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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Kathleen Clarke
Executive Director
Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

September 4, 2000

TO: Internal File

THRU: Mike Suflita, Project Lead *MS*

FROM: Paul Baker, Reclamation Biologist *PBB*

RE: Utah Power and Light Tract, Canyon Fuel Company, LLC., Skyline Mine, ACT/007/005-IB00B

SUMMARY:

On July 6, 2000, the Division received a proposal from Canyon Fuel Company to add 459 acres to its permit area. Canyon Fuel does not plan any new surface disturbance. The area is to the south of the current permit area and just to the east of Electric Lake.

Under the proposal, the lower part of James Creek, a perennial stream that flows into Electric Lake, would be undermined. James Creek is a spawning area for fish from Electric Lake, and Electric Lake is important for the fisheries program of the Division of Wildlife Resources' Southeast Region.

TECHNICAL ANALYSIS:

ADMINISTRATIVE INFORMATION

OWNERSHIP AND CONTROL INFORMATION

Regulatory Reference: R645-301-112

Analysis:

The applicant has updated ownership and control information. This will need to be checked in the applicant violator system, but it appears to be complete.

TECHNICAL MEMO

The applicant has also updated the lists of owners of lands within and contiguous to the permit area. Drawings 1.6-1 and 1.6-2, the land ownership maps, have been revised, but the revised maps are not complete. According to the C-2 form, Drawing 1.6-2 would replace Drawing 1.6-2 in the current plan. This map is supposed to show coal ownership, but it only shows this information for the proposed addition to the permit area, not the rest of the area. Drawing 1.6-1 is supposed to show surface ownership information, but it does not include this information for most of the areas on the map, including the entire current mine permit area.

Sections 112.500 and 112.600 contain lists of the owners of lands within and contiguous to the permit area. This information is confusing and needs to be revised. There are two lists of owners of contiguous lands, both surface and subsurface, the lists conflict. Because the land ownership maps are incomplete, it is impossible to check the lists against the maps.

The lists of the names and addresses of owners of surface and subsurface rights within the permit area have not been changed, but they need to be updated.

Findings:

Information in the application is not adequate to meet the requirements of this section of the regulations. Prior to final approval, the applicant must supply the following in accordance with:

R645-301-521.131, Maps in the plan are required to show surface and subsurface land ownership information. The application includes two maps showing this information for the proposed addition to the permit area, but these maps do not show this same information for the current permit area.

R645-301-112.500 and R645-301-112.600, The lists of owners of surface and subsurface lands within and contiguous to the permit area need to be updated.

VIOLATION INFORMATION

Regulatory Reference: R645-301-113

Analysis:

The applicant has updated the violation information for the plan.

Findings:

Information in the application is adequate to meet the requirements of this section of the regulations.

RIGHT OF ENTRY

Regulatory Reference: R645-301-114

Analysis:

The application includes right of entry information for the proposed addition, including a copy of the lease between Canyon Fuel and PacifiCorp. Only part of the leased area would be included in the permit area, and the application includes a metes and bounds description of the area that would be added. The legal description appears to match the proposed addition shown on the maps in the application. This fulfills the regulatory requirements for providing right of entry information.

The lease with PacifiCorp specifically says no mining of any kind is allowed within the high water mark of Electric Lake, including a buffer zone. Drawing 3.1.8-3 shows an area of mining under a portion of Electric Lake at the bottom of James Canyon. This is not allowed under the terms of the lease in the application, and the mine plan needs to be adjusted accordingly.

Findings:

Information in the application is not adequate to meet the requirements of this section of the regulations. Prior to final approval, the applicant must supply the following in accordance with:

R645-301-114, Drawing 3.1.8-3 shows an area of mining under a portion of Electric Lake at the bottom of James Canyon, and this is not allowed according to the lease with PacifiCorp. The applicant needs to modify the mine plan.

UNSUITABILITY CLAIMS

Regulatory Reference: R645-301-115

Analysis:

The application includes no new information about unsuitability claims. The Division is unaware of any proposal to designate the area as unsuitable for mining.

Findings:

Information in the application is adequate to meet the requirements of this section of the regulations.

TECHNICAL MEMO

PERMIT TERM, INSURANCE, PROOF OF PUBLICATION, AND FACILITIES USED IN COMMON

Regulatory Reference: R645-301-116 and -117

Analysis:

The permit term would not change with this proposal.

The applicant maintains an insurance policy, and the Division has a copy on file.

Because the application is for an incidental boundary change and not for a new permit or for a significant revision, public notice is not required.

The applicant is not using facilities in common with any other permitted operation.

Findings:

Information in the application is adequate to meet the requirements of this section of the regulations.

ENVIRONMENTAL RESOURCE INFORMATION

HISTORIC AND ARCHAEOLOGICAL RESOURCE INFORMATION

Regulatory Reference: R645-301-411.140

Analysis:

Appendix A-3 of the current mining and reclamation plan contains various cultural resources reports, mostly about the current permit area. There has been some survey work done in the proposed addition to the permit area as part of exploration operations. A report dated October 2, 1978, from Archeological-Environmental Research Corporation details a survey conducted in the area. One drill hole and about two seismic lines in the James Canyon area were surveyed, and nothing "of any significance" was found.

