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Region

Ashley National
Forest

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Paint Mine Exploration and Development Proposal

**Supplement to the
Environmental Assessment
Including
Summary of Public Comments
With Forest Service Responses**



Duchesne/Roosevelt Ranger District

**Paint Mine
Exploration and Development Proposal
Duchesne County, Utah**

**Supplement to the Environmental Assessment
Dated August 2003**

Including

Summary of Public Comments with Forest Service Responses

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**Paint Mine Exploration and Development Proposal
Duchesne/Roosevelt Ranger Districts
Ashley National Forest**

**Supplement
to the
Environmental Assessment
Dated August 2003**

And

**Summary of Comments Received on the Environmental
Assessment with Forest Service Responses**

Introduction

Section 1

This section consists of:

- 1) Corrections of errors to data, maps and other resource information found by Forest Service specialists after publication of the Environmental Assessment for the Paint Mine Exploration and Development Proposal (EA); and
- 2) Additions to resource information by Forest Service specialists to further clarify the affected environment and environmental consequences associated with the Proposed Action and Alternatives as defined in the EA.

This section is organized by EA Chapter, Section, and/or Resource, and where appropriate, refers back to page numbers in the EA.

Section 1 does not change the results of the analysis and evaluation in the EA, including the disclosed impacts. *(Refer to the "Decision Notice/Finding of No Significant Impact Document" for the EA for supporting statements.)*

Section II

This section consists of:

Changes to the EA and general Forest Service responses, as a result of comments received from Federal and State agencies, local government groups, private organizations, and individuals. The changes are entitled "Summary of Comments with Forest Service Responses". *(Refer to the above table of contents.)*

Section II is organized by Office and Organization and their respective comments, along with corresponding Forest Service responses/changes to the EA.

Section II also does not change the results of the analysis and evaluation in the EA, including the disclosed impacts. *(Refer to the “Decision Notice/Finding of No Significant Impact Document” for the EA for supporting statements.)*

Section 1

All Chapters

1. The following corrections are made to ore and acreage figures in the EA:

- ✓ *Tons of ore removed will be 1534 tons, rather than the 1600 tons as noted in several sections of the EA.*

Chapter 2 – Alternatives Including the Proposed Action

1. Section 2.2, subsection 2.2.b.1 – Mitigation Measures and Monitoring Guidelines Developed by the Interdisciplinary Team, page 2-27.

- a. Two mitigation measures and one monitoring guideline for Soils were not brought forward from Chapter 4. The two measures and one monitoring guideline are as follows:

- ✓ Soils Mitigation Measures

Certified weed-free straw bales would be used as directed by the Forest Service to prevent deterioration of gullies and side washes that have resulted from previous activities, as well as those that may result from the project activities.

If clearing at the truck turn-around area (beginning of UMCC’s 0.3 mile access road) is needed and required, soil would be stockpiled for later use in rehabilitation.

✓ Soils Monitoring Guideline

UMCC would be required to provide monitoring and maintenance of soil and water mitigation practices other than pit gabion for one year following completion of mining activity, and to provide the Forest Service with documentation regarding soil and water mitigation activities, including:

- *Activity /mitigation measure implemented and GPS coordinates or project area map.*
- *Date implemented*
- *Results upon completion*
- *Maintenance performed during operations*
- *Results 9-12 months after completion and maintenance performed*

b. An additional mitigation measure will be added in regards to gabion rock used for test pit reclamation work. This measure is as follow:

- ✓ *All rock used by UMCC for gabions in the test pit reclamation work will be approved by the Forest Service prior to placement and use in the gabion structures.*

2. Table 2.2 – Summary of Disturbed Areas within the Paint Mine, page 2-9

- ✓ The following corrections are made to the table:

Existing Access/Spur Roads/Truck turn-around area is 1.40 acres rather than 1.37 acres.

Existing Camp/ore storage and transfer site remains at 0.25 acres.

Total Acres of Existing Disturbed Areas is 1.65 acres rather than 1.62 acres.

New Disturbed Access/Spur Roads/Truck turn-around area is 0.25 acres rather than 0.28 acres.

New Disturbed Camp/ore storage and transfer site remains at 1.25 acres.

New Test Pit/Ore Extraction Area remains at 0.075 acres.

Total Acres of Disturbed Areas From Proposed Action is 1.575 acres rather than 1.605 acres.

The above corrections do not change the “Total Acres of Disturbed Areas, which will remain at 3.225 acres.

3. Table 2.3 – Areas Closed and Rehabilitated under Alternative C – Baseline Comparison, page 2-34

- ✓ The following corrections are made to the table:

Roads and Facilities are 1.40 acres rather than 1.37 acres.

Camp/Ore Storage and Transfer Sites remains at 0.25 acres.

Total acres are 1.65 acres rather than 1.62 acres.

4. Table 2.6 – Acreage and Percentage Breakdown by Management Prescriptions for Alternative C, page 2-39

- ✓ The following corrections are made to the table:

Area ‘n’ is 1.65 acres rather than 1.62 acres.

5. Table 2.7 – Acres of Disturbance by Alternative, page 2-39

- ✓ The following corrections are made to the table:

Alternative C – Baseline Comparison (No Action) is 1.65 acres rather than 1.38 acres.

6. Table 2.8 – Summary of Consequences, page 2-40

- ✓ The existing wording is changed to read as follows:

Vegetative clearing will only occur on 0.47 acres (0.25-acre truck turn-around area and 0.22-acre ore storage/transfer site). An additional 1.03 acres would experience temporary disturbance to vegetative cover from project activities at the proposed campsite, i.e., vegetation would be disturbed but not cleared.

7. Maps 5 and 6 – Alternatives A and B, pages 2-24 and 2-33.

- ✓ The location of the Campsite and Ore Transfer Site as shown is incorrect. The correct location of these sites is as shown on Map 2 – Project Area Map, page 1-8.

Chapter 3 – Affected Environment

1. Section 3.1 – Description of Ecological Units in the area of the Proposed Test Pit/Ore Extraction Operations, including Vegetative Cover and Surface Conditions.

- a. The first two paragraphs of the Section 3.1 of the EA, page 3.2 are revised as follows:
 - ✓ *The information on Ecological Units in the proposed mine area and associated activities serves as background information and data for discussions on the resource issues mentioned in Section 1.9 of Chapter 1, specifically the issues for vegetation, sensitive areas and resources (steep slopes, soils), and water quality. The Ecological Units described are those units affected by roads, support areas and site locations.*
 - ✓ *Four (4) separate ecological units (EU) are found in the area. A map (Map 8, page 3-6) and brief descriptions and concepts of these units are included on the following pages, pages 3-2 through 3-6. More detailed descriptions of these units are on file at the Forest Supervisors Office of the Ashley National Forest. The units affected in the analysis depend on the assessment area by resource.*
- b. The description of Section 3.1.a Glacial Bottom 3 (GB3), page 3.2 of the EA is revised as follows:
 - ✓ *0.27 miles of the Forest Service access road crosses through this EU. The camp/ore storage and transfer sites are located in this EU. Although not mapped, it is an inclusion extension in to Glacial Canyon 5 (GC5).*
- c. The following resource information for Sensitive, Threatened, Endangered, and Proposed Plant Species is an addendum to Section 3.1, page 3 -2 of the EA:
 - ✓ *Survey for Threatened, Endangered, Proposed, and Sensitive Plants have been intensive in the past few decades. Many thousands of plant collections housed at the major and minor herbaria of Utah and at other institutions including New York Botanical Garden are the basis for geographic, elevational, and habitat information given in Atwood et al. (1991), Barneby (1984); Cronquist (1994); Cronquist et al (1972, 1977, 1984, 1997), Welsh et al. (2003), and (Goodrich and Neese 1986).*

- ✓ *Specific works for narrow endemic and other plants that have been listed as Threatened, Endangered, Sensitive, or considered for such status include: Farrar 2002, Farrar 2004, Fertig 1997, Fertig 2000, Franklin 1988, Franklin 1989, Franklin 1990, Franklin 1991, Franklin 1992, Heil and Melton 1995a, Heil and Melton 1995b, Heil and Melton 1995c, Welsh and Neese 1979, and Welsh and Throne 1979. Some of these papers deal with plants outside but adjacent to the Ashley National Forest. However, they are relevant in that they help verify absence of some plants from the National Forest.*

- ✓ *Threatened, Endangered, and Proposed Plants*

*Based on this information above, the only Threatened, Endangered or Proposed plant to be expected on the Ashley National Forest is *Spiranthes diluvialis*. All other Threatened Endangered, and Proposed plant species are well removed from the National Forest in distance and/or their habitat is not found on the Ashley National Forest.*

*Franklin (1992) has completed a detailed report for *Spiranthes diluvialis*. Based on several collections from the drainages of the south slope of the Uinta Mountains, *Spiranthes diluvialis* is not expected on the National Forest. Collections from the National Forest were sent to Charles J. Sheviak at New York State Museum, Albany, New York for identification. All specimens sent to him from the National Forest were identified as *S. romanzoffiana*. Recently plants of *Spiranthes diluvialis* were reported along the Green River between the Flaming Gorge Dam and the National Forest Boundary.*

Distribution of this and other T&E plant species excludes the portion of the Ashley National Forest for which this action is proposed.

- ✓ *Sensitive Plant Species*

The “Biological Evaluation for Sensitive Plant Species – Paint Mine, Duchesne/Roosevelt Ranger Districts, Ashley National Forest, 2004 Update” is on file in the Ashley National Forest Supervisor’s Office.

*A list (dated November 1995) of sensitive species was prepared by the Regional Forester. A Biological Evaluation for this action was completed in 2001. Since 2001 narrowleaf grapefern (*Botrychium lineare*) was added to the list of Federal List of Candidate Species. It is thus treated here as a Sensitive Plant.*

Distribution of these species and their habitat is provided in the literature cited above including various reports on individual species prepared by Franklin (1989, 1990, 1992) and by Fertig (1995).

Literature and surveys are consistent in defining distribution of endemic plants (these often listed as sensitive, threatened, and endangered) to be confined to specific geologic strata or other specific habitat. They are often found on barrens and semibarrens of inherently high disturbance. This is well demonstrated in the photographs and notes of habitat provided in Atwood et al. (1991). Potential habitat for these plants is therefore quite predictable. Surveys for these plants are quite effective when confined to specific geology or other features. Random surveys for these plants over wide areas are not needed to delineate distribution or habitat of these species. The narrow and predictable distribution of most of these plants is verified in a large sample set of over 4000 monitoring sites on the Ashley National Forest that includes numerous plant communities. Plants listed as sensitive are found in comparatively few of these numerous sites. Most of the sites where these plants are found were specifically selected to monitor plants listed as sensitive. In addition to monitoring sites, surveys for sensitive plants have been conducted across the National Forest. This and information provided in herbaria and publications cited above are the basis for an inventory of Sensitive plants of the Ashley National Forest.

Ecological Units including Landtype Associations and Landtypes are outlined in the Land Systems Inventory of the Ashley National Forest. Presence of Sensitive Plants has been correlated with Ecological Units at the Landtype Association and/or Landtype level (refer to table below). Distribution of sensitive plants in relation to distribution and habitat of the propose action is discussed below.

*The proposed action is to take place on the Glacial Canyon Landtype Association. Of the sensitive plants of the Ashley National Forest only petolate wormwood (*Artemisia campestris* var. *petiolata*) has been found on this landtype association. It has been found east of Moon Lake in the Lake Fork Drainage in ponderosa pine/curl-leaf mountain-mahogany communities at 8900 ft elevation on warm, southerly and westerly exposures. Although found in the same drainage and same Landtype Association, plant communities that provide habitat for this plant are lacking on the west side of the canyon in the vicinity of the proposed action. Habitat indicates the plant is not there. All known specimens of this plant have been found along a trail. Trail-side sites are indicated to be prime habitat for the plant. Thus surveys along the trails in the area are indicated to be highly relevant to finding this plant. This plant has not been found in botanical surveys along the trail leading to the mine and through shale creek leading to Brown Duck Basin. Based on available information, the plant is determined to not be present in the area of proposed action.*

*SENSITIVE SPECIES BY ECOLOGICAL UNIT
ASHLEY NATIONAL FOREST
FEB.2004*

<i>Taxon</i>	<i>Ecological Unit</i>
<i>AQUILEGIA GRAHAMII</i> *	SC5
<i>ARTEMISIA CAMPESTRIS</i> VAR. <i>PETIOLATA</i> *	GC10, GC12, NF13
<i>CYPRIPEDIUM FASCICULATUM</i>	PP4, PP5, TS1, TS2, TS4, TS7
<i>DRABA APICULATA</i>	UB2, UB3
<i>PAPAVER RADICATUM</i>	UB1, UB2
<i>PENSTEMON ACAULIS</i>	NF7, AF1
<i>BOTRYCHIUM LINEARE</i> *	190, 210
<i>ERIGERON UNTERMANNII</i> *	100, 105, (110, 115)
<i>MENTZELIA GOODRICHII</i> *	105, 115
<i>THELESERMA CAESPITOSUM</i> *	105, 135, GR100

19 of over 100 ecological units account for over 98% of sensitive plant occurrences on the Uinta Mountains Section and Tavaputs Plateau Section on the Ashley National Forest. The relationship between sensitive plants and ecological units are based on botanical work that has spanned nearly 100 years with extensive and intensive work being conducted in the last 30 years.

**Described within the past 20 years.*

Key to codes of Landtype Associations for the Uinta Mountains Section

GC = Glacial Canyon, NF = North Flank, PP = Parks Plateau, SC = Steam Canyon, TS = Trout Slope, UB = Uinta Bollie

✓ *Threatened*

Spiranthes diluvialis is known from the Red Canyon Landtype association along the Green River below the Flaming Gorge Dam. The known distribution and habitat of this plant indicates this plant is not to be expected elsewhere on the Ashley National Forest. Extensive survey along the south slope of the Uinta Mountains produced specimens of *S. romanzoffiana* from the Forest, but no specimens of *S. diluvialis*, which was found along riparian systems below the Ashley National Forest.

2. Section 3.2 Wildlife, subsections 3.2.a.3) and 3.2.a.4) – Terrestrial Wildlife – Management Indicator Species and Migratory Birds

- a. The following information is an addendum to Section 3.2, subsection 3.2.a.3) – “Management Indicator Species”, pages 3-14 and 3-15 of the EA.

✓ Sage Grouse

Sage grouse populations are allied closely with sagebrush habitats (Connelly et. al. 2000). The sage grouse is dismissed from further discussion in the EA on page 3-14 and 15, due to the lack of habitat in the project area. Mapping of sage grouse habitat indicates that there is no strutting, brood rearing, or winter habitat within or near the project area (refer to the project record for a map of sage grouse habitat).

- b. The following information is an addendum to Section 3.2, subsection 3.2.a.4) – Migratory Birds, page 3-15 of the EA.

✓ Migratory Birds (US Fish & Wildlife Service Birds of Conservation Concern)

The draft Memorandum of Understanding of December 9, 2002 between the USDA Forest Service, USDI Bureau of Land Management, and USDI Fish and Wildlife Service to promote the conservation of migratory birds, provides direction for managing migratory birds. This direction includes identifying species listed in the Fish and Wildlife Service Birds of Conservation Concern that are likely to be present in the area of the proposed action, and to utilize best available demographic, population, or habitat association data in the assessment of impacts to these species. Only one species, the Williamson’s sapsucker, on the USF&WS List of Birds of Conservation Concern is associated with those habitat types in or near the project area.

✓ Williamson’s Sapsucker

Williamson’s sapsucker is associated with montane coniferous forest, especially fir and lodgepole pine. In migration and winter they are also found in lowland forest (Nature Serve 2003). Species selection of trees for nesting varies from conifers to aspen, however trees infected with Fomes or heartrot, or trees that have cavity nests are preferred (DeGraaf et. al. 1991). Nesting occurs in mid May to mid June and young have usually fledged by the end of July (Dobbs et. al. 1997). They feed primarily on sap, cambium, and ants, but also forage on wood-boring larvae, moths, and other insects (Nature Serve 2003). The Ashley National forest is within their breeding range. They arrive in the spring and leave in the fall.

Breeding Bird Surveys (BBS) (Sauer et. al.) have been done on the ANF, and have found that the Williamson's sapsucker is present on the Ashley National Forest. Habitat for this species is present within the project area.

3. Section 3.2 Wildlife, subsection 3.2.b – Aquatic Wildlife

- a. The following “analysis area” information is an addendum to Section 3.2, subsection 3.2.b – “Aquatic Wildlife”, page 3-15 of the EA:

✓ *The analysis area used for aquatic wildlife was the immediate sub-watershed area directly below the extraction area of the project area. The area surveyed extended east/north east along the Shale Creek corridor to its confluence with Brown Duck Creek and then along Brown Duck Creek to its confluence with Moon Lake. This analysis area was selected because it is the only area within the project area that contains live water; consequently this is the area for potential impacts.*

- b. The following “trend” information for Aquatic Wildlife is an addendum to Section 3.2, subsection 3.2.b – “Aquatic Wildlife”, page 3-15 of the EA:

✓ Macroinvertebrates

Forest-wide macroinvertebrates populations have been monitored on the Ashley National Forest since the early 1980's. The forest wide trend for macroinvertebrates has been steady for the past 20 + years with an average Biotic Condition Factor (BCI) that exceeds 75 which is the minimum value to manage for on the Ashley National Forest. The genera identified in the Forest Plan, (Mayflies) Epeorus ssp, Ephemerella doddsi, Ephemerella inermis, (Stoneflies) Zapada spp., and the True fly family Chironomidae is all widespread and common on the Forest.

- c. The following affects information for Aquatic Wildlife is an addendum to Section 4.2, subsection 4.2.b – “Aquatic Wildlife”, page 4-17 of the EA:

✓ *The activities associated with the camp/transfer site (primarily cooking, cleaning, minor maintenance, etc...) would not be detrimental to aquatic wildlife for two reasons. First, the slope of the ground at the campsite is relatively flat and no ground disturbing activities would take place at this site. Secondly, the nearest live water to the camp/transfer site is the Lake Fork River downstream of Moon Lake dam/reservoir. The distance from the campsite to the river is approximately 0.7 miles. The combination of distance, slope, and nature of the campsite activities do not pose*

any threats to aquatic wildlife in the Lake Fork River below Moon Lake.

With implementations of the mitigation measures outlined in Chapter 2 of the EA, (i.e., proper storage, handling, transferring, spill plan, etc...) the use of hazardous materials, primarily oil and gas, would not present any risk of contamination to aquatic wildlife resources.

4. Section 3.7 – Roadless

The following resource information for Roadless Areas is an addendum to Section 3.7, subsection 3.7.a – “Background”, page 3-24 of the EA.

- ✓ *The 'Blue Line' is a term commonly used to describe the line containing an area on the Forest Plan map, described as an "Area remaining unroaded and with no commercial timber harvesting at the end of the first planning period." The “Blue Line” refers to a decision made by the Forest Supervisor of the Ashley National Forest immediately after publication of the draft Ashley National Forest Land and Resource Management Plan Environmental Impact Statement in 1985.*
- ✓ *The Blue Line was not addressed in the EA because the ore exploration and development proposal is located outside of this area.*

The Roadless Area Conservation Initiative Final Environmental Impact Statement identified several resources that define roadless character. For clarification purposes each of these is discussed below:

Soil, Water and Air Resources – these are described in the EA in Chapter 3 and 4 pages 3-17 to 3-22 , 4-26 to 4-30, and 4-34 to 4-36.

Sources of public drinking water – there are no sources of public drinking water in the project area.

Diversity of plant and animal communities – these are described in the EA in Chapters 3 and 4 pages 3-7 to 3-15.

Habitat for TES and species dependent of undisturbed area of land – these are described in the EA in Chapters 3 and 4 pages 3-7 to 3-15 and 4-7 to 4-16.

Primitive and semi-primitive classes of recreation – the project will not affect these classifications nor change the nature of the recreation opportunities in the area.

Reference landscapes for research study or interpretation – there are no reference landscapes within the project area.

Landscape character and integrity – the Paint Mine has been a disturbed site for several decades. This project will not alter the existing character or integrity of the landscape.

Traditional cultural properties and sacred sites – there are no traditional cultural properties or sacred sites within the project area.

There are no other locally unique characteristics.

5. Section 3.11 – Facilities including Public Access and Safety

The statement on in the last paragraph of page 3-34 of the EA is stated incorrectly, in regards to sight distance at the junction of Forest Development Road 131 and the Forest Service access road to the ore development site. This statement is corrected as follows:

- ✓ *The sight distance to the south of the junction of FDR 131 and the 6.2-mile Forest Service access road is 500 feet or greater. The sight distance to the north of the junction is limited to less than 200 feet by a stand of aspen trees along the west side of FDR 131.*

Uintah Mountain Copper Company has developed a measure public safety measure that will require a flagman at the above junction during all ore hauling periods to control traffic on FDR 131 (see page 2-21 of the EA).

Chapter 4 – Environmental Consequences

1. Section 4.1, subsection 4.1a and 4.1.b – Environmental Consequences to vegetation for Alternative A – Current Plan of Operation, Alternative B – Modified Plan of Operations, and Alternative C – Baseline Comparison, No Action

The following information is added concerning Threatened, Endangered, Proposed, and Sensitive Plant Species in the Project area:

- ✓ *The only Threatened, Endangered or Proposed plant expected on the Ashley National Forest is *Spiranthes diluvialis* (refer to above Chapter*

Three Section 3.1). Distribution of this and other T&E plant species excludes the portion of the Ashley National Forest for which this action is proposed. Based on this, no effect to these species or their habitat is determined for activities of the Alternatives A, B, or C.

- ✓ *The proposed action and alternatives would occur on the Glacial Canyon Landtype Association. Of the sensitive plants of the Ashley National Forest only petiolate wormwood (*Artemisia campestris* var. *petiolata*) has been found on this landtype association (refer to above Chapter Three Section 3.1. This plant has not been found in botanical surveys along the trail leading to the mine and through shale creek leading to Brown Duck Basin. Based on available information, the plant is determined to not be present in the area of proposed action.*

2. Section 4.2 Wildlife, subsection 4.2.b – Terrestrial Wildlife, Cumulative Effects

- a. The following three statements in the EA on page 4-14 should be deleted.

- ✓ *“Cumulative effects for all species will be considered at two levels.” The first level is the project level consisting of a sub-watershed scale and in the case for wildlife species, the Lynx Analysis Unit (LAU) will be used.” The second level of consideration will be the watershed or drainage scale.”*

- b. The following statements replaced those shown in item 2.a above:

- ✓ *“The Moon Lake Lynx Analysis Unit (LAU 9) will be used for the cumulative effects area for all wildlife species discussed in this Chapter. This LAU was selected as the cumulative effects area for consistency purposes in analyzing effects to wildlife, and because the area is large enough to capture effects that may cumulatively affect wildlife.”*

- c. The following information is an addendum to Section 4.2, subsection 4.2.a. “Terrestrial Wildlife” and is a new section under the subsection 4.2.a.4) – “Migratory Birds”. This new section follows subsection 4.2.a.3) on pages 4-11 through 4-13 of the EA.

- ✓ *Williamson’s Sapsucker – Direct and Indirect Effects*
There would be some removal of conifer species at the truck turnaround site (.25 acres) from the proposed project In Alternatives A and B that would result in some loss of Williamson’s sapsucker habitat at this .25 acre area”. This is a small amount of habitat that is disturbed when compared to the amount of habitat

that is in the surrounding area. There is adequate habitat in the area that will remain undisturbed.

There would be increased disturbance from traffic along the access road. The young of Williamson's sapsuckers have usually fledged by the end of July (Dobbs et. al. 1997). The timing mitigation in Alternative A would eliminate disturbances from the proposed project to Williamson's sapsucker habitat during the nesting period, but would allow some disturbances (site preparation) during the fledging period. However, the timing mitigation under Alternative B would eliminate disturbances to Williamson's sapsucker habitat during the nesting period and fledging period. During the hauling phase of the project (September 10th and later) individual Williamson's sapsuckers may be temporarily displaced. Alternative C would cause a temporary disturbance to the area. However, if actions under this alternative were not implemented until September, disturbance to this species during the critical period (the nesting and fledgling period) would be eliminated. Due to the small scale of the project, the abundance of habitat in adjacent areas, disturbance from the project being eliminated during the nesting and fledging periods, and the project being temporary in nature, the proposed project may impact individuals, but would not adversely affect the Williamson's sapsucker or its habitat.

- d. The following information is an addendum to Section 4.2, subsection 4.2.a. Terrestrial Wildlife and is a new section under the subsection 4.2.b.4) – Terrestrial Wildlife Cumulative Impacts, pages 4-14 through 4-17 of the EA. This new subsection is for cumulative impacts to Migratory Birds - Williamson's sapsucker.

✓ *Williamson's sapsucker - Cumulative Effects*

Cumulative impacts would include the paved road to Moon Lake, the Moon Lake resort, the Moon Lake campground, summer cabins, the dam structure at Moon Lake, the Moon Lake trailhead, two thinning projects (10 acres total), one pole timber sale (2 acres), grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. The Petty Mountain Fire of 2003 burned some Williamson's sapsucker habitat. However, the fire has also improved Williamson's sapsucker habitat by increasing the amount of trees susceptible to bug infestation. Firewood gathering may be taking some snags, but the amount of snags taken under this program is very little when compared to the overall habitat for the Williamson's sapsucker on the Forest. The amount of trees taken during the thinning projects and the pole sale is also a small amount compared to the overall habitat for the Williamson's sapsucker on the Forest. This project, taken with

these cumulative impacts, may incrementally increase disturbance to Williamson’s sapsuckers in the area and may temporarily displace individuals. Due to the small scale of the project in Alternatives A and B, the abundance of habitat in adjacent areas, disturbance from the project being eliminated during the nesting and fledging periods, and the project being temporary in nature, cumulative impacts combined with the proposed project may impact individuals, but would not adversely affect the Williamson’s sapsucker or its habitat.

The additional 1.2 acres of disturbance at the test pit and the 450 feet (.21 acre) of new road as presented in the “reasonably foreseeable actions” would not alter habitat for the Williamson’s sapsucker. Due to these additional disturbances being small in size and use on the road restricted, the effects to this species would be minimal. Likely effects would occur from disturbances of the project during the nesting and fledging season. The timing mitigation that is in Alternative B of the EA would need to be in place to avoid disturbances to the Williamson’s sapsucker during the nesting and fledging periods. These actions being done over a 10 to 30 year period would likely increase disturbance to the area, and increase the likelihood of effects from cumulative impacts.

3. Section 4.3, subsection 4.3.a – Soils Mitigation Measures and Monitoring Guidelines, page 4-21

Forest Service mitigation measures for Soils, #'s 2 and 4 on page 4-21 are revised as follows:

- ✓ *Soils Mitigation Measure #2*
Certified weed-free straw bales would be used as directed by the Forest Service to prevent deterioration of gullies and side washes that have resulted from previous activities, as well as those that may result from the project activities.
- ✓ *Soil Mitigation Measure #4*
If clearing at the truck turn-around area (beginning of UMCC’s 0.3 mile access road) is needed and required, soil would be stockpiled for later use in rehabilitation.
- ✓ *Soils Monitoring Guideline*
UMCC would be required to provide monitoring and maintenance of soil and water mitigation practices other than pit gabion for one year following completion of mining activity, and to provide the Forest Service with documentation regarding soil and water mitigation activities, including:

- *Activity /mitigation measure implemented and GPS coordinates or project area map.*
- *Date implemented*
- *Results upon completion*
- *Maintenance performed during operations*
- *Results 9-12 months after completion and maintenance performed*

4. Section 4.7 – Roadless

The following resource information for Roadless Areas is an addendum to Section 4.7, subsection 4.7.d – “Roadless Area Cumulative Impacts”, page 4-48 of the EA.

- ✓ *As mentioned for Section 3.7, subsection 3.7.a, the area behind the ‘Blue Line’, i.e., area remaining unroaded and with no commercial timber harvesting at the end of the first planning period, was not addressed in the EA because the ore exploration and development proposal is located outside of this area. However, even if the case were made that the mine's proximity to the Blue Line cast doubt about it's location relative to it, the Forest Plan restrictions linked to the Blue Line would not prohibit the type and scale of ore removal being considered under Alternatives A and B.*

5. Section 4.14 – Unavoidable Adverse Impacts

- a. The statements for “Wildlife” in the EA in this section on pages 4-59 and 60, should be replaced with the following:

- ✓ *There would be a loss of 0.075 acre (7.5/100's of an acre) of habitat for the spotted bat, peregrine falcon, and golden eagle in Alternatives A and B.*

- b. The following correction is made to Section 4.14 – Unavoidable Adverse Impacts, page 4-62 – “Recreation, Facilities, and Public Safety”, page 4-62 of the EA:

- ✓ *The reference to Alternatives B and C in the paragraph for Traffic and noise is changed to read.....Alternative A and B.*

6. Section 4.16 – Irreversible and Irretrievable Commitments of Resources

The following resource information for Wildlife is an addendum to Section 4.16, – “Irreversible and Irretrievable Commitments of Resources”, page 4-63 of the EA

- ✓ **Irreversible (commitments that can not be reversed) –**
 - short-term disturbances to foraging habitat for sensitive bird species and MIS bird species.
 - under Alternative A, short-term disturbances to potential nesting habitat for sensitive bird species, and MIS bird species.

- ✓ **Irretrievable (commitments that are lost for a period of time) –**
 - temporary alteration of linkage corridors for lynx within the Lynx Analysis Unit.
 - temporary disruption to potential habitat of sensitive bird species and MIS bird species.
 - loss of habitat (rocky outcrops) for spotted bats.

Chapter Six – Appendices

Appendix A – Literature Cited

- ✓ The following additional literature applies to the indicated Resources.

Vegetation - Biological Assessment for Threatened, Endangered and Proposed Plant Species – Paint Mine Area

Atwood, Duane; Holland, Jim; Bolander, Ron; et al. 1991. Utah threatened, endangered, and sensitive plant field guide. Ogden, UT. U.S. Department of Agriculture, Forest Service, Intermountain Region. 1 vol.

Fertig, Walter. 1995. Status report on Thelesperma caespitosum in southwestern Wyoming. Cooperative Agreement # K910-A4-0011. Laramie, WY: Wyoming Natural Diversity Data Base. 45 p.

Franklin, M. A. "Ben". 1989. Target species: Erigeron untermannii Welsh & Goodrich (Untermann daisy). Report for 1990 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 9 p. with appendices.

Franklin, M. A. "Ben". 1990. Target species: Cypripedium fasciculatum. Report for 1990 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 10 p. with appendices.

Franklin, M. A. "Ben". 1992. Target species: *Penstemon acaulis*. Report for 1992 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 11 p. with appendices A-H.

Goodrich, Sherel; Neese, Elizabeth. 1986. Uinta Basin Flora. Ogden, UT. U.S. Department of Agriculture, Forest Service, Region Four. 320 p.

Welsh, Stanley L.; Atwood, N. Duane; Goodrich, Sherel; Higgins, Larry C. 1993. A Utah flora. Provo, UT: Brigham Young University, Print Services. 986 p.

Vegetation - Biological Evaluation for Sensitive Plant Species – Paint Mine Area

Atwood, Duane; Holland, Jim; Bolander, Ron; et al. 1991. Utah threatened, endangered, and sensitive plant field guide. Ogden, UT. U.S. Department of Agriculture, Forest Service, Intermountain Region. 1 vol.

Fertig, Walter. 1995. Status report on *Thelesperma caespitosum* in southwestern Wyoming. Cooperative Agreement # K910-A4-0011. Laramie, WY: Wyoming Natural Diversity Data Base. 45 p.

Franklin, M. A. "Ben". 1989. Target species: *Erigeron untermannii* Welsh & Goodrich (Untermann daisy). Report for 1990 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 9 p. with appendices.

Franklin, M. A. "Ben". 1990. Target species: *Cypripedium fasciculatum*. Report for 1990 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 10 p. with appendices.

Franklin, M. A. "Ben". 1992. Target species: *Penstemon acaulis*. Report for 1992 Challenge Cost-share Project Ashley National Forest. Salt Lake City, UT. Utah Natural Heritage Program. 11 p. with appendices A-H.

Goodrich, Sherel; Neese, Elizabeth. 1986. Uinta Basin Flora. Ogden, UT. U.S. Department of Agriculture, Forest Service, Region Four. 320 p.

Welsh, Stanley L.; Atwood, N. Duane; Goodrich, Sherel; Higgins, Larry C. 1993. *A Utah flora*. Provo, UT: Brigham Young University, Print Services. 986 p.

Terrestrial Wildlife

Ashley National Forest unpublished data. Fauna database.

Ashley National Forest unpublished data. Paper records, on file at the Vernal Forest Service Office.

Connelly, J. W.; M. A. Schroeder; A. R. Sands; and C. E. Braun. 2000. *Guidelines for management of sage grouse populations and habitats*. Idaho Department of Fish and Game.

DeGraaf, R. M.; Scott, V. E.; Hamre, R. H.; Ernst, L. and S. H. Anderson. 1991. *Forest and rangeland birds of the United States: natural history and habitat use*. Dept. of Agriculture Handbook No. 688. Washington, D.C.: U.S. Dept. of Agriculture, Forest Service. 625pp.

Dewey S. R. 1999. *Effects of supplemental food on parental care strategies and juvenile survival in northern goshawks*. M.S. Thesis Colorado State University. 75pp.

Dobbs, R. C.; Martin, T. E.; and C. J. Conway. 1997. *Birds of North America* # 285.

Kennedy, P. L. 1997. *The northern goshawk (Accipiter gentilis atricapillus): Is there evidence of population decline?* *Journal of Raptor Research*. 31(2):95-106.

Nature Serve. 2003. *Nature Serve Explorer: An online encyclopedia of life [web application]*. Version 1.8. NatureServe, Arlington, Virginia. Available <http://www.natureserve.org/explorer>. (Accessed: March 2004).

Perkins, J. M. 2001. *Bat surveys in Dry Fork and Ashley Creek watershed, Ashley National Forest, Vernal, Utah*. Survey report prepared in September 2001, on file at the Supervisor's Office in Vernal, UT. 26pp.

Perkins, J. M. 2002. *Summer 2002 bat survey, Duchesne Ranger District*. Survey report prepared from 2002, on file at the Supervisor's Office in Vernal, UT. 29pp.

UDWR. 2003. *Utah Division of Wildlife Resources statewide management plan for mule deer*.

UDWR. 2004. Utah big game proclamation, bucks, bulls, and once in a lifetime. Utah Division of Wildlife Resources. 71pp.

USDA Forest Service, USDI Bureau of Land Management, and USDI Fish and Wildlife Service. December 9, 2002. Draft Memorandum of Understanding to promote the conservation of migratory birds. On file at the Vernal Forest Service Office.

USDA Forest Service. 2000. Ashley Forest Plan Amendment, Utah Northern Goshawk Project. USDA Forest Service, Intermountain Region, Utah Northern Goshawk Project Decision Notice Appendix CC, Ashley Forest Plan Amendment.

USDA Forest Service. 2003. Ashley National Forest northern goshawk inventory and monitoring report. On file at the Vernal Forest Service Office.

USDA Forest Service. 1986. Final Environmental Impact Statement for the Ashley National Forest Land and Resource Management plan. USDA Forest Service, Vernal Utah.

Appendix B – Threatened, Endangered and Sensitive Wildlife Species

Changes in italics and underlined

Threatened, Endangered and Sensitive Wildlife Species

Federally threatened (T), endangered (E), and proposed (P) species occurring in Duchesne County, UT (USFWS 2000), and Forest Service sensitive (S) and management indicator (MI) species occurring on the Ashley National Forest (Ashley National Forest unpub. data; USFS 1986) and their status in the Mine project area.

<u>Species</u>	<u>Status</u>	<u>Occurrence in Project Area</u>	<u>Basis for Occurrence Determination</u>
Canada lynx	T	<u>Present</u>	Project is within primary habitat in Ashley NF LAU 9.
Mexican spotted owl	T	<u>Absent</u>	Preferred habitat not present; outside normal distribution of species.
Mountain plover	PT	<u>Absent</u>	No suitable habitat
Bald Eagle	T	<u>Absent</u>	Preferred winter or summer habitat is not present.
Black-footed ferret	E	<u>Absent</u>	No suitable habitat
Great gray owl	S	<u>Present</u>	<u>Habitat exists in the project area.</u>
Northern goshawk	S, <u>MI</u>	<u>Present</u>	Part of project area is within Moon Lake PFA/territory.
Townsend’s big-eared bat	S	<u>Absent</u>	No Roosting habitat near the project area.
Peregrine falcon	S	<u>Present</u>	<u>Habitat is within the project area.</u>
Spotted bat	S	<u>Present</u>	<u>Roosting habitat (rock outcroppings) present in project area</u>
Boreal owl	S	<u>Present</u>	<u>Habitat exists in the project area.</u>
Wolverine	S	<u>Absent</u>	Remote and secluded habitat does not exist in the project area. Species may be extirpated from the state.
Common Loon	S	<u>Absent</u>	Only Ashley occurrences are on Flaming Gorge Reservoir and along Green River corridor (outside project area).
Three-toed woodpecker	S	<u>Present</u>	<u>Habitat exists in the project area.</u>
Flammulated owl	S	<u>Present</u>	<u>Habitat exists in the project area.</u>
Trumpeter Swan	S	<u>Absent</u>	Only observed on Flaming Gorge.
<u>Pygmy rabbit</u>	<u>S</u>	<u>Absent</u>	<u>No suitable habitat exists in or near the project area.</u>
Greater sage grouse	<u>S, MI</u>	<u>Absent</u>	<u>No suitable habitat exists in or near the project area.</u>
Elk and mule deer	MI	<u>Present</u>	Observed in project area.
Lincoln’s and song sparrow	MI	<u>Absent</u>	No suitable habitat exists in the project area.
Red-naped sapsucker and warbling vireo	MI	<u>Present</u>	The campsite is associated with these species habitat.
White-tailed ptarmigan	MI	<u>Absent</u>	<u>No suitable habitat exists in or near the project area.</u>
Golden Eagle	MI	<u>Present</u>	<u>Habitat is within the project area.</u>

Section II

The following offices and organizations sent comment letters to the Ashley National Forest on the “Environmental Assessment – Paint Mine Exploration and Development Proposal”, dated August 2003 (EA): (6 comment letters were received)

Table 1 – Offices and Organizations Commenting on the Paint Mine Exploration and Development Proposal Environmental Assessment

I. Local Government Offices (1 comment letter)	II. State of Utah Offices (1 comment letter)	III. Organizations (4 comment letters)
A. Uinta County Commission – Michael J. McKee, Commissioner – Public Lands	A. Utah Division of State History – James L. Dykmann, Deputy State Historic Preservation Officer - Archeology	A. High Uintas Preservation Council – Dick Carter B. People for the USA, Rocky Mountain Region – Betty Wilkinson, Secretary C. Uintah Mountain Copper Company – Peter Kandaris, President D. Utah Environmental Congress – Joel Ban

The number of comments by EA Section and/or resource is listed in the following table, along with a comment identifier that matches the offices or organizations listed above. Each comment can be located in the attached Content Analysis and Summary of Comment document by using the references listed in the tables.

Table 2 – Number of Comments by Section and/or Resource in the Paint Mine Exploration and Development Proposal Environmental Assessment

EA Section and/or Resources	Comment # in Content Analysis/Summary of Comments
General Comments (3 comments)	III.A.1; III.B.1; III.C.1
NEPA Compliance – Cumulative Effects (2 comment)	III.D.1.a & b
Purpose and Need (2 comments)	I.A.1; III.A.2;
Proposed Action (5 comments)	III.A.3; III.B.2; III.B3.a-c
Alternatives (3 comments)	III.C.3; III.D.2.a & b
Reasonable Foreseeable Actions (5 comments)	III.C.2.a-d; III.D.3
Terrestrial Wildlife (30 comments)	III.A.4; III.D.8.a-j
Aquatic Wildlife (10 comments)	III.9.a & b
Hydrology and Water Quality (18 comments)	III.C.4.a & b; III.D.7.a-p
Air Quality (1 comment)	III.D.5
Soils (7 comments)	III.D.10.a-g
Recreation (1 Comment)	III.D.4
Visual Resources (1 comment)	III.D.6
Wilderness (2 comments)	III.B.4; III.D.13
Inventoried Roadless Area (5 comments)	III.B.3.a-c; III.D12.a & b
Facilities/Public Access/Safety (2 comments)	III.C.5; III.D.3
Cultural Resources (2 comments)	II.A.1; III.D.11.a-c
Irreversible/Irretrievable Commitment of Resources (2 comments)	III.B.5.a & b
All Resources (1 comment)	III.A.5
EA Errors (6 comments)	III.C.6.a-e

The content analysis/summary of each comment within each of the 6 letters, and corresponding Forest Service responses are presented below.

Comments are listed by resource under the headings and organization/names displayed in Table 1. Forest Service responses follow the listing of comments, and are reference back to the corresponding comments.

Each comment in the Content Analysis and Summary of Comment is followed by a Forest Service response (*in italics*). Forest Service responses are shown as: a) general response(s) that did not require a change(s) in the analysis and evaluation included in the EA; or b) response(s) that resulted in a change(s) to the analysis and evaluation in the EA, with such change(s) identified by EA Chapter, Section and Page. These changes are shown as for deleted text in the EA, and/or underline for new or modified text in the EA.

I. Local Government Offices - (1 comment letter)

**A. Uintah County Commission – Michael J. McKee,
Commissioner – Public Lands**

1. Purpose and Need and Proposed Action

The proposed exploration mining activities are consistent with the Uintah County Plan, is small in scale, and the cumulative impacts would be minimal and of short duration. Development of a small hematite mine would help to diversify the local economy.

Forest Service Response –

Comment is acknowledged. No response needed.

II. State of Utah Office - (1 comment letter)

**A. Division of State History – James L. Dykmann, Deputy
State Historic Preservation Officer - Archeology**

1. Cultural Resources

USHPO provides no additional comments to the concurrence with determination of No Historic Properties Affected made in 2000.

Forest Service Response –

Comment is acknowledged. No response needed.

III. Organizations - (4 comment letters with several comments within each letter)

A. High Uintas Preservation Council – Dick Carter

1. General Comment

The maps in the EA were less valuable and readable than the clear and concise maps of the first EA.

Forest Service Response –

Comment is acknowledged. Hard copies of the maps will be provided upon request.

2. Purpose and Need for the Action

Why was an EA done on this test proposal when numerous and extensive exploration activities (including open pit mining) have been undertaken without an EA?

Forest Service Response –

A 20 to 25 foot wide by 20-foot long and 7-foot deep test pit was developed between 1996 and 1998, with 170 tons of sample ore removed for preliminary testing. Prior to this work, activities at the Paint Mine included exploration drilling and core samples. This test pit and the exploration drilling and core samples mentioned above were done as Categorical Exclusions without case file and decision memo (FSH 1909.15, Subsection 31.1.b).

In regards to Uintah Mountain Copper Company's most recent Plan of Operations, the Forest Service determined that the proposed activities including in UMCC's plan required analysis and evaluation in an environmental assessment, according to NEPA regulations and agency policy.

3. Proposed Action

The proposal is not a test proposal but a production and test marketing proposal. Neither is appropriate and is supposed to come with the final production proposal.

Forest Service Response –

As described in the Chapter 1, Section 1.0 and 1.1 of the EA, the intent of the UMCC's past discovery and exploration work on their claims, and the proposed development work the Paint Mine is to determine the extent, quantity, and quality of hematite (iron oxide) ore and its marketability in the specialty natural pigments market."

The proposed test pit and hematite (iron oxide) ore removal is an extension of previous exploration and development phases, and are considered necessary to ‘(a) verify depth and location of geologic strata and faulting identified during the previous drilling programs, (b) assess the accuracy of drill hole data interpolations for calculating hematite ore deposits/reserve, (c) determine the probable depth of overburden for possible future mining, and (d) provide for small scale reclamation projects to measure and document the viability of proposed reclamation methods and to extrapolate results to large operations’. (UMCC Engineering Analysis Report, Exploratory Test Pit Excavation & Reclamation Development Program, page 2, September 26, 1997)

The Proposed Action is part of UMCC’s program to evaluate the full mining potential of the project. The evaluation of the activities and the ore removed will include a minerals evaluation; demonstrations that minerals can be mined, removed, and marketed at a profit; and methods needed to achieve successful environmental reclamation.

4. Terrestrial Wildlife

There are no impacts specific to wildlife from truck hauling (120 to 140 round trips over a 3 to 4 week period). This number of truck trips may have major impacts to wildlife behavior that transcends the specific period of time of truck hauling.

Forest Service Response –

It has been acknowledged in the EA that hauling of ore along the access road may have effects to wildlife. Alternative B contains a mitigation that will delay implementation of the project until August and delay hauling of ore along the road until September 10th. Modified or new text would be as follows:

With the exception of elk, the delay of ore hauling along the access road will ensure disturbances to those wildlife species described in the EA, including the goshawk post fledging area (PFA), will occur outside the breeding and nesting/birthing periods. The hauling would occur during the rutting period for elk. Any elk in the area may be temporarily displaced during this period. However, this is not anticipated to adversely affect elk, as there is ample space and habitat available to them throughout the drainage and away from the disturbance. Furthermore, more suitable elk breeding habitat exists further north in the drainage (Wilderness Area) and on the gentler slopes in the next drainage to the west.

The access road is closed to the general public, but is used sporadically through the season by UMCC, Moon Lake Electric,

permittees (grazing allotments), and for Forest Service administrative uses. Use of the road by UMCC during August and prior to the hauling period, is not anticipated to increase traffic along the road more than would normally occur. Effects from use of the road during this period would be negligible.

5. All Resources

Describe the differences between the EA dated September 2001 and associated DN/FONSI dated April 2002, and the EA dated August 2003.

Forest Service Responses –

a. For the Proposed Action and Alternatives –

1) The items that remained the same in the August 2003 EA (Chapter 2 - Proposed Action and Alternatives) and the same Chapter 2 sections in the September 2001 EA are as follows:

a) Road Access, Excavation-Extraction-Removal of Ore, Camp/Ore Storage and Transfer Sites, Long-haul of Ore to Pilot Plant, Equipment and Truck Hauling, Test Pit/Ore Extraction Area, and UMCC's Spur Roads and Access Roads.

b) The Test Pit configuration (Staged Excavation and Gabion Installation).

Note:

The August 2003 EA did include another test pit illustration from the most recent Plan of Operations from Uintah Mountain Copper Company (UMCC), i.e., the illustration from p. B-6 of the latest Plan of Operation, showing "Geogrids, filter fabric, drainage rock layer, rock net, etc. These features had been agreed to as part of the EA, dated September 2001, but were inadvertently excluded as an illustration.

2) The items that are different between the August 2003 (Chapter 2 - Proposed Action and Alternatives) and the same sections in the September 2001 EA are as follows:

a) A "Reasonable Foreseeable Actions" Section 1.5 was included in the August 2003 EA.

This section attempts to predict the magnitude and nature of related future activities that might occur at the Paint Mine site. To deal with the inherent uncertainty, both a minimum (least disturbance) and maximum (most disturbance) scenario are presented. Although

speculative, we feel these scenarios represent reasonable minimum and maximum limits to future mining disturbances at the Paint Mine site.

Forest resource specialists evaluated and analyzed the cumulative impacts to resources from the acres of ore exploration and development included in the reasonable foreseeable action section.

b) New protection measures were added to the August 2003 EA's Proposed Action under UMCC's Proposed Environmental Protection Measures – section 2.1.a.1, pages 2-19 through 2-23), based on their most recent Plan of Operations. (These were inadvertently excluded from the same section in the September 2001 EA.)

(1) The following actions will be applied as part of test pit reclamation:

- o Excelsior blankets or wood fiber slurry will be applied to exposed cut slopes above the test pit and to the lower terrace of the test pit to reduce sediment to acceptable levels.*
- o Geogrids will be constructed in each gabion with the first layer having a filter fabric. A drainage rock layer will underlie each gabion structure. (See Figure)*
- o Heavy earthmoving equipment will not be placed within 10 feet of the edge of the lower gabion wall once fill has been placed to the final elevation. Lighter equipment will be used for final lift compaction.*
- o Gabion structures will meet the specifications of the gabion basket manufacture, including type and size of rock used in filling the basket and the addition of fines at the top of the basket to encourage vegetative growth.*

(2) The following actions will be applied as part of road maintenance, and water quality and soil erosion protection along access roads and at the test pit area:

- o Drainage water from storm runoff on the access road will be controlled with mud bars, road edge bar*

ditches, surface vegetation and natural cobble plating (see Figure 5A, page 2-17 of the EA). These have been effective in providing a non-erosive surface.

- *UMCC will employ the use of temporary silt fences, hay bales and terracing to capture sediments within roadway flows.*
 - *Water bars will be constructed as directed by the USFS to remove water to the outer edge of the road and prevent collection of storm waters at erosive sections. Low points and outflows that collect water will be protected with rip-rap rock to prevent erosion. At these locations, water will be allowed to cross through the rock drainage blanket, flowing under road beds. Filter fabric will cover the rock drain and a road bed will be reconstructed above.*
- c) *As mentioned above, the August 2003 EA includes another test pit illustration from UMCC's most recent Plan of Operations, i.e., the illustration from page B-6 of the Plan of Operations, showing "Geogrids, filter fabric, drainage rock layer, rock net, etc. (See page 2-14 of the August 2003 EA.)*
- d) *The design of the test pit was changed, which provided a better slope stability safety factor for test pit reclamation work. The improved safety factor changed from 1.5 in section 2.2.a.1 of the September 2001 EA to 2.19 in section 2.2.a.1 of the August 2003 EA (see page 2-23 of the August 2003 EA).*
- e) *Measures listed under "All Project Sites" in Section 2.2.b.1) (Chapter 2) of the September 2001 EA were placed in corresponding resource headings, i.e., Vegetation; Soils, Hydrology, and Water, Quality; etc. of section 2.2.b.1) (Chapter 2) of the August 2003 EA. (This was done to improve the format of this part of the EA.)*
- f) *Changes were made to the Forest Service Mitigation Measures under the Modified Plan of Operations (Alternative B) in the August 2003 EA – Section 2.2.b.1, pages 2-25 through 2-32 – Chapter 2. (These changes reflect additional evaluation and analysis by Ashley National Forest resource specialist of UMCC's current Plan of Operations.)*

(1) *The following mitigation measure was added under a title called “Schedule of Proposed Work”.*

- *Road access and site mobilization/preparation would be allowed between late June and mid-July when road and site use do not result in unacceptable damage due to saturated surface conditions. Test pit work would not begin until August 1, 2004. From this date until September 10, the workweek would begin Monday afternoon and end Friday morning with 10-hour days Tuesday through Thursday. Thereafter, the workweek could be switched to a standard 8-hour, 5-day schedule. Major hauling and reclamation would begin after this same September date.*

In addition, the restriction of no project work on legal holidays will remain in effect during all time frames (from June 1st through October 30). The restriction of ore hauling during daylight hours only remains in effect for all time frames.

(2) *The following mitigation measures were added to Soils, Hydrology, and Water Quality mitigation measures listed in section 2.2.b.1), pages 2-27 through 2-30 – Chapter 2 of the August 2003 EA:*

- *Topsoil replacement would not be done on the 0.25 acres of spur roads and test pit area within Sunshine Quartz Mine No. 4, due to the extremely rocky nature of the overburden that would be replaced after ore extraction. Analysis and evaluations indicate that topsoil would not properly compact or subside on the rocky surface of the replaced overburden.*
- *Topsoil replacement would not be done on the 0.3 miles of the existing access road within Sunshine Quartz Mine No. 4, again due to the lack of adequate topsoil and the rocky nature of the soil profile. This access road would be closed after completion of all rehabilitation work. Road surfaces would be scarified, and drainage structures would be installed as indicated in the Section 2.2 Descriptions of the Alternatives, Figures 5, 5A, and 6, pages 2-16 through 2-18.*

- (3) *The measure in Section 2.2.b.1) of the September 2001 EA under Soils, Hydrology, and Water Quality requiring offsite sources of gabion rock was removed and not included in the August 2003 EA. (UMCC has test results that indicate that the rock on site will not break down during the design life of the gabion structures.)*
- g) *The mitigation measure on monitoring under the Soils, Hydrology, and Water Quality of Section 2.2.b.1) in the September 2001 EA was revised in the August 2003 EA as follow: (This revision was done to better define time frames durations and locations of monitoring and maintenance.)*
- *Monitoring and maintenance of the pit gabion by UMCC would be the same as for the roadcut gabion addressed in Alternative C – No Action (annual monitoring and maintenance would occur for a minimum of 5 years and longer if needed. Maintenance would also be performed if advised by the Forest Service of structural or resource damage. An annual report would be filed with the Forest Service by December 31 of each calendar year.*
 - *The Forest Service would establish monitoring below the ore extraction site, consisting of water quality and stream channel condition monitoring of Slate Creek and hillside stability monitoring of slopes below the ore extraction site.*

b. For Terrestrial Wildlife –

The 2001 EA for this project did not include analyses for the three-toed woodpecker, great gray owl, boreal owl, flammulated owl, red-naped sapsucker or warbling vireo. The mitigation measure for the northern goshawk was unclear. There was no analysis for reasonably foreseeable actions on terrestrial wildlife.

The 2003 EA includes analyses for the three-toed woodpecker, great gray owl, boreal owl, flammulated owl, red-naped sapsucker and warbling vireo. It includes a clear mitigation measure for the northern goshawk to protect the PFA from increased disturbances. This EA also includes an analysis for reasonably foreseeable actions on terrestrial wildlife.

c. For Aquatic Resources –

All fisheries information in the EA dated August 2003 is new and additional information from that found in the EA dated September 2001.

A Biological Assessment/Evaluation was prepared for fisheries resources associated with the project area. (This BE/BA was not completed for the September 2001 EA.)

d. For Hydrology and Air Quality –

Hydrology points were clarified and include the following:

Chapter 2 comparison table: *more clearly identifies the differences between alternatives. (pages 2-41 through 2-43)*

Chapter 3 Existing Condition: *Campsite area, ore storage/transfer site, roads, test pit/ore extraction site, water quality (pages 3-4 through 3-22)*

Chapter 4 effects: *cumulative effects (including road discussion in “reasonably foreseeable” and sediment, mitigation and monitoring, Colorado River effects. (pages 4-23 through 4-35)*

References: May 14,2003 drafts of Hydrology Chapters 3 and 4, in project record. Changes made in red illustrate what remained the same and what was changed. Reason for changes was to improve the document with better information or explanation.

B. People for the USA, Rock Mountain Region – Betty Wilkinson, Secretary

1. General Comment

The FS should authorize and approve the Proposed Action (Alternative A) by Uintah Mountain Copper Company as included in UMCC’s Plan of Operations.

Forest Service Response –

The Forest Service followed NEPA requirements in the analysis and evaluation of Uintah Mountain Copper Company’s Proposed Action and environmental protection measures. The Forest Service determined that additional mitigation measures were necessary. Alternative B included UMCC’s Proposed Action and, either accepts their environmental protection measures, or modifies them to achieve acceptable resource protection. Additional mitigation measures were also added when UMCC’s environmental protection measures were inadequate or incomplete.

2. Proposed Action

UMCC should be allowed continued use of the camp facility, since the proposed action is, “an extension of and substitute for additional drilling exploration, and is not a prelude to mining”. Concerns over continued use of the camp facility could be addressed in future EA’s for actions addressed in the “reasonable foreseeable actions”.

Forest Service Response –

Uintah Mountain Copper Company would be allowed to use the campsite as part of Alternative B - Modified Proposed Action, as analyzed and evaluated in the Environmental Assessment. Upon completion of the approved actions, as addressed in the Environmental Assessment, UMCC would be required to close out the project area, including reclamation and closure of the campsite.

If UMCC decides to pursue future actions as addressed in the Reasonable Foreseeable Action Section of the Environmental Assessment, continued use of the camp would be analyzed as part of their new proposed action.

3. Proposed Action and Inventoried Roadless Area

- a. Claims filing began as early as 1936, some 30 year prior to RARE I and more than 40 years previous to RARE II as pertains to the Utah Wilderness Act of 1984 section 201. Therefore, even though the camp facility is located 50 to 300 feet within the Official Inventoried Roadless Area, use of the facility should be allowed,

Forest Service Response –

The Forest Service is directed by the current Administration and Congress to analyze and evaluate all impacts to resources, based on current laws, regulations, and policies, notwithstanding the non-existence of such laws, regulations, and regulations in past years. Inventoried Roadless policies within the Forest Service are reflective of current Administrative Directives and Congressional Oversight, and therefore, must be part of the NEPA process.

As noted in Chapter Four of the EA for the two action alternatives, the roadless area attributes would be affected during the operation period, then return to their existing ratings after completion of the project. With implementation of Alternative B, Modified Plan of Operations, all above ground facilities at the camp and transfer site would be removed and all roadless attributes, including “Manageability and Maintenance of the Roadless Boundary” would return to existing ratings and conditions.

- b. The responsible official should be aware of the State of Wyoming vs. United States Department of Agriculture, et al., wherein Federal Judge Clarence A. Brimmer, on July 14, 2003, permanently enjoined the Roadless Rule.

Forest Service Response –

The Forest Service is aware of the current status of the Roadless Area Conservation Rule (RACR). The court’s decision does not preclude the Forest Service’s obligation to disclose the effects of management activities on roadless characteristics.

- c. People for USA, Rocky Mountain Region agrees that the responsible official should correct any roadless area mapping discrepancies “in the near future”, based on the intent of the Forest to provide long-term use of the access road, as well as the historic exploration activities by private interests.

Forest Service Response –

The Ashley National Forest does not anticipate opportunities in the near future to make corrections to our roadless inventory for purposes of the Roadless Area Conservation Rule. We do however, plan to make adjustments to our roadless inventory using established protocol, as we revise our land management plan.

4. Wilderness

Pursuant to Public Law 98-428 of September 28, 1984, the Utah Wilderness Act of 1984 – PROHIBITION ON BUFFER ZONES – Sec. 303, “Congress does not intend that designation of wilderness areas in the State of Utah lead to the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.” Rocky Mountain Region People for the USA (RMRPFUSA) consider this a “substantive” comment under 36 C.F.R. § 215.6(a)(3), in the context of Council of Environmental Quality Guidelines – Title 40 CFR 1500-08.

Forest Service Response –

The EA makes no mention of a wilderness buffer zone. The EA contains an analysis of the affects on the adjacent wilderness and develops mitigation measures to lessen the impacts to wilderness opportunities.

5. Irreversible and Irretrievable Commitments of Resources

- a. The listed commitments published on page 4-63 of the EA are only pertinent to the physical and biological conditions of the “human”

environment. [40 C.F.R.1508.14] The responsible official should also consider the potential loss of economy if UMCC’s proposed action is not approved, if mitigation is too restrictive, or if future mining is not approved. This is relative to 40 C.F.R. 1502.16, and 1502.10 as well as NEPA Section 102 (2)(c)(v), but also congruent with 1508.8 and 1508.14.

Forest Service Response –

A socioeconomic analysis was not performed, since Uintah Mountain Copper Company’s proposed action is not a full mining proposal. Rather, UMCC proposal is...” to determine the extent, quantity, and quality of hematite (iron oxide) ore and its marketability in the specialty natural pigments market”. The socioeconomic environment and effects from the proposed action are limited in scale to a season of work and a small work crew. If and when UMCC proposes a mining operation, their proposed action will be analyzed and a socioeconomic analysis will be considered.

- b. Irretrievable commitments of natural resources also mean loss of production or use of resources as a result of a decision, and represent opportunities foregone for the period of time that a resource cannot be used.

Forest Service Response –

The comment on...”loss of production or use of resources as a result of a decision”...and “opportunities foregone for the period of time that a resource cannot be used”...is acknowledged, and will be considered by the decision maker in the decision document for this EA.

**C. Uintah Mountain Copper Company – Peter Kandarlis,
President**

1. General Comment - Proposed Action

UMCC supports Alternative B, with stipulations shown in the subsequent comments.

Forest Service Response –

Uintah Mountain Copper Company’s comment is acknowledged. The company’s stipulations are addressed in the following responses.

2. Reasonable Foreseeable Actions

- a. Section 1.5 of the EA is highly speculative. It is worded to assume mining is the probable result of a completed test program. This is

misleading and inconsistent with documentation previously provided by UMCC to the FS, and invites appeals of the EA by those who contend that the test work is actually mining or will lead to mining.

Forest Service Response –

Section 1.5 (Reasonably Foreseeable Actions) is speculative, in that it tries to predict what future mineral exploration or mining might occur at the Paint Mine site. To deal with the inherent uncertainty, both minimum and maximum disturbance scenarios are presented. The maximum (most disturbance) scenario is an attempt at predicting the maximum disturbance that could reasonably occur at the site, based on existing information. This section is not intended to predict actual future mining at the site, but simply outlines a minimum and maximum limit to what future mining proposals for the site might look like.

Completion of the proposed test mining does not assume or guarantee that larger scale mining will ever commence at the Paint Mine site. The purpose of the test mining, as we see it, is to determine if the mineral deposits at the Paint Mine site can be economically mined, processed, and marketed. While additional mining is not guaranteed, however, such test mining (or bulk testing) is typically done as a first step to larger scale mining. Collection and processing of such large samples is rarely done, except for those deposits with reasonable potential for economic development and large-scale mining.

While we cannot predict the outcome of the proposed test mining, its purpose is clearly to determine the feasibility and economics of larger scale mining at the site.

- b. The proposed action (excavation of a test pit) is not mining, and should not be labeled or implied as such in the EA. UMCC has stated many times in previous correspondence with the FS that the proposed test pit is an extension of previous exploration phases and is not necessarily a prelude to mining. Implying that the proposed action is mining will invite appeal of the project. The test pit project is self-contained and does not foreclose future options for any forest use and does not commit the company to any future action. The decision tree provided by UMCC in earlier correspondence demonstrates that, until completion of the test pit work, nothing by speculative future concepts should not be developed or analyzed.

Forest Service Response –

The fundamental nature of the proposed activities is not changed by what people choose to call them. The proposed activities include using heavy equipment to extract approximately 1,500 tons of hematite-rich rock, from a previously defined deposit, and then hauling the extracted rock to a plant near Price for processing and test marketing. As defined and described above, the proposed test pit work is in fact mining.

Certainly the proposed test mining does not commit UMCC to any additional mining activities at the site. However, there is no point collecting and processing such large rock samples if UMCC did not have reasonable hope for economic recovery or additional mining at the site.

