy Defreese, Ecologist, at the letterhead address or (801) 975-3330 x128.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Crist". The signature is fluid and cursive, with a large initial "L" and a distinct "Crist" following.

Larry Crist
Utah Field Supervisor

cc: UDWR – Cedar City (Attn: Rhett Boswell)
UDWR – Salt Lake City (Attn: Carmen Bailey)
EPA – Denver (Attn: Molly Vaughn)

References

Frey, S. N., S. G. Lupis, K. Heaton, T. A. Black, T. A. Messmer, and D. Mitchell. 2006. Color Country Greater Sage-grouse (*Centrocercus urophasianus*) Local Conservation Plan. Utah's Community Based Conservation Program. Unpublished Report. Logan, Utah.

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Utah Division of Wildlife Resources. 2005. Utah comprehensive wildlife conservation strategy. Publication Number 05-19.

Utah Division of Wildlife Resources (UDWR). 2009. Utah Greater Sage-grouse Management Plan. Utah Department of Natural Resources, Division of Wildlife Resources, Publication 09-17, Salt Lake City, Utah, USA: