EXHIBIT E

0010

Incoming
C/025/0005

From: Joe Helfrich
To: OGMCOAL
CC: Priscilla Burton
Date: 3/9/2009 9:13 AM
Subject: Fwd: expanded comments
Place: OGMCOAL
Attachments: Alton Coal_NDP_20090316.doc

Please file in Alton C/025/0005.....Thanks, Joe

>>> Neil Perry 3/9/2009 8:23 AM >>>
Hey Joe, I've just added a few additional comments to the document I sent you last week. This document includes everything I sent last week as well, so you can delete that old one if you haven't already opened it up. Hope this helps...sure seems like they have a long way to go!

We really appreciate your efforts on this project!

Neil

Neil D. Perry
Wildlife Biologist II
Utah Division of Wildlife Resources
1470 N. Airport Rd.
Cedar City, UT 84720
(435) 865-6112
fax: (435) 586-2457

Alton Coal Mine Mitigation Plan

Section 322.220 High Value Habitats

In 2006 UDWR changed the terms utilized for habitat designations. The term "high-value" habitat are now designated as "crucial", and should be changed as such throughout the document.

Section 333.

General comments:

Road-kill

Coal haul trucks can have severe impacts to wildlife populations along highways. Specifically, the UDWR is concerned with impacts along the State Routes 89 and 20. The mitigation plan should include measures to efficiently monitor and remove road kill by haul trucks, including but necessarily limited to: mule deer, elk, sage grouse, other birds and smaller animals. Further, golden and bald eagles feeding on carcasses near roads are exposed to road kill risks. At the least, UDWR would request that a specific road-kill monitoring program be established, whereby truck drivers could maintain a log of animals hit and/or killed.

Predator control

There is no discussion of predator control or waste management protocols within this document (well that I found, admittedly not having read the entire deal). Predator control is most effective when preventative measures are taken to limit and/or reduce predator attractants. Preventative measures should include careful management of employee and company trash, utilizing wildlife proof containers when left outside. Further, road kill along the haul truck routes near sage grouse habitat should be removed daily. Carcasses will attract ravens and eagles, both of which are significant predators of sage grouse. Low speed limits should be established and enforced, at least as far as highway 89, to limit likelihood of wildlife vehicle collisions, especially to sage grouse.

Specific Comments:

Second paragraph, third sentence. This statement underestimates the scale of mining activity in this area. More appropriate wording would be be…."the local population of sage-grouse is vulnerable to elimination, the probability of extirpation would be greatly increased by mining activities proposed by the Coal Hollow Project."

Under bulleted items on the same page. Should read, "Enhance **potential** sage-grouse habitat"…they are digging up the "**current** sage grouse habitat".

Chapter 3

3-43.

First sentence, "...mining activities will be minimized so that the lowest disturbance will be created during the breeding season at areas adjacent to the original lek". The term "minimized" is too subjective. Technically they are digging up all areas adjacent to the lek, and they offer no specific provisions to avoid the lek during the breeding season, i.e. if they end up excavating the lek and "areas adjacent to" during the breeding season (as they repeatedly indicate they may have to) then this statement is false. This paragraph should include (unless I'm misunderstanding how this document should be organized) a detailed explanation of specific actions that will be taken. They should explicitly state if they may be excavating the lek during the breeding season or, preferably, that they will avoid the lek site (including some buffer) during the breeding season. And, what is the "lowest disturbance"? ...24 hour a day excavation with massive diesel engines screaming through the night?

We still support the decoy idea; however this document reads as if it is certain to work, just work because it did for a researcher in 1978. Their failure last year indicates that this mitigation needs methodology improvements. In the sprit of full disclosure, this document should include a short summary of that effort and detail exactly how they intend to improve the technique. For example, the idea to include white markings on the decoys may not work, and is based on one or two anecdotal examples. Heck, for all we know adding white might deter the birds? I would suggest that they include a simple experimental design to test their techniques before excavating the lek. This could be conducted on alternative populations, but should at least be attempted on site this season.

Next Page, 1st paragraph, last sentence. "In sites used by sage-grouse for breeding and roosting that had previous livestock grazing, livestock will be used post-reclamation to maintain similar vegetation characteristics as pre-mining conditions." This logic is false, and this action is most definitely not sage-grouse mitigation. Much of the "pre-mining condition" is over utilized rangeland. Indeed historic (i.e. the last 100 years) is likely at least partially the cause of long-term PJ encroachment and loss of understory components that are important for sage-grouse brood-rearing. In other words, resuming pre-mining land use will (in essence) bring us back to square one; i.e. a population of sage-grouse that is "vulnerable to elimination". Restoring this area to current land use regimes is not beneficial to an already vulnerable sage-grouse and should not be considered mitigation.

Example: when we toured Robinson creek, it was obvious that the landowner actively partakes in sage-brush removal treatments (maybe the herbicide spike?). Further, excessive soil compaction and almost complete lack of understory (other than non-native cow forage like crested wheat-grass) indicate a heavily overgrazed pasture. This pre-mining land use is in now way beneficial to sage-grouse.

3-44. Juniper Removal.

It is interesting that they describe the BLM effort as insufficient, when there is little opportunity for them to treat even a fraction of the acreage treated by the BLM? This part needs to be more specific. I would argue they should offer a habitat treatment plan that is as detailed as their coal excavation plan. This should include, where, when, how, and how many acres will be treated each year.

They state: "Long-term plans **could** include remove of hundreds of acres of juniper woodlands, in a specific area adjacent to the Coal Hollow Project which would significantly increase conditions that are more suitable to sage-grouse nesting and post-nesting requirements." Aside from being poorly written and including some typos, this sentence says nothing. If they are going to have a long-term plan it should be a plan, not a vague outline of what these plans "could" be?

3-45. Heut's ranch

Again, this section needs to be more specific. They should be able to cite an agreement with the landowner. Also, they should at least offer a specific estimate of treatment expenses and how many funds they will be providing. Further, I doubt they will have approval from the Heaton's to raze 1,700 acres of PJ and oak. The number looks good on paper, but is probably not realistic.

3-46. Establishment of a Core Sage-Grouse Conservation Area.

Again, they should to explain exactly what and where they will be removing. And, rather than evaluating whether or not vegetation is responsive and/or if birds use their treatment areas, they should simply execute treatments to this area to the maximum extent feasible. These treatments take time, at least a couple of years. Given their timeline to excavate the private leases, these treatments need to happen this fall…really two falls ago, and they need to be rested from cattle grazing (standard is typically at least two years of resting) to ensure establishment of planted forbs and grasses. Again, they need to commence and not procrastinate.