Appeals to this project, if any, would likely deal with the nature of the proposed activities, or our analysis of potential effects to the environment, and not simply how we choose to label the activities.

- c. Future cumulative impacts should not be speculative, but should be based on known long-range plans, regulations, or operating agreements. UMCC has no known long-range plans for future of its claims, only a wide range of possible options based upon the outcome of the development phase.

Forest Service Response –

Although UMCC claims to have no long-range plans, they do admit having a wide range of options. Although section 1.5 (Reasonably Foreseeable Actions) is speculative, it is also necessary for a full and proper analysis. In the absence of such information being provided to the Forest Service by UMCC, this section represents our attempt to place reasonable limits to the various future options available to UMCC at the Paint Mine site. We feel that the scenarios presented in Section 1.5 represent reasonable minimum and maximum limits, and that they span the range of reasonable and logical future options for UMCC at the Paint Mine site.

- d. The EA should be modified to note the speculative nature of future actions that could follow the development phase. UMCC recommends the following changes to Section 1.5 of the EA:
 - 1) Include an accurate project purpose summary as described in UMCC's response letter to Joe Bistriski, dated 9/4/02 and UMCC's letter to Utah Environmental Congress on UMCC's "decision tree" for evaluation process upon completion of the test pit work.

- 2) Include possible size of area disturbance for any single year in the second bullet statement on page 1-13, i.e., maximum possible annual area of disturbance would range from 0.13 to 0.25 acres.
- 3) Delete all reference to “mining” or “continued mining” in the EA, particularly in Section 1.5.

Forest Service Response –

Section 1.5 of the EA (Reasonably Foreseeable Actions) is speculative, in attempting to predict actions that have not yet been proposed, and might never be. To deal with the inherent uncertainty, both a minimum (least disturbance) and maximum (most disturbance) scenario are presented, with text explaining the conditions that might lead to one or the other being most likely. Although speculative, we feel that these scenarios accurately span the range of reasonable and logical future options for UMCC at the Paint Mine site.

Item 1) The EA already accurately summarizes the project purpose in several places, including paragraph 3 of section 1.0 (Introduction, page 1-1), and paragraph 3 of Section 1.1 (Purpose and Need for the Action, page 1-3).

Item 2) The details of future mining proposals, if any are submitted, as well as site conditions at the time, and the success of the currently proposed actions, may dictate either smaller or larger annual impacts than those suggested above. Due to the already speculative nature of Section 1.5, we don't feel that the “maximum possible” annual disturbance acreages can be reliably predicted at this time.

Item 3) As noted elsewhere (response to Item III C 2 b), we consider the proposed activities to consist of small-scale mining. Choosing a different label for these activities (such as mine development, continued exploration, bulk sampling, test mining, or developmental or exploratory mining) does not change the fundamental nature of the activities being proposed. References to mining and continued mining have been retained in the EA, because these terms accurately represent the activities in question.

3. Camp Site Area Mitigation

The FS allowed another operator to use the proposed camp site area, including connection to on-site electric and telephone systems without benefit of an environmental analysis, and this operator does not have the same standards or requirements for use of the area as will UMCC

under mitigation measures in the EA (see Section 2.2.b.1 – Vegetation and Section 2.2.b.1 – Camp Site Area). In addition, the operator was authorized to use the area prior to August 1st, in contradiction to wildlife restrictions in the EA. Because of this situation, the FS should modify the EA as follow:

- ✓ Remove requirements that UMCC notify Moon Lake Electric for termination of power services upon completion of test pit work.
- ✓ UMCC will only be responsible for mitigation of areas solely used by the company.
- ✓ Mitigation of areas jointly utilized with others under authority of the FS will be the responsibility of the FS and other parties who used the area.

Forest Service Responses –

The Forest Service authorized Flying J Outfitters to use the area around the campsite and allowed the use of the existing electrical facilities. Flying J Outfitters is a legally authorized permit holder on the Ashley National Forest and has a permit to operate outfitter and guiding services. The campsite is not and never has been an exclusive use area for UMCC. Flying J Outfitters is administered under the terms and conditions of their special use permit.

UMCC will be required to notify Moon Lake Electric, to terminate power services to the site, whenever their activities at the site no longer require electrical power. Enforcement of this requirement, however, will occur only when the Forest Service determines that electrical power is not needed for other authorized uses of the National Forest.

UMCC will be held responsible for all required mitigation where UMCC's activities take place. This will include areas used solely by UMCC and an area where other legitimate uses of the National Forest is occurring, but where UMCC's activities results in the need for mitigation. National Forest lands are available for many legitimate uses and the fact that others are using the Ashley National Forest does not relieve UMCC of their mitigation responsibilities.

The Forest Service will assume no liability or responsibility to mitigate activities of UMCC under this proposal. Activities conducted under this proposal by UMCC will require mitigation by UMCC as appropriate and commensurate with their activities. If another joint user of the area performs activities that require some form of mitigation, they will be required to correct the situation under the terms of their permit. The Forest Service will not be liable, nor will we assume responsibility, for

mitigation actions that may be needed by any authorized user of the National Forest.

4. Hydrology and Water Quality

- a. UMCC cannot agree with the unlimited monitoring and maintenance of the pit gabion with a minimum of 5 years and no time limit for completion of mitigation. Unlimited time for monitoring and indefinite remediation of the test pit area prevents UMCC from final business decisions on its claims, as well as making it difficult to impossible to bond such work. UMCC proposes that the EA be modified to use the original wording from the previous EA, where monitoring would be done for a 5 year period, unless the UMCC work continues beyond 5 years, in which case, monitoring would continue for another 5 years, or upon closure of the project, whichever occurs first.

Forest Service Response –

Monitoring needs have been discussed among interdisciplinary team members and Regional Office staff. The wording in the previous EA was an unfortunate error that did not address documented identification of a need for long-term monitoring. The current wording incorporates the need for long-term monitoring as described in the EA on page 4-25 while striving to minimize the impacts to UMCC by not requiring monitoring beyond a period adequate to assess the success. Climate and weather factors cannot be predicted, the existing gabion is not the same design or size as the proposed pit mitigation, the terrain is steep and of low productivity, and the gabion's success may be dependent on precipitation. No comparable mine mitigation in similar Uinta mountain terrain is available to extrapolate success. Monitoring of the gabion is to ensure long-term resource protection even after mining operations are complete. The recommended monitoring includes consideration that UMCC revised the gabion design to better meet Forest Service concerns.

References: Chap 4 drafts – 6/24, 25 & 26/01, 12 years; draft mitigation measures 1/26 & 4/2/01, 8-10 years; IDT notes/Helzner 4-25-03 re: monitoring for effectiveness, not just implementation; notes from R.Helzner meeting with Sherry Hazelhurst/Asst. Regional Hydrologist on 4-11-03.

- b. In regards to bonding, what is the definition of “structural damage” and “resource damage”? The FS and UMCC must agree on the criteria for gabion maintenance to allow for appropriate bonding, and this stipulation should be in the EA.

Forest Service Response –

Reclamation bonding will be required for this project, before it is authorized to proceed. Such bonding will reflect both the reclamation and mitigation activities proposed by UMCC, and the additional required activities as outlined by this analysis. However, the precise details of the bonding (bond amounts, monitoring periods, and release criteria and definitions) are still being worked out, and are beyond the scope of this analysis. Specific details for project bonding will be outlined in one or more additional documents, and reviewed with UMCC, independently of this analysis.

5. Facilities, including Public Access and Safety

Under previous agreements with the FS, UMCC will not maintain FS roads when company work does not require access to the site, and UMCC is only responsible for the upper 2000 feet of road to the site.

Forest Service Response –

Comment is acknowledged. The EA addresses UMCC's protective measures for Road Maintenance and the Forest Service acceptance of those measures (see Chapter 2, page 2-20).

6. EA Errors

- a. Figures 3 and 4 are not compatible.

Delete the pit cross section and plan view in Figure 4. Leave only the gabion detail/cross section and re-title as "Gabion Wall Section".

Forest Service Response –

This correction will be made in the decision document to this project, as well as on future figures of the gabion detailed/cross section.

- b. Acres shown on Table 2.7 for Alternative C should be 1.62, not 1.38.

Forest Service Response –

The correction is noted and will be made in the decision document to the EA.

- c. Third paragraph, 9th line on page 4-27 should be "450 feet of", not "450 of".

Forest Service Response –

The correction is noted and will be made in the decision document for the EA.

- d. There will be 1534 tons of ore removed, not 1600 tons as shown in various places in the EA.

Forest Service Response –

The comment is acknowledged. The figure of 1534 tons is correct and will be use in the decision document for the EA.

- e. Test pit disturbance acreage is 0.075, not 0.05 or 0.5 as shown in various places in the EA.

Forest Service Response –

The comment is acknowledged. The figure of 0.075 acres is correct and will be use in the decision document for the EA.

D. Utah Environmental Congress – Joel Ban

1. NEPA – Cumulative Effects

- a. It appears that the FS has broken down the project in to parts, i.e., test pit and possible future mining, and plans on evaluating and analyzing each part in separate NEPA documents, with the purpose of declaring the test pit project “insignificant”. “The definition of significance is unique as applied to NEPA because an individual action may seemingly be insignificant, but NEPA does not allow a project to be broken down into smaller projects so that it is insignificant. This is because these smaller projects may cumulatively amount to a significant environmental impact. (CFR 1508.27(7).”

...Nevertheless...”at this stage the proposal calls for extraction activities which will present significant environmental impacts as defined in the NEPA regulations.”

Forest Service Response –

The proposed action being evaluated was formulated and submitted to the Forest Service by the Uintah Mountain Copper Company. It was not “broken down into parts” by the Forest Service.

The potential for future mining activities at the Paint Mine is dependant on the results of the test mining being proposed. If additional mining activities were proposed for the site, approval of such activities would include NEPA documentation that considers cumulative impacts from prior activities (including the currently proposed test mining).

The proposal is only the test pit and associated activities. The document as revised addresses possible future activity as a “reasonably foreseeable” action in cumulative effects, which addresses the concern of the commenter that the proposal not be considered in a piecemeal fashion (pp. 1-11 through 1-13) and cumulative effects analysis on pages 4-26, 4-27, 4-29, and 4-34. The 10-30 year timeframe referred to by the commenter is included in the description of reasonably foreseeable actions (p. 1-13) and thus is considered in the cumulative effects write-ups. The Forest Service has not determined “significant environmental impacts” as stated in the UEC quote provided in the comment.

*The rationale for the “reasonably foreseeable” scenario has been carefully documented (and the assumptions clearly stated (see pages 1-11 through 1-12 for rationale/assumptions and pages 1-12 through 1-13 for the scenario). UMCC would not offer a more specific description, stating “no known long-range plans for the future of its claims, only a wide range of possible options based upon the outcome of its development work” which suggests that at least one option would be other than “no action”. The Plan of Operations submitted by UMCC (8/2001 & 10/2000) included “small-scale ore removal and reclamation projects for evaluating and documenting economics and restoration techniques of **a larger project.**” (item C) AND “Small-scale test pits provide a wealth of economic and environmental reclamation data for evaluating the **future mining potential** of the project.” (Supplemental Discussion – Project Description). Also, UMCC wrote the Ashley NF (9-30-99) that their data “provides a reasonable standard for minerals valuation during exploration **and development** activities of our project. We believe that the level of information provided exceeds the Government threshold of the “prudent man rule,” in that, when minerals have been found, a person of ordinary prudence would be justified in further expenditures of his labor and means **with a reasonable prospect of success in developing a valuable mine**, and the “marketability test,” requiring a claimant to show **a reasonable prospect that minerals can be mined, removed and marketed at a profit.**” UMCC has requested that the details of their report be kept confidential, so that data is not reproduced here. UMCC letter 5/21/96 to Ashley NF asserts that the small-scale project is “environmentally independent of future mining and development activities because of proposed continuous reclamation.” The Ashley NF has handled the test pit proposal in this manner, in that direct and indirect effects are limited in scope to the test pit proposal. However, legal mandates to include cumulative effects as “reasonably foreseeable” activities requires that this be analyzed, so the approach used is valid.*

In regards to the comment on significance: Extraction activities alone are not listed as significant impacts in NEPA or in the CEQ – Regulations for Implementing NEPA. Rather, significance is determined by the degree and type of impacts to the human environment, including natural and physical resources, i.e., quantity and quality of changes from existing conditions (40 CFR 1508.27). The EA addresses impacts to the human environment, and discloses the potential or lack thereof of adverse impacts that can or cannot be adequately mitigated. A determination of significance will be made in the decision document for the EA.

- b. “The current EA is said to influence future mining development, so cumulative effects must be analyzed. We have said the that an EA may be deficient if it fails to include a cumulative impact analysis or to tier to an EIS that has conducted such and analysis.” “Notably missing from much of the cumulative effects analysis is the possibility of construction of 450 feet of new road to access all of the ore described on page 1-13 of the EA.” “Also, the effects of a mining project that could last potentially 10 to 30 years were not discussed in the cumulative effects analysis.” The cumulative analysis must include both direct and indirect effects as well as past and future impacts to the project area.

Forest Service Response –

The potential for future mining activities at the Paint Mine is dependant on the results of the test mining currently being proposed and evaluated. To deal with the uncertainty of future mining activities at the Paint Mine site, section 1.5 (Reasonably Foreseeable Actions) was prepared by our geologist. This section is not intended to predict actual future mining at the site, but simply outlines a minimum and maximum limit to what future mining proposals for the site might reasonably look like.

Additional or future mining activities, if any are actually proposed, are beyond the scope of this analysis. Any additional mining proposals would be properly evaluated, and potential effects documented, before being approved.

The reasonable foreseeable actions included in Section 1.5 are part of cumulative effects analysis in Chapter Four for each resource, including the 450 feet of new road.

Cumulative effects have been analyzed, including the “reasonably foreseeable” action of a commercial mine project of 10-30 years duration.

For Hydrology/Water Quality, the 450 feet of new road is addressed on page 1-13 (reasonably foreseeable scenario), 4-27 (Hydrology/Water Quality cumulative effects, Alternative A) and included in cumulative effects for Alternative C by the stating that effects are similar to Alternative A and defining differences (p. 4-29). See also response to III.D.1.a above. (References also include: Dave Herron write-up 2/14/03 & specialist write-ups thereafter)

Additional text that augments Section 4.2 – Chapter 4 of the August 2003 EA concerning cumulative impacts to wildlife under the “Reasonably foreseeable actions” is as follows:

With the exception of the spotted bat, peregrine falcon, and golden eagle the additional 1.2 acres of disturbance at the test pit and the 450 feet of new road as presented in the “Reasonably foreseeable actions” would not alter habitat for any sensitive species, migratory birds, or MIS. Due to these additional disturbances being small in size and use on the road restricted, the effects to sensitive species, migratory birds, and MIS would be minimal. Likely effects would occur from disturbances of the project during the nesting/breeding season. These actions being done over a 10 to 30 year period would likely increase disturbance to the area, and increase the likelihood of effects from cumulative impacts. The goshawk post fledging area (PFA) would have an increase of disturbance in the Foraging area. The timing mitigation that is in Alternative B of this EA would need to be in place to avoid disturbances in the PFA during the nesting season. This mitigation would also need to be in place to avoid disturbances during the nesting/breeding season for other sensitive species, migratory birds, and MIS. Avoiding disturbances during the nesting/breeding seasons would also avoid impacts to MIS populations. The hauling may occur during part of the rutting season for elk, and may displace breeding elk to other areas in the drainage. However, this area is not known to be a rutting area for elk, therefore this is unlikely to occur. The project is not associated with calving and fawning areas. Due to disturbances during the hunting season, elk and deer hunting may be displaced for the 10 to 30 year period of project operation.

The “electronic mail correspondence with US Fish & Wildlife Service” analyzes the “reasonably foreseeable actions” on lynx and lynx habitat. This electronic mail correspondence states the “reasonably foreseeable actions” would disturb an additional 1.2 acres at the pit site and would construct 450 feet (0.21 acres, 20ft. wide x 450ft. long) of new road. This would be done slowly

over a period of 10 to 30 years. The total amount of lynx habitat converted to unsuitable in LAU 9 within the last 10 years is 368 acres. The amount of lynx habitat that would be converted to unsuitable from the proposed project would be .325 acre (0.075 test/pit and .25 acre truck turn around). Adding the 1.41 “reasonably foreseeable” acres to these figures (.325 acres and 368 acres) gives a total of 369.735 acres of lynx habitat that would be converted to unsuitable within the last 10 years in the “reasonably foreseeable future”. This is still approximately 1.3% of the total lynx habitat within LAU 9 (refer to Response to Comments III.D.8.j.7 and US Fish & Wildlife Service e-mail correspondence). This is far less than the 15 percent standard in the LCAS. Total “disturbance area” (acres directly changed and acres affected by noise) within the LAU from the proposed project and “reasonably foreseeable actions” would be approximately 3385.435 acres. This is approximately 12.1% of the total lynx habitat within the LAU, which is less than the 30% standard in the LCAS. It should be noted that the “disturbance area” calculation is not a requirement of the LCAS. This was calculated as an additional analysis to determine the total possible disturbance area associated with the proposed project. Refer to Response to Comments III.D.8.j.7, US Fish & Wildlife Service e-mail correspondence (in the project record), and the Biological Assessment for further discussion and clarification.

The new road construction in the “reasonably foreseeable actions” is not anticipated to increase the likelihood of competing predators in lynx winter foraging habitat. The LCAS states that snow compacting activities such as snowmobiles, cross-country and nordic skiing, snowshoeing, dog sledding, and snowcat use within lynx habitat may increase the likelihood for competing predators such as coyotes, bobcats, and mountain lions to access lynx habitat in the winter; increasing competition for prey and opportunity for direct interference. Since the access road is closed to the general public and closed to snowmobile use, snow compaction along this road is unlikely. The new road construction would be at the end of the current road, which is more than 4 miles from snow compacting activities. The new road would only be 450 feet long and on a steep slope. This would further decrease the chance of snow compaction along this road.

The “reasonably foreseeable actions” could occur over a 10 to 30 year period. This annual occurrence of mining activities and mining traffic along the road for the next 30 years could make it more

difficult for lynx to move through the LAU and between adjacent LAU's.

2. Alternatives

- a. There is an inadequate range of alternatives. Alternatives A and B have “little differences between them”. Two proposed alternatives are not a reasonable range of alternatives, as required by NEPA.

Forest Service Response –

The alternatives that were developed for this Proposed Action from Uintah Mountain Copper Company (UMCC) are subject to the direction contained in FLPMA and U.S. Mining Laws.

As stated in the EA - Section 1.6 – Decision to be made, page 1-9: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), the Forest Service must consider that all National Forest System lands are available for mineral exploration and development unless the lands in question are withdrawn from mineral entry. The lands in question have not been withdrawn from mineral entry. Therefore, the Forest Service proceeded with the evaluation and analysis under NEPA regulations.

Based on the above direction, the Forest Service must consider alternatives that will allow a proponent access to and development of valid mining claims. These alternatives must address changes and modification to a proponent's proposed action to eliminate or mitigate adverse environmental impacts. If such impacts cannot be eliminated, then a proponent must modify their proposed action before the Forest Service can proceed with a full and complete analysis and evaluation.

UMCC's proposed action and protective measures were evaluated, and a reasonable range of alternatives considered. The Forest Service decided that only one action alternative was needed and could include all the necessary changes and modifications to UMCC's Proposed Action.

In regards to the No Action Alternative, although technically feasible, this alternative does not have a support base in Federal land and minerals policy, as mentioned in the first paragraph. Nevertheless, this alternative is included and analyzed in order to quantify baseline environmental conditions that would exist if exploration and development operations were to end and proposed operations were not initiated. Therefore, this alternative provides environmental data for use in comparing environmental effects.

The No Action Alternative represents a reasonable alternative not within the jurisdiction of the Forest Service (CFR 1505.14).

- b. The EA also did not discuss why other possible alternatives were eliminated from further analysis, as required by NEPA.

Forest Service Responses –

Section 2.0, page 2-1 of the EA further explains the rationale for the range of alternatives, including why there were no alternatives eliminated from detailed study. The above paragraphs in the Forest Service response to III.D.2.a essentially summarize this rationale.

3. Reasonably Foreseeable Actions and Facilities, including Public Access and Safety

The EA states that new roads are not proposed and existing roads would meet all requirements. This statement conflicts with the narrative on page 1-13 of the EA, which states that 450 feet of new road could be required to provide access to all proven ore reserves. The road mentioned on page 1-13 must be analyzed within the cumulative effects analysis.

Forest Service Response –

The proposed action being evaluated in this EA does not include or require construction of any new roads. The existing roads will suffice for the currently proposed actions. The reference to “up to 450 feet of new road construction” on page 1-13 refers only to speculative but reasonably foreseeable future actions (section 1.5). Such actions have not been proposed by UMCC, may not ever be proposed or required, and are technically beyond the scope of this analysis. Nevertheless, in order to evaluate possible effect from speculative future actions, we have already included the speculative 450 feet of possible future road construction in our cumulative effects analysis. If additional proposals were to be submitted at some future date, including proposals for actual road construction in the Paint Mine area, those proposals would be properly evaluated before being approved.

4. Recreation – Long Haul of Ore

The EA states that visitor sightings of the 60 to 70 long-haul trailer trips on Forest Development Road 131 would be rare. This conclusion seems erroneous and misleading, not to mention any future mining activities in the area.

Forest Service Response –

The wording mentioned in the comment cannot be found in the EA. Therefore, no response is made.

5. Air Quality – Long Haul of Ore

The EA does not show that air resources will be protected from the constant passage of trailer trucks that will emit exhaust and cause significant amounts of dust.

Forest Service Response –

The EA acknowledges dust and chemical air pollutants, as well as from vehicles and boats, and from other uses. The EA discusses the effects, and provides for mitigation. Dust abatement is part of both action alternatives.

References: pages 2-30, 3-22, 4-24, 4-31, 4-35 to 38; Plan of Operations & EA page 2-29 for dust abatement.

6. Visual Resources

The EA does not propose any plans that assure protection of scenic values, aside from stating that the FS is confident that visitors will unlikely be able to see the mining area.

Forest Service Response –

Plans that assure protection of visual resources would not be necessary because:

- 1. Most of the infrastructure for the proposed operation already exists on the ground, including camp area, roadways and mining operation area.*
- 2. The site is situated on a bare scarp face and all alternatives, including action alternatives would be on the same bare scarp face location.*
- 3. Existing colors and landform configurations would not change between the alternatives.*
- 4. Cumulative effects for visuals would not change between the alternatives.*

Mitigation proposed for soils and watershed are sufficient to assure protection of the visual resource.

7. Hydrology and Water Quality

- a. There are concerns over water used to control dust. Runoff from dust control should be considered wastewater. Such wastewater would likely originate from within the Moon Lake watershed, causing additional environmental impacts. These impacts should be further analyzed, including potential water quality and quantity impacts from using water from Moon Lake.

Forest Service Response –

Wastewater containing pollutants is not an expected discharge from the proposed action (p.2-6, “Water would not be required to remove the sample ore from the test pit; therefore no wastewater would be generated), including from road surface dust abatement. Regarding excess water running off roads, dust abatement

activities are performed to settle dust; water is a scarce commodity in the vicinity of the mine exploration activity and transport is expensive, so use would be essentially the minimum adequate to meet the need. Therefore, excess runoff is not considered to be a potential pollutant from dust abatement activities.

The EA references the State of Utah jurisdiction, regarding an NPDES/stormwater drain permit. (Ref: pp. 1-14, 4-26, 4-28)

Alternative A uses potable water, which by definition cannot be polluted (p.2-20). Alternative B uses non-potable but not polluted water (p.2-29, 4-28) and requires Forest Service review prior to use of any chemical dust palliatives (p.2-29).

See also response to III.D.5 for references on dust abatement in the EA, as well as page 2-8 through 2-9 for road sediment and drainage water control measures in the proposed action, and pages 2-19 through 2-21 for mine area erosion control and road maintenance provisions of the proposed action. The quantity of water for dust abatement is estimated as 5000 gallons every other day for 16 days (p.2-21). See also pages 2-25 and 2-26 for Alternative B road maintenance, page 2-28 for spill plan provision, and 2-29 for dust abatement and road drainage/sediment control.

- b. The EA should discuss how much erosion will occur and that mitigation plans would in fact protect forest resources, including aquatic resources.

Forest Service Response –

The project record includes a detailed erosion analysis that was conducted by UMCC to evaluate the proposed rehabilitation. (Ref: 8/28/2001 letter UMCC to ANF, Appendix D).

Pages 3-19 and 4-26 of the EA provides the following description and effects of project activities at the Test Pit/Ore Extraction Site:

Page 3-19 –

“The proposed project is located on a hill of approximately 30 to 40 degree slopes in the Slate Creek drainage basin, about 1/3 linear mile above the creek. Slate Creek is a tributary of Brown Duck Creek that flows into Lake Fork by entering Moon Lake Reservoir from the west, just above Moon Lake Campground. Lake Fork is a tributary of the Yellowstone River. Although the ore extraction site itself is located on more productive limestone geological formations, approximately 25% of the Slate Creek drainage area is comprised of red pine shale geology, which has low natural vegetation and high natural erosivity. Much of

the red pine shale is located upstream, although some is also located on the lower-elevation slopes between the Paint Mine area and Slate Creek.”

“Slate Creek below the mine area (old road switchbacks) exhibits some areas of streambank instability and bank cutting, likely from a variety of causes such as erosion of shale around natural debris, low natural levels of herbaceous vegetation along banks in Red Pine shale with conifer overstory, and sediment contributions from natural sources (such as barren headwaters of Red Pine Shale) as well as management activities, particularly past activities (erosion from old roads-now closed to the public vehicle use, trails, and past mining activities). These variables make it difficult to monitor baseline sediment vs. contributions from the proposed action. Some lodgepole pine and aspen have colonized sparsely on old exploration roads that have not been used since around 1978; some isolated spots are eroding although an area examined near Slate Creek was mostly stable.”

“Streamflows at the Brown Duck water quality sampling site were estimated during water quality sampling between 1974 and 1999. Flows ranged from 1.5-80 cubic feet per second (cfs) (low flows in late summer/fall, high flows in early summer). The average was 29 cfs during June through November. [STORET – USEPA] There is no measurement of flows for Slate Creek on record.”

Page 4-26 –

“There is ongoing natural erosion in the Slate Creek and Dry Canyon drainages. Soils in these drainages have high geologic erosion ratings and active erosion is occurring in the upper end of each of the two drainages. This erosion is adding sediments to downslope areas within the drainages, including the project area.”

“Within the Slate Cr. drainage, some old access roads exist in the Slate Creek watershed – lower in elevation than the ore extraction site and access road. Some erosion or rilling is evident although these roads were reclaimed many years ago and are not open to public vehicle use. Transport of soil, parent material, and sediment from these roads is expected to remain above natural levels. The Slate Creek watershed is about 8% of the Brown Duck Creek watershed and includes highly erosive natural headwater areas. The natural and pre-project sediment potential is thus high and no detectable increase from the

project would occur where Brown Duck Cr. enters Moon Lake Reservoir, within Moon Lake Reservoir or below. Alternative A would generate sediment, but the sediment will not reach Slate Creek or have detectable impacts, so stream conditions would be similar to Alternative C. The distance to water from the ore extraction site and upper roads (approximately 2000 feet) and the variety of sediment contributions already entering Slate Creek would continue to make direct water quality sampling of low value since any anomalies discovered would be from a variety of sources.”

“Water depletion or quality in the Upper Colorado River Basin is not a concern in any alternative. Water for dust abatement is from off-site potable sources or nearby Moon Lake facilities. No net depletion would occur unless the water is in addition to uses already under water right (vs. change of use or purchasing other users’ water rights); the amount of water needed for road watering is considered to be undetectable to the Brown Duck Creek and the Upper Colorado River. (For example, this use would likely qualify as a de minimus use in Idaho, and a water right would not be needed.) No downstream effects to water quality would occur since Moon Lake Reservoir would trap sediment, store incoming water, and control water releases downstream.”

Effectiveness monitoring is part of Alternatives B and C [pp. 2-29 through 2-30, p. 2-36, 4-29(1), 4-30(4), 4-31(7,8,10,11), 4-32(12&13), 4-33, 4-34(3), 4-35(4,5)]. Since the gabion structure is preceded in the Uinta Mountains by a roadside gabion of more simple design, no information is available to confirm effectiveness at the pit. However, Forest Service engineering input has been incorporated by UMCC in order to maximize the potential for success so that sediment does not reach water bodies such as Slate Creek. (p. 4-26, “Alternative A may generate sediment but it is not expected to reach Slate Creek or have detectable impacts”). The EA at 2-23 acknowledges that soil disturbance (i.e., sediment) would occur at the pit site, but does not indicate that this sediment would enter water bodies, and addresses the anticipated upland recovery. Sediment is not expected to impact Slate Creek 1/3 mile away (not a fishery- p.4-26, 4-29), Brown Duck Creek (a fishery) which provides an average of about 22 cubic feet per second (cfs) in September and October thus diluting any sediment input – such as occurs naturally - from Slate Creek (Reference – US EPA STORET database, flow data in hydrology file), or Moon Lake Reservoir (the end point for all sediment deposition due to the dam,

pp. 4-26 through 4-27). Nonetheless, monitoring Slate Creek has been a commitment in the EA and was initiated in 2003.

Aquatic resource baseline monitoring in Slate Creek was initiated in 2003 and prior data is available for Brown Duck Creek (1974-1999). (Ref: pp. 2-39, 3-19, 3-20 to 3-22). The EA confirms that no risk to the identified spring would occur; it is outside the drainage vector from the ore extraction site (Ref. pp. 4-27, 4-29, hydrology file topographic map) and addresses possible sediment, including preventive measures. The EA references the State of Utah jurisdiction, regarding an NPDES/stormwater drain permit. (Ref: pp. 1-14, 4-26, 4-28)

- c. Baseline data is needed to know how much sediment exists and how much will be created as a result of the proposed action and future projects. There is no baseline data discussed in the EA to help the FS or the public to know and understand the “acceptable” levels of erosion and sediment, and if and to what degree these levels are being exceeded. Therefore, no mitigation plan can be considered effective if the baseline data, quantities, and acceptable levels of erosion and sedimentation are unknown.

Forest Service Response –

Baseline data collection was initiated in 2003. See also response to III.D.7.b.

- d. Additionally, the effects of erosion and sediment accumulation from past projects in the area are not presented in the EA. The FS has violated the Forest Plan and NEPA by: 1) failure to utilize appropriate modeling techniques to analyze cumulative impacts of sediment and water yielding resource project activities, 2) to determine sediment and water yield thresholds to meet aquatic habitats, and 3) to maintain or improve current stream channel stability.

Forest Service Response –

The Forest Plan provisions cited apply to projects designed to “Increase water yields through resource management activities.” The proposed action is not that type of project; increasing water yield is neither a primary nor secondary objective. Nonetheless, statistics presented regarding distance to water and vegetation address parameters used in the WEPP model (Water Erosion Prediction Project Model), which is the sediment model available. Bill Elliott of the Forest Service Research Station in Moscow, Idaho, who teaches the training on WEPP and works on its continued development, has advised that the model available to the Forest

hydrologist is not appropriate for use in this analysis. (Personal communication at Denver, 11/20/03, R.Helzner).

INFISH (Inland Native Fish Strategy) guidelines give recommended thresholds for parameters such as channel substrate surface fines. The emphasis is on stream effects, rather than what is generated on the uplands. Since no measurable effect is anticipated (see also III.D.7.b above), no thresholds would be exceeded from this proposal.

Nonetheless, stream monitoring was a commitment in the EA (p.4-32) and has been initiated in Slate Creek so that future monitoring may also be conducted. The baseline monitoring includes stream channel stability although no effects are anticipated from the proposed project, since neither water yield nor instream sediment changes are expected to be detectable. Baseline monitoring in Brown Duck Creek was conducted between 1974-1999 and is presented in the EA at pages 3-20 to 3-22. See also III.D.7.b above.

- e. The EA should also show sediment and water yield thresholds needed to meet aquatic habitat objectives.

Forest Service Response –

See response to III.D.7.d above.

- f. UEC questions UMCC's evaluation of the effects of storm water at the site, and states that UMCC's conclusions are unreliable because of the lack of data and modeling. (UMCC stated that annual sedimentation would decrease after terracing by 9 to 10% over a 10-year period.)

Forest Service Response –

Better engineering data should be submitted to the Forest Service for evaluation; this is the data that has been submitted.

- g. There is no indication if there will be a threat to water quality and the nearby spring, and whether mitigation measures will be necessary or effective in protecting water quality in the area. "A mere listing of mitigating measures, without supporting analytical data is inadequate." Springs and public watering areas near mines have special protections as described in Executive Order of April 17, 1926. "The FS has not assured the public that the spring...will be adequately protected from any potential impacts." "There are no mitigation measures proposed to reduce any potential runoff into the spring."

Forest Service Response –

The EA at pages 4-27 and 4-29 affirms that no effect to the spring would occur and provides explanation. See also response to III.D.7.b above. It is outside the drainage vector from the ore extraction site besides having a forested buffer between the ore extraction site and the spring. A comparison of water quality protection measures may be found on page 2-41.

- h. The EA did not analyze the potential for rain on snow events, which is known to be a common problem in the ANF and cause additional erosion and sedimentation. A cumulative analysis should be done and show how rain on snow events have affected the project area.

Forest Service Response –

Rain-on-snow events are part of the baseline condition and precipitation factors, along with snowmelt and high-intensity summer thunderstorms, or other precipitation. Rain-on-snow events and thunderstorms are mentioned on page 4-24. High-intensity precipitation events (with an example of summer thunderstorm but not limited thereto) are mentioned on page 4-25. Page 4-32 acknowledges that some precipitation patterns maintain erosion. High-intensity events (which would include rain-on-snow events) are mentioned on page 4-33. While no specific climate/weather factors are individually evaluated relative to erosion and sedimentation, the baseline conditions (including results of past mine activity) reflect the contributions of rain-on-snow events. Thus, the potential environmental effects consider the contributions of rain-on-snow events, including as might be transmitted through the collection draws mentioned.

(Ref. p. 2-41, 4-23, 4-25, 4-25/26, 4-27, 4-33 – collection draws/chute & 4-24 – Thunderstorms & rain-on-snow events)

- i. The comparison of water depletion in the watershed as inconsequential to “de minimus in Idaho” is...” irrelevant and makes and irresponsible comparison to another state’s water code that has no relevance to this project or Utah in general”.

Forest Service Response –

The use of Idaho was simply a parenthetical illustration of the order of magnitude of road watering use and is not essential to the discussion. The key factors regarding depletion are provided on pages 4-24, 4-26, 4-29, 4-31, and 4-37.

- j. The failure to do water quality monitoring because “sediment comes from a variety of sources” is....”irresponsible and will lead to

data gaps in terms of what is known about water quality in the project area both before and after any potential mining proposal”.

Forest Service Response –

Baseline water quality rationale questioning the cost-effectiveness of water quality monitoring is given in the EA at pages 3-19, 4-23, 4-26, 4-29, 4-33, and 4-34. Nonetheless, baseline monitoring in Slate Creek was a commitment in the EA (p.4-32/13) and was initiated in 2003 so that future monitoring may also be conducted.

- k. “The cumulative effects analysis for alternatives A and C is equally void of useful information and arbitrarily and capriciously concludes that there will be no impacts in terms of both water quality and quantity.”

Forest Service Response –

The rationale for Alternative A is given at 4-26 (sediment would not reach Slate Creek – assessment based on distance & vegetation presented at 3-19, 4-23, and 4-27.

- l. “There is no analysis of the distinct possibility that there might be a net water depletion due to other water rights, and this could lead to deteriorated fish habitat, which was not analyzed in the EA...”

Forest Service Response –

The EA specifically identifies that there would be no net depletion or resulting effects to aquatic resources and gives rationale at 4-24, 4-26/27, 4-29, 4-31, and 4-37.

- m. “Cumulatively this project together with other past and future projects, as well as direct and indirect impact”...could cause sedimentation that presents a problem.....”which was not considered by the FS or even analyzed”.

Forest Service Response –

See also responses to III.D.7.b and III.D.7.k. Cumulative effects discussion is found at 4-26/27, 4-29, and 4-34.

- n. The FS says that information is unknown and unavailable on how past activities has affected the hydrology, without saying why it is unknown and unavailable.

Forest Service Response –

The reference to cutthroat status as present/unknown referenced a map of cutthroat trout and accurately represents the data available

from that map. However, additional information is provided in Chapter 3-fisheries.

- o. The FS has not analyzed the “large amounts of erosion” from past mining activities in the Slate Creek drainage, which is highlighted in the EA.

Forest Service Response –

The quote cited does not appear in the EA. There is no other mining activity in the Brown Duck drainage area other than an isolated small pit. Existing conditions are part of baseline analysis. See 3-19/Slate & Brown Duck Creek and 4-34/Cumulative Effects-No Action, which states “Influences and effects are similar to Alternative A and B...” and 4-26/Cumulative Effects-Proposed Action, which acknowledges the conditions of old access roads and their presence in the larger picture.

The baseline erosional processes and magnitudes are located in the EA at 3-18, 3-19, 4-23, 4-24, 4-264-33 and 4-34. See also Sections 3.1 and 3.3 in the EA (Ecological Units and Soils).

- p. “Most water quality data has been recorded in high flow months, and there is no indication as to whether standards would met in low flow months”... for project activities. This is important because....”Potential contamination from either human uses of water or mining contaminants could reach water sources based on high percolation rates”.

Forest Service Response –

Water Quality data has been collected in low flow months of August through April (46 % of samples) as well as higher flow months of May through July 54% of samples).

Reference US EPA STORET database. This data is included in Chapter 3/Hydrology on pages 3-19 to 3-21.

8. Terrestrial Wildlife –

a. **Wildlife – Long Haul of Ore**

Long-haul trucks may adversely affect area wildlife (ungulates, small mammals, and raptors, as well as aquatic resources. These impacts have not been analyzed.

Forest Service Response –

It has been acknowledged in the EA that hauling of ore along the access road may have effects to wildlife. Alternative B contains a mitigation that will delay implementation of the project until August

and delay hauling of ore along the road until September 10th. Additional text that augments Section 4.2 – Chapter 4 of the EA is as follows:

With the exception of elk, the delay of ore hauling along the access road will ensure disturbances to those wildlife species described in the EA, including the goshawk post fledging area (PFA), will occur outside the breeding and nesting/birthing periods. The hauling would occur during the rutting period for elk. Any elk in the area may be temporarily displaced during this period. However, this is not anticipated to adversely affect elk, as there is ample space and habitat available to them throughout the drainage and away from the disturbance. Furthermore, more suitable elk breeding habitat exists further north in the drainage (Wilderness Area) and on the gentler slopes in the next drainage to the west.

The access road is closed to the general public, but is used sporadically through the season by UMCC, Moon Lake Electric, permittees (grazing allotments), and for Forest Service administrative uses. Use of the road by UMCC during August and prior to the hauling period, is not anticipated to increase traffic along the road more than would normally occur. Effects from use of the road during this period would be negligible.

The delay of ore hauling along the access road would also ensure disturbances to other raptors would occur outside the breeding and nesting/fledging periods. Some displacement of raptors may occur, but due to ore hauling being temporary and occurring outside the critical periods discussed above, this would not adversely affect raptors.

The delay of ore hauling along the access road would also ensure disturbances to small mammals would occur outside the breeding/birthing and young rearing periods. Some displacement of small mammals may occur, but due to ore hauling being temporary and occurring outside the critical periods discussed above, this would not adversely affect small mammals.

b. Northern Goshawk

- 1) The lack of data and research on goshawk distribution/habitat requirements and population trends is addressed in the Forest Plan and the “Master’s Thesis of Sarah Dewey, Department of Wildlife Biology—Colorado State, 1999”, but these facts are not discussed in the EA.

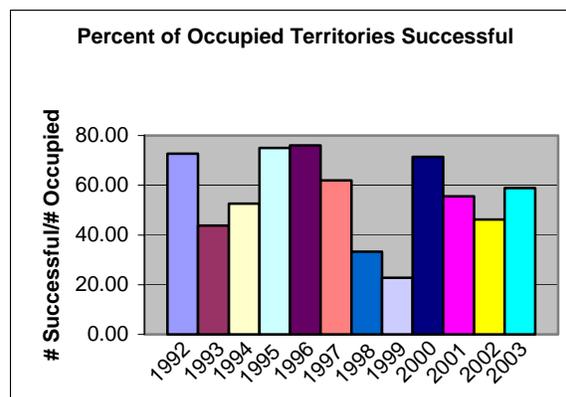
Forest Service Response –

Additional text that augments the text in Section 4.2 – Chapter 4 of the EA is as follows:

Calling surveys in 2003 elicited no response in the Moon Lake goshawk territory, and the territory was considered inactive (Ashley NF unpub. data).

Statistical analysis of autumn migratory raptor counts in the Wellsville Mountains of Utah from 1977-1979 and 1987-2001, showed a decline in counts of northern goshawks. This analysis also suggests that northern goshawk productivity has dropped substantially in portions of northern Utah. (Hoffman and Smith 2002) Hoffman and Smith further suggest that the severe drought may be depressing raptor populations, range wide, in the interior west.

The Ashley National Forest annually monitors and surveys known goshawk territories on the Forest (Ashley NF unpub. data, USDA Forest Service 2003). The graph below depicts the percent of occupied northern goshawk traditional territories that were successful on the Ashley National Forest, between 1992-2003 (USDA Forest Service 2003).



The Ashley National Forest has been monitoring northern goshawks since 1991. Of the 13-year total of 236 active nests, 162 (69%) fledged young (USDA Forest Service 2003). The occupancy rate of known territories has fluctuated since data collection began, with an average of 46.9% (USDA Forest Service 2003). A paper by Patricia Kennedy in 1997 evaluated goshawk populations across the west, including the goshawk population on the Ashley National Forest (Kennedy 1997). Kennedy found no

statistical evidence of a decline in the goshawk population on the Forest (Kennedy 1997). Analysis of goshawk data collection on the Forest since Kennedy's paper indicates that the population is apparently stable across the Forest (USDA Forest Service 2003, Ashley NF unpub. data). It also appears that the Forest supports a viable goshawk population and continues to provide well-distributed habitat across the Forest for this species.

- 2) A useful cumulative effects analysis for impacts to goshawks is not included in the EA. The EA must analyze the combined effects of the actions in sufficient detail to be useful to the decision maker in deciding whether, or how, to alter the program to lessen cumulative impacts to goshawks.

Forest Service Response –

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-15 of the EA, the BE and Supplemental BE). Additional text that augments cumulative impacts in Section 4.2 of the EA is as follows:

Other cumulative impacts would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Firewood gathering is taking some snags and woody debris, but the amount of snags and woody debris taken under this program is very little when compared to the overall habitat for the goshawk and their prey species on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may incrementally increase disturbance to the PFA and the foraging area. However, with the exception of site preparation in Alternative A, the timing mitigation will delay implementation of the project until August and delay hauling of ore along the road until September 10th. Alternative B will give additional protection to the PFA by delaying site preparation until August 1st and test pit work until August 15th. The delay of ore hauling along the road will ensure disturbances to the PFA from hauling will occur outside the fledgling dependence on the PFA, according to radio telemetry data from the Ashley NF (Dewey 1998 & 1999). Therefore, with the timing mitigation, there would be no additional effects to the PFA during the nesting period from cumulative impacts. The effects of cumulative impacts to the goshawk territory would likely occur in the foraging area, as stated in the EA. This would likely result in foraging goshawks avoiding those areas of disturbance. This

may displace foraging goshawks, but due to the areas of disturbance being small compared to the amount of available foraging habitat within the territory, the small scale of the project, and the project being temporary in nature, the proposed project would not affect the ability of goshawks to find and capture prey within the territory.

There are portions of two other known goshawk territories within the cumulative effects area. A portion of one of these territories (this territory has been inactive for the last five years), was burned in the fall of 2003 by the Petty Mountain Fire. This fire burned one nest out of a cluster of five in the territory. In the short term, the fire may have increased the likelihood of this territory remaining inactive or resulted in the territory being temporarily expanded to account for the loss of habitat. In the long term, habitat for prey species would improve as understory vegetation repopulates. The other territory would not be affected by the proposed project and was not affected by the fire. Due to the small scale of the project, the project being temporary in nature, ample goshawk habitat in the area, these territories not being affected by the proposed project, and the mitigation measures protecting the Moon Lake PFA, there would be no measurable changes from cumulative impacts combined with the project on these territories.

It is therefore determined that direct, indirect and cumulative impacts from the proposed project would not affect the viability or trend of goshawk populations on the Forest or impair the ability of the Forest to provide well-distributed habitat for this species.

- 3) “The EA discussion of potential impacts to goshawks by the project does not satisfy NEPA’s ‘hard look’ requirement. The word “could” is used to explain impacts, and implies that the Forest is not sure what or if any impacts will occur to goshawks. “We have warned that general statements about “possible effects” and “some risk” do not constitute a “hard look” absent a justification regarding why more definitive information could not be provided.”

Forest Service Response –

A hard look at potential impacts to the Northern goshawk has been taken. It has been acknowledged that the proposed project occurs within a goshawk territory and part of the access road crosses the outer edge of the PFA. Possible effects to the goshawk and the PFA have also been disclosed (refer to pages

4-8 and 4-9 in the EA and the two previous responses). Additional text that augments the text in Section 4.2 – Chapter 4 of the EA is as follows:

There would be some removal of small conifer species at the truck turnaround site (.25 acres). This site is not in the PFA, but is within the foraging area of the Moon Lake goshawk territory. These conifers are small (approximately 8" dbh and smaller) and are not the large mature trees goshawks prefer for nesting (Reynolds et. al.). Furthermore, this is a small amount of habitat that is disturbed when compared to the amount of habitat that is in the surrounding area. There is adequate foraging habitat in the area that will remain undisturbed. Considering this rationale, the removal of the small conifers on the 0.25-acre truck turn around area is consistent with the Ashley National Forest Northern Goshawk Amendment and the intent of the Conservation Strategy and Agreement for Management of the Northern Goshawk in Utah. Disturbances from the proposed project may displace foraging goshawks, but due to the areas of disturbance from the project being small compared to the amount of available foraging habitat within the territory, and the project being temporary in nature, the proposed project would not affect the ability of goshawks to find and capture prey within the territory. The timing mitigation in Alternative A would limit disturbances to the PFA during the nesting period. However, the timing mitigation under Alternative B would provide additional protection to the PFA from disturbances caused by the proposed project, during the nesting period. Because of the above rationale and the rationale in the EA, it is determined that effects from the proposed project (direct, indirect, and cumulative) would not affect the viability or trend of goshawk populations on the Forest, or impair the ability of the Forest to provide well-distributed habitat for this species.

- 4) The project should be enjoined until it can be ensured that the goshawk will not be adversely affected. There are numerous examples of the possibility of adverse effects by project activities, including those discussed on pages 4-15 and 4-59 of the EA. The Forest Plan does not allow resource management activities if they will adversely affect sensitive species.

Forest Service Response –

Refer to the previous three responses. Adverse impacts to the goshawk would not occur in Alternative B. With the timing mitigation measure, impacts to the PFA would be eliminated. The delay of ore hauling along the road will ensure disturbances to the PFA will occur outside the fledging dependence on the PFA (the critical time period), according to radio telemetry data from the Ashley NF (Dewey 1998 & 1999).

c. Spotted Bat

- 1) “The cumulative effects analysis as it relates to spotted bats is insufficient.” The FS must demonstrate that this sensitive species will not be adversely affected by the project, and this has not been done in the EA. The FS has failed to survey the cumulative effects area to see how much spotted bat habitat exists, and relies on speculative statements like....”might serve as potential roosting areas”, (see EA at page 3-9).

Forest Service Response –

The Forest Service acknowledges the 2001 spotted bat detections on the Ashley National Forest in 2001 (Perkins 2001). As stated in the EA (page 3-9) a more recent survey of 2002 (Perkins 2002) also detected 2 spotted bats. Additional text to augment this is as follows:

However, these surveys have not detected spotted bats near the project area, and a site visit in 2003 revealed no evidence of bats roosting in the rock outcroppings near the project area.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-15 of the EA, the BE and Supplemental BE). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. The Petty Mountain Fire of 2003 did not affect spotted bat habitat. This project, taken with these cumulative impacts and those listed in the EA, may increase disturbance to the rock outcrop/cliff areas near the project. However, traffic and recreational activity on the road above the proposed project and current activities at the mine site has likely prevented spotted bats from using this portion of rock outcrop/cliffs. Alternatives A and B would only eliminate 0.075 acres of this rock outcrop/cliff habitat. Within the

cumulative effects area, there is a substantial amount of this habitat at a suitable elevation for the spotted bat. A large portion of this habitat is within the High Uintas Wilderness designation, which will continue to remain undisturbed. With the exception of the rock outcrop/cliffs in the proposed project, rock outcrop/cliff areas in this drainage, outside the Wilderness area would also remain undisturbed. Furthermore, the birthing period for spotted bats is in June (Nature Serve 2003). The timing mitigation in Alternative A will prevent test pit from occurring during the birthing period, but will allow site preparation prior to August. Site preparation under Alternative A could occur during the birthing period. The timing mitigation in Alternative B, does not allow the project to begin preparation until August 1st, which is long after the birthing period of spotted bats. Due to the above rationale and the rationale in the EA, the cumulative activities combined with the proposed project may impact individuals, but would not adversely affect the spotted bat or cause a trend toward federal listing.

- 2) How many acres of habitat will be removed by the project? The EA states 0.05 acres, yet concedes that both action alternatives would remove rocky outcrops and replace them with overburden, which would make them unsuitable for spotted bats. Whatever the figure is, the loss is not allowed by NFMA or the Forest Plan.

Forest Service Response –

The EA states on page 4-11 that the project would remove acres of spotted bat habitat. This calculation should actually be 0.075 acres (7.5/100's of an acre). This calculation is taken from table 2.2 on page 2-9 of the EA. This is the total amount of surface disturbance (in acres) at the test pit extraction site proposed in Alternatives A and B.

d. Peregrine Falcon

- 1) The analysis of this sensitive species in the EA is completely void of population trend data, habitat data, and cumulative effects. “The FS has violated their own management plan by not ensuring that there are in fact no peregrine falcons in the area, and that since this is unclear the FS cannot ensure that the project will not adversely affect peregrine falcon habitat.”

Forest Service Response –

Since the peregrine falcon was not selected as an MIS for the Ashley National Forest, it is not analyzed in the Environmental Assessment (EA) under the MIS requirements. However, the peregrine falcon is on the Regional Foresters sensitive species list and is analyzed in the EA. Habitat descriptions for the peregrine falcon are on page 3-9 & 10 of the EA. Additional text to augment this section is as follows:

Threats to the peregrine falcon include loss of wetland habitat of primary prey, poachers robbing nests, shooting by hunters, and food chain contamination from use of persistent pesticides. Pesticide-caused reproductive failure now apparently is rare or absent in northern populations, though organochlorine levels in the environment are still high in some areas. The peregrine falcon arrives in breeding areas late April-early May and departure begins late August-early September. Incubation lasts 32-35 days and young fledge at 39-49 days. Clutch size averages four at mid-latitudes and three in the far north. In northwestern Arizona, mean distance between centers of nesting areas was around 6-8 km. (Nature Serve 2003)

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to pages 4-15 and 4-16 for peregrine falcon). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. The Petty Mountain Fire of 2003 did not affect peregrine falcon habitat. This project, taken with these cumulative impacts and those listed in the EA, may increase disturbance to areas near rock outcrop/cliffs and foraging areas near the project. However, traffic and recreational activity on the road above the proposed project and current activities at the mine site has likely prevented the peregrine falcon from using this portion of rock outcrop/cliffs. Alternatives A and B would only eliminate 0.075 acres of this rock outcrop/cliff habitat. Within the cumulative effects area, there is a substantial amount of this habitat at a suitable elevation for the peregrine falcon. A large portion of this drainage is within the High Uintas Wilderness designation, which will continue to remain undisturbed. With the exception of the rock outcrop/cliffs in the proposed project, rock outcrop/cliff areas in this drainage

outside the Wilderness area are also anticipated to remain undisturbed. The Ashley National Forest contains approximately 23,655 acres of cliff habitat (FEIS Ashley NF LRMP 1986). The removal 0.075 acre of this habitat from the proposed project is a small amount compared to the total amount (23,655 acres) on the Forest. Affecting this amount of rock outcrop/cliff habitat would not affect the viability of peregrine falcon populations and would not impair the ability of the Forest to provide well-distributed habitat for the peregrine falcon.

The timing mitigation in Alternative A would prevent test pit work and hauling during the nesting and fledging periods (Nature Serve 2003), but would allow site preparation to occur during the fledging period. However, the timing mitigation in Alternative B would ensure implementation of the project would avoid the nesting and fledging periods (Nature Serve 2003) for the peregrine falcon. Furthermore, a site visit in August of 2003 revealed no nests in the nearby rock outcrop/cliffs and no evidence of white wash. Considering these facts and those in the EA, the proposed project combined with the cumulative impacts may impact individuals, but would not adversely affect the peregrine falcon or cause a trend toward federal listing.

It should be noted that the table on page 6-6 in the EA states that peregrine falcon habitat is in the project area. This statement should be corrected to say that peregrine falcon habitat is present in the project area.

- 2) The EA also gives no evidence that the FS has...“participated with UDWR in evaluating the potential for re-establishment of the peregrine falcon as discussed in the Forest Plan.

Forest Service Response –

This comment is outside the scope of the proposed project.

e. Three-toed Woodpecker

- 1) The FS is in violation of NEPA by stating in the EA that the FS has not conducted surveys for this sensitive species, but supposes that the species is in the project area. The EA states that a road passes through potential woodpecker habitat, but arbitrarily and capriciously dismisses impacts to the species. The FS has violated the Forest Plan by failing to assure that this species will not be adversely affected by the proposed activities.

Forest Service Response –

Since the three-toed woodpecker was not selected as an MIS for the Ashley National Forest, it is not analyzed in the Environmental Assessment (EA) under the MIS requirements. However, the three-toed woodpecker is on the Regional Foresters sensitive species list and is analyzed in the EA. Sightings and surveys for the three-toed woodpecker across the Forest have documented this species in similar habitat to that found along the access road in the project area (Ashley NF unpub data). The EA states that impacts to the three-toed woodpecker from the proposed project would be similar to those impacts to the sensitive owl species (refer to page 4-9 of the EA). The EA analyzes impacts to three-toed woodpeckers in common with the owl species (page 4-9) and discloses additional impacts on page 4-10. Three-toed woodpecker habitat does occur along the access road. Additional text to augment this section is as follows:

The EA states on page 4-16, The EA should state, “There would be some removal of conifer species at the truck turnaround site (.25 acres) from the proposed project that would result in some loss of boreal owl, great gray owl, and three-toed woodpecker habitat at this .25 acre area”. These conifers are small (approximately 8” dbh and smaller) and do not provide adequate nesting habitat [(12”-16” dbh (Nature Serve 2003)] for three-toed woodpeckers. Furthermore, this is a small amount of habitat that is disturbed when compared to the amount of habitat that is in the surrounding area. There is adequate habitat in the area that will remain undisturbed.

There would be increased disturbance from traffic along the access road. Nesting for three-toed woodpeckers occur in May and June and young can be found in the nest into July (Nature Serve 2003). The timing mitigation in Alternative A would limit disturbances to three-toed woodpecker habitat during the nesting period. However, the timing mitigation under Alternative B would provide additional protection to three-toed woodpecker habitat from disturbances caused by the proposed project, and eliminate disturbances during the nesting period. During the hauling phase of the project (September 10th and later) individual three-toed woodpeckers may be temporarily displaced. Due to the small scale of the project, the abundance of habitat in adjacent areas, disturbance from the project being eliminated during the nesting period, and the project being

temporary in nature, the proposed project may impact individuals, but would not adversely affect the three-toed woodpecker or cause a trend toward federal listing of this species.

- 2) There is no cumulative effects analysis for this species

Forest Service Response –

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-17 for three-toed woodpecker). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. The Petty Mountain Fire of 2003 burned some three-toed woodpecker habitat. However, the fire has also improved three-toed woodpecker habitat by increasing the amount of trees susceptible to bug infestation. Firewood gathering may be taking some snags, but the amount of snags taken under this program is very little when compared to the overall habitat for the three-toed woodpecker on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may incrementally increase disturbance to three-toed woodpeckers in the area and may temporarily displace individuals. Due to the small scale of the project, the abundance of habitat in adjacent areas, disturbance from the project being eliminated during the nesting period, and the project being temporary in nature, cumulative impacts combined with the proposed project may impact individuals, but would not adversely affect the three-toed woodpecker or cause a trend toward federal listing of this species.

f. Flammulated, Boreal, and Great Grey Owls

- 1) The EA does not include trend data and a cumulative effects analysis; therefore, the statement in the EA that the flammulated owl (sensitive species) will not be affected is arbitrary and capricious. “The access road is suggested to be potential habitat, but is cited to only be foraging area.”

Forest Service Response –

Since the flammulated owl was not selected as an MIS for the Ashley National Forest, it is not analyzed in the Environmental

Assessment (EA) under the MIS requirements. However, the flammulated owl is on the Regional Foresters sensitive species list and is analyzed in the EA. The EA states that impacts to the flammulated owl from the proposed project would be similar to those impacts to the boreal owl, great gray owl, and three-toed woodpecker (refer to page 4-9 of the EA). The EA analyzes impacts to the flammulated owl in common with these species (page 4-9) and discloses additional impacts on page 4-10. On the Forest the flammulated owl has only been found in Doug fir and ponderosa pine forests (Ashley NF unpub. data). There is some scattered and patchy Doug fir along the access road. Additional text to augment this section is as follows:

The EA states that most of the access road does not occur in suitable flammulated owl habitat. While this statement is true, there are portions of the road that do occur in flammulated owl habitat. There would be a temporary increase of traffic along this road from the proposed project that may increase disturbance to flammulated owls. Because habitat for this species in the project area is scattered and patchy, it is unlikely that the area would be suitable for nesting. However, it should be noted that the nesting and fledging period for the flammulated owl is over by the end of July (McCallum 1994), and implementation of the project would not occur until August 1st under Alternative B. During the hauling phase of the project (September 10th and later) individual flammulated owls may be temporarily displaced. However, the proposed project is temporary in nature and does not alter any flammulated owl habitat. Due to the above rationale and the rationale in the EA, the proposed project may impact individuals, but would not adversely affect the flammulated owl or cause a trend toward federal listing.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-16 for flammulated owl). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Some flammulated owl habitat was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of flammulated owl habitat as the understory repopulates. Firewood gathering is

taking some snags, but the amount of snags taken under this program is very little when compared to the overall habitat for cavity nesters (including the flammulated owl) on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may incrementally increase disturbance to foraging flammulated owls in the area and may temporarily displace individuals. However, the proposed project is temporary in nature and does not remove any flammulated owl habitat (Doug fir or aspen). Additionally, the project would not occur during the nesting and fledging periods in Alternative B, there would only be minor disturbance (site preparation) from Alternative A during the fledging period. Due to the above rationale and the rationale in the EA, cumulative impacts combined with the proposed project may impact individuals, but would not adversely affect the flammulated owl or cause a trend toward federal listing.

- 2) The EA is not clear on how boreal owls (sensitive species) have been and will be affected cumulatively, directly and indirectly through past and future activities. Therefore, this species needs further study before the project commences in order to be consistent with the Forest Plan.

Forest Service Response –

Since the boreal owl was not selected as an MIS for the Ashley National Forest, it is not analyzed in the Environmental Assessment (EA) under the MIS requirements. However, the boreal owl is on the Regional Foresters sensitive species list and is analyzed in the EA. The EA states that impacts to the boreal owl from the proposed project would be similar to those impacts to the flammulated owl and great gray owl (refer to page 4-9 of the EA). The EA analyzes impacts to the boreal owl in common with these species (page 4-9) and discloses additional impacts on page 4-10. On page 3-11 of the EA, the following paragraph should be deleted and replaced.

This paragraph should be replaced with the following: Spring calling surveys on the Forest have detected five boreal owls. These surveys have detected boreal owls in habitat similar to habitat that is along portions of the access road (Ashley NF unpub. data).

Also on page 4-10 of the EA, the following sentences should be deleted.

There would be increased disturbance to the boreal owl from hauling along the access road. The timing mitigation in Alternative B would eliminate the disturbance from the project to boreal owl habitat during the nesting period and fledging periods (Hayward 1994). Site preparation in Alternative A may occur during the later end of the fledging period. Additional text to augment this section is as follows:

During the hauling phase of the project (September 10th and later) individual boreal owls may be temporarily displaced.

The EA states on page 4-16, "The EA should state, "There would be some removal of conifer species at the truck turnaround site (.25 acres) from the proposed project that would result in some loss of boreal owl, great gray owl, and three-toed woodpecker habitat at this .25 acre area". The tree diameter at the entrance to boreal owl nest cavities average 41cm (16") (Hayward 1994). These conifers are approximately 8" dbh and smaller, and do not provide adequate nesting habitat for the boreal owl. Furthermore, this is a small amount of habitat that is disturbed when compared to the amount of habitat that is in the surrounding area. There is adequate habitat in the area that will remain undisturbed.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-16 for boreal owl). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Some boreal owl habitat was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of boreal owl habitat as the understory repopulates. Firewood gathering is taking some snags and down woody debris, but the amount of snags taken under this program is very little when compared to the overall habitat for cavity nesters (including the boreal owl) and their prey species on the Forest. This project, taken with these cumulative impacts and those listed in the EA,

may incrementally increase disturbance to boreal owls in the area and may temporarily displace individuals. However, the proposed project is small in scale, temporary in nature, and does not alter any boreal owl nesting habitat. Boreal owl nests are usually initiated by mid April to the first of June, and young have usually fledged (28 – 36 day nestling period) by early July (Hayward 1994). The project would not occur during the nesting and fledging periods (Hayward 1994) in Alternative B, and there would only be minor disturbance (site preparation) from Alternative A at the end of the fledging period. Due to the above rationale and the rationale in the EA, the direct, indirect, and cumulative impacts discussed above and in the EA would not adversely affect the boreal owl or cause a trend toward federal listing.

- 3) “Since it is unknown how many gray owls (sensitive species) exist in the area it cannot be stated with any accuracy that they would not be adversely affected”, as so stated in the EA. Therefore, this species needs further study before the project commences in order to be consistent with the Forest Plan.

Forest Service Response –

Since the great gray owl was not selected as an MIS for the Ashley National Forest, it is not analyzed in the Environmental Assessment (EA) under the MIS requirements. However, the great gray owl is on the Regional Foresters sensitive species list and is analyzed in the EA. As stated in the EA (page 3-12 and 6-7), spring calling surveys on the Forest have detected three and possibly four great gray owls on the Forest. These surveys have detected great gray owls in habitat similar to habitat that is along portions of the access road (Ashley NF unpub. data).

The EA states that impacts to the great gray owl from the proposed project would be similar to those impacts to the flammulated owl and boreal owl (refer to page 4-9 of the EA). The EA analyzes impacts to the great gray owl in common with these species (page 4-9) and discloses additional impacts on page 4-10. Great gray owl habitat does occur along the access road and there would be increased disturbance from traffic along this road. The timing mitigation in Alternative B would eliminate the increased disturbance to great gray owl habitat during the nesting period. Additional text to augment this section is as follows:

During the hauling phase of the project (September 10th and later) individual great gray owls may be temporarily displaced.

The EA states on page 4-16, The EA should state, “There would be some removal of conifer species at the truck turnaround site (.25 acres) from the proposed project that would result in some loss of boreal owl, great gray owl, and three-toed woodpecker habitat at this .25 acre area”. These conifers are small (approximately 8” dbh and smaller) and do not provide adequate roosting habitat [(>23 cm or 9” dbh (Duncan and Hayward 1994))] for the great gray owl. Furthermore, this is a small amount of habitat that would be disturbed when compared to the amount of habitat that is in the surrounding area. There is adequate habitat in the area that will remain undisturbed.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all terrestrial wildlife species described in the EA (refer to page 4-16 for great gray owl). Additional text to augment this section is as follow:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Some great gray owl habitat was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of great gray owl habitat as the understory repopulates. Firewood gathering is taking some snags and down woody debris, but the amount of snags taken under this program is very little when compared to the overall habitat available to the great gray owl on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may incrementally increase disturbance to great gray owls in the area and may temporarily displace individuals. However, the proposed project is temporary in nature and small in scale. Great gray owls usually lay their eggs by the first of May, and young have usually fledged in 3 –4 weeks (first of June) and ready to fly one to two weeks later (mid June) (Duncan and Hayward 1994). The project would not occur during nesting or fledging period under Alternatives A or B. Due to the above rationale and the rationale in the EA, the direct, indirect, and cumulative impacts discussed above and in the EA would not adversely affect the great gray owl or cause a trend toward federal listing.

g. Elk/Mule Deer

- 1) The Forest Plan requires a complete inventory of MIS species to determine their occurrence, abundance, distribution, habitat requirements, and population trends. The EA states that.. ‘population trends generally are either stable, or increasing for these species’, but there is no scientifically reliable figure for either species since there has been no organized inventory taken for either species.

Forest Service Response –

The EA states that the elk population within the Yellowstone subunit is approximately 5,300 animals, has increased in the recent past and is currently stable (refer to page 4-11 in the EA). This statement was taken from a personal communication with Randal Thacker, UDWR Wildlife Biologist March of 2003. Additional text to augment this section is as follow:

A phone conversation with Randal Thacker UDWR on December 5th 2003 verified the information on the elk population given in March 2003.

In Appendix A, page 6-3, the date in this reference should be changed from to December 5th 2003. Additional text to augment this section is as follows:

The Ashley National Forest occurs within five of the states wildlife management subunits (North Slope, Daggett (elk population objective is 1300 and population estimate is 1400); South Slope, Vernal (elk population objective is 2500 and population estimate is 2600); South Slope, Yellowstone (elk population objective is 5600 and population estimate is 5300); Nine Mile, Anthro (elk population objective is 700 and population estimate is 810); and Wasatch Mountains, Avintaquin (elk population objective is 1000 and population estimate is 1250) (UDWR 2004). Since there are portions of these subunits that are off the Forest, not all of these animals would occur on the Forest. With the exception of the Yellowstone subunit, the elk population on each of these subunits appears to be on a stable to slightly increasing trend. The Yellowstone subunit (proposed project is within this subunit) has nearly met the population objective and has been relatively stable for the past three years (Thacker, UDWR, 2003, pers. com.). Before that time, elk numbers in this subunit were on an increasing trend (Thacker, UDWR, 2003, pers. com.). Since the Forest constitutes a large portion of these subunits and population objectives have

been exceeded or nearly met, it appears that the elk population across the Forest is stable. Based on the available data, it is also believed that the Forest provides well-distributed habitat that sustains a viable population of elk.

It is acknowledged that deer herds have been declining throughout the state in recent years. Additional text to augment this section is as follows:

Mule deer population objectives and population estimates for the five wildlife management subunits in which the Ashley National Forest occurs are as follows: South Slope, Vernal population objective is 13,000 and the population estimate is 11,600; South Slope, Yellowstone population objective is 12,000 and the population estimate is 10,400; Wasatch Mountains, Avintaquin population objective is 3,000 and the population estimate is 1600; North Slope Unit (Daggett is a subunit within this unit) population objective is 12,000 and population estimate is 10,400; and Nine Mile Unit (Anthro is a subunit within this unit) population objective is 8,500 and the population estimate is 3,400. (UDWR 2004)

The estimated deer population is below the population objectives in all of the subunits discussed above. There was a sharp decline of mule deer populations in the state of Utah in the winter of 1992-'93. This decline has been attributed to several years of drought followed by an unusually hard winter. The years following the decline, the deer population rebounded slowly. However, due to the current drought, the deer population has again taken a downward trend since 2000. (UDWR Statewide Management Plan for Mule Deer 2003)

The EA states that the deer population for the Yellowstone subunit has decreased over the years, but is currently stable. This statement was taken from a personal communication with Randal Thacker UDWR in March of 2003. The phone conversation with Thacker in December of 2003 verified the information in March of 2003, with the exception of current trend in the deer population. Thacker states (December 2003) that data from recent deer classifications indicate that deer numbers in the Yellowstone subunit (proposed project is within this subunit) continue to be down (Thacker, UDWR, 2003, pers. com.).

From the data above and since the Forest constitutes a large portion of the discussed subunits, it appears that the overall deer population on the Forest is currently in this same downward trend. However, the data also suggest that the Forest provides well-distributed habitat that sustains a viable population of mule deer.

- 2) Notwithstanding the findings of the 1999 “Utah Big Game Range Trend Studies”, the FS should gather their own data on these species as mandated by NFMA. Since the FS has not done this, they are in violation of NFMA... “by not comparing population trends to changes in habitat which have occurred cumulatively through management activities”.

Forest Service Response –

Additional text on this matter is as follows:

On the UDWR “Utah Big Game Range Trend Studies” website, (www.ag.utah.gov/mktcons/rangeland/range.htm) there are several studies listed in the Northeast Volume 2, 2000 that are within the South Slope Wildlife Management Unit (WMU #9). Because winter range is thought to be critical habitat and the more limiting, all of these studies are in big game winter range and only a few occur on the Forest (very little winter range exists on the Forest). Two Forest Service trend study sites (38-31 and 38-16) are near the project area. These study sites indicate that range conditions in the area have generally been good in the past. Given that there is no winter range near the project, range conditions generally being good near the project, and few impacts to vegetation from the project, it is therefore unlikely that elk and deer habitat would be negatively affected by the project. This further indicates that elk and deer populations are not likely to be affected by the project. Furthermore, elk and deer populations are usually driven by hunting, winter range conditions, and weather.

- 3) The EA states that these species may be affected, but gives no reliable quantitative data.

Forest Service Response –

The EA does address impacts to elk and deer from the proposed project (refer to pages 4-11, 4-14, and 4-16). For additional discussion on quantitative data and impacts to elk and deer, refer to Response to Comments III.D.8.g.1, 2, & 4

(previous two responses and the following response).
Additional text to augment this section is as follows:

Though, tree removal on the .25 acre truck turnaround may reduce hiding and thermal cover, it is small in scale in comparison to the amount of habitat available to these species in the area. Because of its adjacency to the access road, it would not provide ample security for big game. Therefore, removing the amount of trees on this .25-acre truck turnaround area would not adversely affect elk and deer.

- 4) There is no cumulative affects analysis for theses species. The Forest Plan requires that there be an identification and mapping of elk/deer calving areas for assessing cumulative impacts. The EA does not include information on this requirement.

Forest Service Response –

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to page 4-16 for elk and deer). Additional text to augment this section is as follow:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Some big game hiding and thermal cover was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of forage, hiding cover, and thermal cover. Firewood gathering is taking some snags and down woody debris, and would not directly affect big game. Of those cumulative effects listed, grazing, past tree removal activities, and human presence have the greatest potential to affect big game habitat in the area. Hunting has the greatest impact on big game populations. There may be direct forage competition between cattle and big game and big game may be displaced from a portion of this area for part of the year. However, forage competition is generally more critical on winter range. Tree removal (thinning and pole timber sale) may reduce hiding and thermal cover, but may benefit big game in the long term by opening areas to more forage production. The past tree removal activities were small in scale and are therefore, unlikely to have negatively impacted big game. This project combined with these cumulative impacts and those listed in the EA, may increase disturbance to big game habitat near the project. In addition

to the rationale in the EA (pages 4-11 and 4-16), the disturbance from the project is short term and will not affect winter range or calving/fawning areas. Furthermore, there is ample space and habitat available to big game throughout the drainage and away from the disturbance. Due to the above rationale, the rationale in the EA, areas of disturbance being small compared to the amount of available foraging habitat within the territory, the small scale of the project, and the project being temporary in nature, the proposed project combined with the cumulative impacts would not affect the viability or trend in elk and deer populations and would not impair the ability of the Forest to provide well-distributed habitat for elk and deer.

Though elk and deer habitat is within the project area (primarily along the access road), suitable calving and fawning areas are not. The project is not associated with dense cover and brush (hiding cover) that is typical of calving and fawning areas.

h. Golden Eagle

The EA does not demonstrate that population monitoring data exists for golden eagles in the project area or that the FS has actually looked for golden eagle territories in the project area, and...“since there have been no site specific surveys for golden eagles in the project area, the FS has failed to comply with NFMA.”

Forest Service Response –

The EA does state that the North American Breeding Bird Survey found golden eagle populations in the “region” to have an increasing trend (refer to page 4-12 in the EA). The “region” in this analysis is the state of Utah. The word should be replaced with state of Utah. In other words, these breeding bird surveys found golden eagle populations in the state of Utah to have an increasing trend. Additional text to augment this section is as follows:

Two of the Breeding Bird Survey (BBS) routes occur on the Ashley National Forest. These are the Moon Lake (which is near the proposed project) and the Grizzly Ridge routes (Sauer et. al.). Golden eagle occurrences on the Moon Lake route appear to be stable and there are no occurrences on the Grizzly Ridge route, according to analyses from the North American Breeding Bird Survey (Sauer et. al.). Four other BBS routes (Soapstone, Wasatch, Matt Warner Res, and Flaming Gorge routes) are in similar habitats that occur on the Ashley National Forest and are in close proximity to

the Forest (Sauer et. al.). The Wasatch and Soapstone routes did not have any golden eagle occurrences, but the Flaming Gorge and Matt Warner routes indicate a stable to increasing trend of occurrences of this species (Sauer et. al.). Nature Conservancy data show golden eagle populations in Utah to be “apparently secure” (Nature Serve 2003). Recorded sightings of golden eagles on the Forest appear to be distributed across the Forest with the majority of sightings occurring within the last four years (Ashley NF unpub. data.).

Based on the available data for the Ashley National Forest and for Utah (Nature Conservancy data, BBS state wide data, BBS data on the Forest and surrounding the Forest, Ashley NF bird transects and sighting records), it is believed that the golden eagle population on the Forest is stable to slightly increasing. The Ashley National Forest provides golden eagle habitat that is well distributed across the Forest that is believed to be sufficient to sustain a viable population of golden eagles (FEIS Ashley NF LRMP 1986).

Direct and indirect impacts to the golden eagle are found on pages 4-12 and 4-13 in the EA. The primary disturbance from the proposed project to this species would be some loss to rock outcrop/cliff habitat and noise disturbance from the activities related to the project. These activities may temporarily displace individuals. Additional text to augment this section is as follows:

The truck turn around site is not located in open country, and would have no affect on rock outcrop/cliffs. Golden eagles nest and roost in rock outcrop/cliffs and large trees, and forage over open country (DeGraaf et.al.). The trees at the .25-acre truck turn around site are small (8” dbh and smaller) and are not located near open country, therefore removing these trees would not affect the golden eagle or its prey species.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to pages 4-16 and 4-17 for golden eagle). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other

small mining claims. Some golden eagle habitat was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of golden eagle habitat as the understory repopulates. Firewood gathering is taking some snags and down woody debris, but the amount of snags taken under this program is very little when compared to the overall habitat available to the golden eagle on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may increase disturbance to the rock outcrop/cliff areas and golden eagle foraging areas near the project. However, traffic and recreational activity on the road above the proposed project and current activities at the mine site has likely prevented the golden eagle from using this portion of rock outcrop/cliffs. Alternatives A and B would only eliminate 0.075 acres of this rock outcrop/cliff habitat. The EA states that acres of cliff habitat would be removed. This should state that 0.075 acres of habitat would be removed. Within the cumulative effects area, there is a substantial amount of rock outcrop/cliff habitat at a suitable elevation for the golden eagle. A large portion of this drainage is within the High Uintas Wilderness designation, which will continue to remain undisturbed. With the exception of the rock outcrop/cliffs in the proposed project, rock outcrop/cliff areas in this drainage outside the Wilderness area are also anticipated to remain undisturbed. The Ashley National Forest contains approximately 23,655 acres of rock outcrop/cliff habitat (FEIS Ashley NF LRMP 1986). The removal of 0.075 acre of this habitat from the proposed project is a small amount compared to the total amount (23,655 acres) on the Forest. Affecting this amount of rock outcrop/cliff habitat would not affect the viability of golden eagle populations and would not impair the ability of the Forest to provide well-distributed habitat for the golden eagle.

It should be noted that golden eagles begin laying eggs in early March in Utah (Nature Serve 2003). The incubation time is approximately 43-45 days and young can fly at 60-77 days (Nature Serve 2003). This would put the fledging period at approximately mid July. The timing mitigation in Alternative A would prevent test pit work and hauling during the nesting and fledging periods (Nature Serve 2003), but would allow site preparation to occur during the fledging period. However, the timing mitigation in Alternative B would ensure implementation of the project would avoid the nesting and fledging periods (Nature Serve 2003) for the golden

eagle. Furthermore, a site visit in August of 2003 revealed no nests in the nearby rock outcrop/cliffs and no evidence of nesting. Considering these facts and those in the EA, the proposed project combined with the cumulative impacts would not affect the viability of golden eagle populations and would not impair the ability of the Forest to provide well-distributed habitat for the golden eagle.

It should be noted that the table on page 6-6 in the EA states that the golden eagle is and . This table should be corrected to say that golden eagle habitat is present in the project area and suitable habitat is within the project area.

i. Red-naped Sapsucker and Warbling Vireo

These species have not been sufficiently studied in the project area; therefore the FS cannot state that the project is..’unlikely to have significant impacts’, or the campsites...’could displace some individuals’....without any definitive conclusions. This is in violation of NEPA.

Forest Service Response –

The EA does state that the North American Breeding Bird Survey found warbling vireo populations in the “region” to have an increasing trend and red-naped sapsucker populations to have a decreasing and recently stabilizing trend (refer to page 4-13 in the EA). The “region” in this analysis is the state of Utah. The word should be replaced with state of Utah. In other words, the analysis of these breeding bird surveys was done for the state of Utah. Additional text to augment this section is as follows:

Two of the Breeding Bird Survey (BBS) routes occur on the Ashley National Forest. These are the Moon Lake (which is near the proposed project) and the Grizzly Ridge routes (Sauer et. al.). There appears to be an increasing trend in warbling vireo occurrences on both these routes according to analyses from the North American Breeding Bird Survey (Sauer et. al.). Four other BBS routes (Soapstone, Wasatch, Matt Warner Res, and Flaming Gorge routes) are in similar habitats that occur on the Ashley National Forest and are in close proximity to the Forest (Sauer et. al.). These routes indicate a stable to increasing trend of warbling vireo occurrences (Sauer et. al.). Nature Conservancy data show warbling vireo populations in Utah to be “apparently secure” (Nature Serve 2003). The Forest ran 13 transects (in a variety of habitats, with the majority of transects and warbling vireo occurrences being in aspen and

riparian types) in 1994 and detected 222 warbling vireos; 17 transects (in same habitat types as 1994) in 1995 detected 117; one transect in 1996 (in ponderosa pine) detected one warbling vireo; one transect in 1998 and two transects in 1999 (all in sage brush) with 2 and 6 warbling vireos detected respectively (Ashley NF unpub. data.). Other recorded sightings of warbling vireos on the Forest appear to be well distributed across the Forest (Ashley NF unpub. data.).

Nature Conservancy data show red-naped sapsucker populations in Utah to be “vulnerable” (Nature Serve 2003). There were five red-naped sapsuckers counted on the BBS Moon Lake route in 2002 and two in 2003 (Sauer et. al.). The Grizzly Ridge route had one red-naped sapsucker occurrence in 2000 and three in 2001 (Sauer et. al.). The Flaming Gorge route does not have any red-naped sapsucker occurrences, but the Soapstone, Wasatch, and Matt Warner Res. routes appear to have stable to slightly increasing occurrences of red-naped sapsuckers (Sauer et. al.). The Forest ran 13 transects (in a variety of habitats, with the majority of transects and red-naped sapsucker occurrences being in aspen and riparian types) in 1994 and detected 17 red-naped sapsuckers; 17 transects (in same habitat types as 1994) in 1995 detected 5; one transect in 1996 (in ponderosa pine), one transect (sage brush) in 1998, and two transects (sage brush) in 1999 did not detect any red-naped sapsuckers (Ashley NF unpub. data.). Other recorded sightings of red-naped sapsuckers on the Forest appear to be well distributed across the Forest (Ashley NF unpub. data.).

Based on the available data for the Ashley National Forest and for Utah (Nature Conservancy data, BBS state wide data, BBS data on the Forest and surrounding the Forest, Ashley NF bird transects and sighting records), it is believed that the warbling vireo population on the Forest is viable and stable. Based on this same data it is believed that the red-naped sapsucker population on the Forest is stable to slightly decreasing, but viable. The Ashley National Forest provides warbling vireo and red-naped sapsucker habitat that is well distributed across the Forest and is sufficient to sustain viable populations of these species (FEIS Ashley NF LRMP 1986).

Direct and indirect impacts to the warbling vireo and red-naped sapsucker are found on pages 4-13 and 4-14 in the EA. The primary disturbance to these species from the proposed project would be noise disturbance from the campsite and traffic through aspen along the road. These activities may temporarily displace

individual red-naped sapsuckers and warbling vireos. Additional text to augment this section is as follows:

The removal of trees at the truck turn around would not include aspen, and therefore would not affect red-naped sapsucker or warbling vireo habitat.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to pages 4-17 for warbling vireo and red-naped sapsucker). Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, firewood gathering, fire, and other small mining claims. Some red-naped sapsucker and warbling vireo habitat was lost in the Petty Mountain fire of 2003, for the short term. In the long term there will be an increase of this habitat as the aspen regenerates. Firewood gathering is taking some aspen snags and down woody debris, but the amount of snags taken under this program is very little when compared to the overall habitat available to the red-naped sapsucker and warbling vireo on the Forest. This project, taken with these cumulative impacts and those listed in the EA, may increase disturbance to warbling vireo and red-naped sapsucker habitat. Grazing can directly effect aspen regeneration and human disturbance from other activities may displace individuals. However, the activities listed above are not anticipated to increase as a result of the proposed action and no measurable changes to these species are expected. It should be noted that red-naped sapsucker young have fledged by mid July and warbling vireo young leave the nest at the end of June (Nature Serve 2003). The timing mitigation in Alternative A would prevent test pit work and hauling during the nesting and fledging periods (Nature Serve 2003), but would allow site preparation to occur during the fledging period. However, the timing mitigation in Alternative B would ensure implementation of the project would avoid the nesting and fledging periods (Nature Serve 2003) for the red-naped sapsucker and warbling vireo. With the exception of clearing overhanging branches along the road, the project would not remove any aspen. Considering these facts and those in the EA, the proposed project combined with the cumulative impacts would not affect the viability of red-naped sapsucker and warbling vireo populations and would not impair the ability of the Forest to provide well-distributed habitat for these species.

j. Canada Lynx

- 1) Federal agencies have failed to designate critical habitat, even though they have been ordered to do so by the court.

Forest Service Response –

The authority to designate critical habitat for listed species has not been given to the Forest Service. This authority has been given to the Secretary of Interior (US Fish & Wildlife Service) [ESA Sec. 4, Subsec. (b) (2), and 16 U.S.C. §1533 (b) (2)].

- 2) Even though the Forest and USFWS believe that the Lynx will not be impacted by this project, further study of the Lynx is warranted and necessary.

Forest Service Response –

Additional text to augment the Section 3.2 – Chapter 3 of the EA is as follows:

The hair samples that were discussed in the EA on page 3-13 were collected from a three year (1999-2001) hair-snare study the Ashley National Forest conducted. This study followed the National Lynx Detection Protocol. The study did not detect any lynx during those three years. Another study using the same protocol in the Uinta Mountains by BYU did not detect lynx (Flinders et al. 2001). A current lynx study being conducted in the Uinta Mountains by BYU is collecting data on snowshoe hare densities and the effects of coyote invasion into deep snow areas on lynx prey species (results of this study have not been released). In addition, the Ashley National Forest has been collecting snowshoe hare data through track surveys and some pellet counts (Ashley NF unpub. data). The Ashley will continue to collect snowshoe hare data.

- 3) Population surveys should include published studies instead of using unpublished data as cited in the EA, page 3-13.

Forest Service Response –

Refer to Response to Comments III.D.8.j.2.

- 4) “The agencies have concluded that Lynx are found rarely if at all in the Uintas, however no snowshoe hare surveys have been conducted.....” “.....the entire ANF was designated as potential Lynx habitat and was listed under the ESA.”

Forest Service Response –

Refer to Response to Comments III.D.8.j.2.

- 5) “Based on the fragile status of Lynx populations nation-wide, and the imminent designation of critical habitat, Lynx should be studied further until it can be definitely concluded that there will be no impact to the Lynx as a result of the project.”

Forest Service Response –

Refer to Response to Comments III.D.8.j.2 & 7.

- 6) The FS has not met the NFMA requirement to identify habitats critical to threatened or endangered species and to prescribe measures to prevent their adverse modification. (219.19(a)(7))

Forest Service Response –

Additional text to augment this section is as follows:

The Ashley National Forest has mapped lynx habitat across the Forest and has designated Lynx Analysis Units (LAU), as directed by the LCAS. The proposed project lies within the Moon Lake LAU (LAU #9). The effects of the project and cumulative effects were analyzed within this LAU. For further discussion refer to the Biological Assessment (on file at the Roosevelt Ranger District Office), pages 4-7, 8, & 14 in the EA, and Response to Comments III.D.8.j.1, 2, and 7.

- 7) “Potential impacts to Lynx have not been clearly eliminated from the project plan, especially in relation to the cumulative effects discussion on page 4-14 of the EA.

Forest Service Response –

Potential impacts to lynx were evaluated in the EA pages 4-8, 4-14, and 4-15. Additional text to augment this section (along with existing text) is as follows:

The Biological Assessment also evaluated potential impacts to lynx in detail. It was determined in the Biological Assessment that the project “may effect, but is not to likely adversely affect” the Canada lynx. The EA does state that linkage corridors could be temporarily altered during the implementation of the project. The amount of habitat and distribution of habitat within the LAU, would still allow lynx to move and forage through the LAU and between adjacent LAU’s during implementation of the project. There is ample

lynx habitat away from the disturbances that would provide corridors for lynx within the LAU and corridors connecting adjacent LAU's. Furthermore, this effect from the project would only be temporary and would not occur during denning or winter foraging periods.

Cumulative impacts to wildlife are listed on page 4-14 of the EA. These concurrent, past and future activities were used in the cumulative effects analysis for all wildlife species described in the EA (refer to pages 4-14 for Canada Lynx). The EA states on page 4-8 that acres of lynx habitat would be directly changed to unsuitable. This should state that 0.075 acres of lynx habitat would be directly changed to unsuitable. It should be noted that the test pit area contains some lynx habitat amongst the rock outcroppings and the area adjacent to the test pit is suitable lynx habitat. Therefore, it was decided to analyze all the test pit area (0.075 acre) as if it is suitable lynx habitat to establish a maximum disturbance. Page 4-14 states that there would be acres of disturbance at the test pit and acres disturbance at the campsite. This should be changed to 0.075 acres and 1.5 acres respectively. There would also be 0.25 acres of disturbance at the truck turnaround.

Additional text to augment this section (along with existing text) is as follows:

A portion of a burn in 2003 changed 320 acres of suitable lynx habitat within the LAU to unsuitable. Firewood gathering within the LAU would affect an additional 36 acres of lynx habitat within the LAU. Adding these acres to the 10 acres of past thinning projects, and the 2 acres of pole timber sale, gives a total of 368 acres of suitable lynx habitat within the LAU that has been changed to unsuitable in the last 10 years, or is expected to be changed to unsuitable in the near future. This is approximately 1.3% of the total suitable acres in the LAU. The statement on page 4-8 of the EA, "" should be changed to "This represents a little over one percent of the total lynx habitat in LAU 9". Adding the 0.325-acre (0.075 acres test pit, 0.25 acre truck turn around) of disturbance from the proposed project, gives a total of 368.325 acres. This would still be approximately 1.3% of suitable lynx habitat changed to unsuitable within the LAU in the last 10 years. This is far less than the 15 % standard in the LCAS. These changes to lynx habitat are analyzed in detail in the electronic mail correspondence with the US Fish & Wildlife Service (US F&WS e-mail correspondence). It

was determined in this correspondence that these changes do not change the overall assessment in the Biological Assessment of the Paint Mine proposal relative to effects on lynx. On page 4-8 of the EA, the 320-acre burn and 36 acres of firewood gathering should be added to the discussion of suitable lynx habitat changed to unsuitable.

It should be noted that the “disturbance area” calculated on page 4-14 of the EA, was not a requirement of the LCAS. This was calculated as an additional analysis to determine the total possible disturbance area associated with the proposed project. With the changes listed above, the total temporary disturbance area of the proposed project would be 3384.025 or 12.1% of the LAU. This is less than the 30% standard in the LCAS. This would change the calculation of acres on page 4-14 of the EA to 3384.025 acres. Page 4-14 of the EA also states, “”. This should be changed to state “This (3384.025 acres) is approximately 12.1% of the total area in LAU 9 that would receive temporary disturbance for the duration of the project”.

The EA states on page 4-14 of the EA, that there would be 1.2 additional acres under the “reasonably foreseeable actions”, and this figure was calculated in the disturbance area. However, the 450 feet (.21 acres) of road was not calculated in the “reasonably foreseeable actions”. This would change acres on page 4-14 of the EA to 1.41 acres. This correction would slightly increase the total suitable acres of lynx habitat changed to unsuitable in the LAU from 368.325 to 369.735. This would still be approximately 1.3% (the same percentage calculated above) of total lynx habitat in the LAU. As stated above, this is less than the 15% standard in the LCAS. This correction and the corrections above would change acres on page 4-14 of the EA to 3385.435 acres. With these changes, the total temporary disturbance area of the “reasonably foreseeable actions” would be approximately 12.1% of the LAU (the same percentage as calculated above). As stated previously, this is less than the 30% standard in the LCAS.

All these corrections are evaluated in the electronic mail correspondence with US Fish & Wildlife Service (US F&WS e-mail correspondence). For further discussion of these corrections of disturbance to lynx habitat, refer to this correspondence (in the project record) and Response to Comments III.D.1.b. It should be noted that on page 4-15, the EA states that reinitiating consultation with US Fish & Wildlife Service on the reasonably foreseeable actions will not be

necessary. Because the concurrence letter from the US Fish and Wildlife Service was two years old and there were some minor changes in lynx habitat that would be affected by the proposed project, correspondence with US Fish & Wildlife Service was initiated through electronic mail. This correspondence also addressed the reasonably foreseeable actions. It was determined in this correspondence that these changes do not change the overall assessment in the Biological Assessment of the Paint Mine proposal relative to effects on lynx (US F&WS e-mail correspondence).

Additional text to augment this section is as follows:

Other cumulative activities would include grazing, hiking, hunting, fishing, OHV use, and other small mining claims. Grazing may limit forage and cover for lynx prey species, however, the project would have little effect to forage and cover of lynx prey species. The other activities may be creating some noise disturbance within the LAU. However, the activities listed above are not anticipated to increase as a result of the proposed action. Measurable changes to lynx and lynx habitat as a result of direct, indirect, and cumulative impacts are analyzed in detail in the EA, the Biological Assessment, and the electronic mail correspondence with US Fish & Wildlife Service.

- 8) The Forest Plan does not allow activities, which will adversely affect threatened species, but the FS concedes that linkage corridors would be altered as a result of the project.

Forest Service Response –

Refer to Response to Comments III.D.8.j.7 (previous response).

- 9) The project should be enjoined until impacts to this species are studied further and adequately eliminated.

Forest Service Response –

Refer to Response to Comments III.D.8.j.1, 2 and 7.

9. Aquatic Wildlife

a. Colorado River cutthroat

- 1) “There is no evidence that there has been any population trend data gathered for CRCT aside from a genetics test from which the results are still pending.”

Forest Service Response –

Successful implementation of the Colorado River cutthroat trout (CRCT) Conservation Agreement and Strategy by the Utah Division of Wildlife Resources (UDWR) and the Ashley National Forest has led to an upward trend for CRCT in several lakes on the south slope of the Uinta Mountains of the Ashley National Forest. Stream populations of CRCT still remain at risk and are on a downward trend Forest wide primarily due to non-native competition, hybridization, historical grazing, roads, habitat fragmentation, and timber practice. The subspecies appears to be distributed throughout much of the Forest, but populations in various streams and stream reaches vary in strength. It appears that some populations are thriving in isolated streams or stream reaches. Many populations have been replaced by non-native fish species. However, with continued planned conservation actions for stream populations as outlined in the Conservation Strategy, and upward trend could be achieved within 5-7 years on the Ashley National Forest. The UDWR and Ashley National Forest continue to better define fish distribution through ongoing surveys.

The upward trend for lake populations is largely attributed to the development of a CRCT broodstock program. For example, a healthy and very productive Colorado River cutthroat trout (CRCT) broodstock population exists in Sheep Creek Lake. For the past 5 years (1999-2003), thousands of fingerlings from this source have been stocked in several Uinta Mountain lakes across the south slope of the Uintas. UDWR's 2001 monitoring effort indicates that 14 of the 62 stocked lakes in 1999 and 2000 exhibit a good potential for full establishment. The continued success of this current trend will be dependent upon future stocking.

In addition to the Sheep Creek Lake broodstock program, two other broodstock programs were recently initiated on the Forest. The Lake Canyon Lake broodstock program located on the south unit was started in 2002 and is scheduled to be ready for stockables in 2006. The third broodstock source, which will be used to supplement CRCT populations on the north slope of the Uintas, also resides in Sheep Creek Lake and is also scheduled for stockables in 2006.

The Forest Service and UDWR are also actively engaged in habitat protection through various activities such as constructing migration barriers to protect reclaimed streams. Along with the fish barriers, new construction and maintenance of riparian fencing has taken place to protect riparian vegetation and

streambanks from cattle grazing. In addition, improvements to existing roads such as culvert replacement and reshaping of roads have occurred to reduce sediment loading in streams. Paramount to the CRCT stream effort is UDWR's lead role in an interagency effort for mechanical and chemical removal of non-native trout to provide non-competitive additional habitat for CRCT.

- 2) There was no meaningful analysis done of potential impacts to aquatic species in the closest streams (0.33 to 0.50 miles from the project area).

Forest Service Response –

Forest Service personnel documented the nearest live water to be 0.33 to 0.50 miles from the project area. It was also documented that this live water (Slate Creek) does not provide viable fisheries habitat; therefore why should a meaningful analysis be done? We do not do analyses on habitat that will not support fisheries. This decision was supported by UDWR officials in 2002.

- 3) There may be a pure population of CRCT in Brown Duck Creek (USFWS letter to Kurt Pindel, Jan. 12, 2002). "Though there is approximately a 3.5 mile distance to Brown Duck Creek, this project is of concern to officials at USFWS."

Forest Service Response –

Even if this population were pure, which is unlikely based on the historical non-native salmonid stocking record above and below the sampled location on Brown Duck Creek, the mining activities would not be a threat because of the distance between the two areas and the lack of habitat in Slate Creek.

- 4) The EA does not support the conclusion with any data that there will be no impacts to CRCT based on past mining activities, nor does the EA specify any specific past projects that may have potentially impacted aquatic resources in the area.

Forest Service Response –

This statement is true, hard data was not obtained on Slate Creek because it was determined that past mining activities have not impacted Slate Creek which is a fishless stream. This determination is based on a visual field survey by two Forest Service fisheries biologists of the potentially affected area and consultation with UDWR officials. We do have physical and

biological data from UDWR’s 1999 Brown Duck Creek survey, which suggests the fishery is in fair condition. We can include this information if necessary. There is nothing suggesting that CRCT is even an issue in this area yet.

b. Aquatic species

- 1) Since there are potential impacts to aquatic species, NEPA requires that impacts be studied at the...“cumulative effects geographical scope”. This was not done for the project.

Forest Service Response –

The following sentence is no longer applicable and will be deleted in references to the Aquatic Section, Page 4-17 of Chapter 4 – Paint Mine Exploration and Development Proposal - Environmental Assessment:

~~*“Given the proposed actions and the reasonably foreseeable actions there will be no negative or positive cumulative effects to fisheries from this project.”*~~

The following is added to the cumulative effects section, page 4-16 of Chapter 4 – Paint Mine Exploration and Development Proposal - Environmental Assessment:

Recreation and cattle grazing are the two primary potential activities that could be considered cumulative impacts. The higher elevation lakes such as, Brown Duck Lake and Kidney Lake are popular recreation areas for anglers and horseback riding. Because these areas are a good distance away (2.5-4.0 miles) from the project area they will not impact the area of concern.

The potential addition of a total 450 feet of new road, and an open pit of potentially 100 feet wide by 500 feet long and up to 50’ deep over the course of 10-30 years is also recognized in the analysis. With the work spread out over the assumed time frame of 10-30 years, coupled with the ability to reclaim areas as mining progresses up the ore body, along with proper mitigations, cumulative environmental effects from this maximum disturbance reasonably foreseeable scenario will be unmeasureable to distant fisheries.

As long as mitigation measures are adhered to by UMCC there should not be any negative cumulative effects from the proposed mining activities.

- 2) The EA has not ...”adequately assured the public that aquatic species will not be adversely affected by the project”.

Forest Service Response –

Refer to #1) and #2) above.

- 3) What are the effects to aquatic species from wastewater and wastewater runoff as a result of dust control activities?

Forest Service Response –

The following is added to the effects section, page 4-16 of Chapter 4 – Paint Mine Exploration and Development Proposal - Environmental Assessment:

The amount of water used during dust abatement rarely leaves the width of the shoulders of the road being treated so I don't see this as a problem. And even if it did, there is no live water along the material transportation route where water will be used for dust control; therefore there will not be any negative effect to aquatic species from this activity.

- 4) The EA does not adequately analyze the impacts to aquatic species from tree/vegetative clearing that will take place as part of project activities.

Forest Service Response –

The following is added to the effects section, page 4-16 of Chapter 4 – Paint Mine Exploration and Development Proposal - Environmental Assessment:

Aquatic species will not be impacted as a result of vegetation removal because of the relatively small area (<3.22 acres) which could be disturbed in relationship to the distance (1/3-1/2 mile) this activity would take place to live water.

- 5) The Forest did not use modeling techniques specified in the Forest Plan to analyze the cumulative effects of sediment to aquatic resources.

Forest Service Response –

This comment is referring to the Water Erosion Prediction Project (WEPP). The Forest Hydrologist discussed the applicability of the WEPP Model to the Proposed Action and Alternatives with the Forest Service Research Station in Moscow, Idaho, and was advised that the WEPP Model was not

applicable to the project activities (personal communication between Ronnee Sue Helzner and Bill Elliott, November 2003).

- 6) Aquatic species....”were completely unanalyzed in the EA and include Colorado River species including Colorado pikeminnow, razorback sucker, bonytail, and humpback chub. The FS failed to consult with USFWS on these species in regards to project activities. “District Wildlife Biologist, Mr. Kurt Pindel noted the lack of analysis of these species, and was concerned that there could be impacts to these species in a letter dated January 10, 2002.”

Forest Service Response –

The following is added to the effects section, page 4-16 of Chapter 4 – Paint Mine Exploration and Development Proposal - Environmental Assessment:

The endangered Colorado pikeminnow, razorback sucker, bonytail and humpback chub will not be effected by this project because there is will not be a net loss of water reaching downstream habitat which is several miles downstream from this project area.

10. Soils

- a. Due to the unstable nature of the project area’s soils it is unclear and in fact unlikely that soil stability will be maintained, and most certainly will not be improved.”

Forest Service Response –

The project area is located in a naturally unstable geological area, and natural erosion rates are high. The natural state of unstable conditions will occur with or without the project, the project as proposed would maintain the natural conditions with mitigation to assure increased instability would not occur beyond the natural range of conditions for the landform in which the project is located.

- b. There is no evidence in the EA that the Forest has conducted order three soil surveys in the project area.

Forest Service Response –

The Ashley National Forest has an order three land systems inventory that addresses the geological, geomorphological, soils and vegetation of the area. An order 3 soil survey is not sufficient for project level work, and the site was visited for more site specific information on soils and geology than would be contained in an order 3 survey.

- c. Will the activities be designed to meet the Forest Plan requirements to minimize the effects of sediment-releases so that rates do not exceed a 125% increase of the pre-project rates the 1st year and a 105% increase at the end of 5 years?

Forest Service Response –

Refer to Forest Plan page IV-40; the cited standard/guideline appears under Objective #2 (Soil/Water/Air) to “maintain or improve soil stability, site productivity, and repair or stabilize damaged watersheds.” Design elements to meet this criterion for Alternative A are in section 2.2.a.1 (UMCC proposed environmental measures) on pages 2-19 through 2-23 (schedule of proposed work to minimize road damage; erosion control, road maintenance, slope stability, and stockpiling topsoil). For Alternative B, see section 2.2.b.1 on pages 2-25 through 2-32 (schedule of proposed work, vegetation, soils/hydrology/water quality, campsite area, and Forest Development Road 131). These design elements are intended to meet the Forest Plan concern/guideline regarding minimize sediment production.

- d. The Forest did not do any modeling as directed by the Forest Plan to determine the rate of sediment increase as a result of project activities.

Forest Service Response –

See Hydrology responses to III.D.7.b and d. regarding sedimentation.

- e. There is no analysis in the EA as to how much erosion could result if the project were to commence and there is no analysis as to whether proposed mitigation measures would be effective.

Forest Service Response –

See Hydrology response to III.D.7.b, c, d, g, and m above.

- f. Mitigation measures/monitoring guidelines should be fully analyzed in the EA, but the EA states that monitoring and mitigation would be discussed between the FS and UMCC at a later time. “Delaying this process and discussion does not give the public the necessary information and assurance that the project will protect area soils.”

Forest Service Response –

Mitigation and monitoring measures (see Chapter 2 for each alternative) are part of the alternatives and thus are included in the effects analyses.

- g. The cumulative effects analysis was void of any particular impacts. There is no evidence in the EA that natural stability would ever be achieved. The EA states that because of natural instability and past projects erosion rates would be high indefinitely...this and other similar statements..."fall well short of assuring the public that the FS will maintain or improve soil stability as the Forest Plan mandates.

Forest Service Response –

Natural erosion rates are high as well as geological instability. The ability to stabilize a naturally unstable area is unlikely, and the FS has put mitigation in place to assure that stability would not exceed the range of natural erosion rates of the landform in which the project is located.

11. Cultural Resources

- a. Potential impacts to the Uintah Indian tribe were not discussed, although tribal lands are within 4 miles of the project area.

Forest Service Response –

The Uintah Indian Tribe was contacted through scoping and informed of the project. The Tribe raised no issues and no issues were raised during the analysis.

- b. The EA should address potential impacts to tribal water sources from project activities.

Forest Service Response –

See response for item a. above.

- c. "The EA failed to do an even superficial analysis of potential impacts to the Uintah tribal lands."

Forest Service Response –

See response for item a. above.

12. Roadless areas

- a. There is no disclosure as to whether the mapping discrepancy on inventoried roadless areas in the project area..."can be made (corrected) through a process or otherwise", and the time frames for such a correction are not disclosed.

Forest Service Response –

There is no opportunity at this time to make corrections or changes to the roadless inventory made 'official' by the Roadless Area Conservation Rule. As the Forest revises its land management plan, roadless will be re-inventoried for purposes of making recommendations for Wilderness designation and other land allocation decisions. This is required under the 1982 regulations implementing the National Forest Management Act.

- b. The regulations for the protection of roadless boundaries do not support a correction to the roadless boundary until the FS can point to a legally validated way to change this designation. Therefore, the area should remain roadless. “The legally preferred method to change roadless boundaries would probably include public comment and occur during a forest plan revision.”

Forest Service Responses –

At this time, the Forest does not anticipate revising the roadless boundaries until such time that we revise our land management plan. The analysis in the current EA accurately describes and discloses the effects to roadless area attributes, whether inside or outside of roadless area boundaries.

13. Wilderness

The public’s wilderness experience would be affected by the project, due to topography, noise, sights, and air quality at the project site.

Forest Service Response –

The Utah Wilderness Act does not preclude activities outside designated wilderness areas. Measures have been developed to help mitigate impacts to wilderness opportunities and will be made part of the operator’s plan of operations.