The applicant has fulfilled the regulatory requirement to include available cultural resource information about the area. In all of the cultural resource surveys of the area, including a 100% survey of disturbed areas and a 10% survey of the rest of the permit area, only a few sites were found, and none of these was considered eligible for listing in the National Register of

Historic Places. The entire area proposed to be added to the permit area was not surveyed, but because of the lack of significant sites in the area, because there has been some survey work done with no cultural resource sites found, and because there will be no surface disturbance other than subsidence, information in the application is considered adequate.

Findings:

Information in the proposal is adequate to meet the requirements of this section of the regulations.

VEGETATION INFORMATION

Regulatory Reference: R645-301-321

Analysis:

Drawing 2.7.1-1a in the application shows vegetation communities in the proposed addition to the permit area. The four communities in the area are sagebrush/grass, riparian, conifer-timber, and aspen. The text of the application includes general descriptions of these areas.

The C-2 form indicates Drawing 2.7.1-1a should replace the same drawing in the mining and reclamation plan. It appears, instead, that the map in the application should supplement the map in the plan.

Other than subsidence, no surface disturbance is planned, so detailed vegetation information is not required.

Findings:

Information in the proposal is adequate to meet the requirements of this section of the regulations. Drawing 2.7.1-1a would not replace the vegetation map in the current plan but should supplement it. Any future C-2 forms should correct this problem.

FISH AND WILDLIFE RESOURCE INFORMATION

Regulatory Reference: R645-301-322

TECHNICAL MEMO

Analysis:

Wildlife Information

Table 2.9-5 lists those animals classified by the Division of Wildlife Resources as Native Utah Wildlife Species of Special Interest. Other than this, the application includes no new wildlife information.

The application contains no information about whether James Creek is a fishery although the Division of Wildlife Resources has indicated verbally it is an important spawning area for fish from Electric Lake. Wildlife Resources considers Electric Lake to be vital for the fisheries program in the Southeast Region.

The Forest Service study of Burnout Creek was completed in 1998. This study examined whether there were any changes to the channel morphology, water flows, or riparian vegetation in Burnout Canyon as a result of subsidence. James Creek was used to compare to Burnout Creek. The study concluded there were probably relatively minor changes to the pool/riffle ratio, but there were no other clearly measurable changes. The Forest Service study did not examine fish or macroinvertebrate populations in either Burnout Creek or James Creek, so there is no information about whether the changes in channel morphology may have affected fish use in Burnout Creek.

The applicant needs to conduct fish and macroinvertebrate studies in James Creek and, because mining and subsidence is not yet completed, in Burnout Creek as well. The surveys for fish need to be done in the fall for two consecutive years, at least one of which should be before any mining occurs, and every three years until three years after mining is completed in the area. The applicant also needs to collect information about macroinvertebrates on a similar schedule except that they would be sampled in the fall and spring instead of just in the fall.

Drawing 23-6-1 shows a flume (F-9) in James Creek at the Forest Service boundary, and the application contains flow data from this flume. This flume is about one-third of the way from Electric Lake to the top of James Creek, so it would not show the effects of mining in much of the James Canyon watershed. There is no commitment in the plan or application for continued monitoring of this flume.

The applicant needs to establish a flow monitoring point in James Creek near Electric Lake and collect flow data at monthly or shorter intervals during times of the year when the area is accessible, about June through October. Samples need to be taken consistently near the same dates each year. If the applicant is monitoring other locations in James Creek, such as flume F-9, these locations should be made a part of the water monitoring plan in the mining and reclamation plan and the data submitted to the Division on a regular basis.

The annual report includes a map of raptor nests found in the area in 1999. There were no raptor nests found in the proposed addition to the permit area. Jeff Jewkes of the Forest

Service has done ground surveys in the area. He confirmed in an August 2, 2000, telephone conversation that there are no known nests in the lower part of James Creek. There is one goshawk nest known from the lower part of Burnout Creek, but it has not been active in 2000.

Threatened and Endangered Species

The only information in the application about threatened and endangered species is a list in Table 2.9-4 of listed and proposed threatened and endangered species. This list was apparently taken from the Division of Wildlife Resources' Internet site, but it is not completely up to date.

More accurate and current information on threatened and endangered species is available from the Fish and Wildlife Service's Internet site. According to the information from the Fish and Wildlife Service, the applicant needs to make the following changes:

1. Delete the American peregrine falcon (*Falco peregrinus anatum*). It is no longer listed as threatened or endangered.
2. Add Canada lynx (*Lynx canadensis*) as a threatened mammal.
3. Add Deseret milkvetch (*Astragalus desereticus*) as a threatened plant species.

Although several plant species on the list in Table 2.9-4 occur in Emery County, most of these are low elevation, desert species that would not be expected in the proposed addition to the permit area. The only threatened or endangered species that could potentially be in the area are the bald eagle and the southwestern willow flycatcher.

Bald eagles are known to have four nest sites in Utah, and none of these is near the Skyline Mines. Bald eagles are likely to fly over the area in late fall through early spring and could forage in Electric Lake when it is not frozen, but there are no known roosting or other concentration sites in the immediate area.

Most confirmed southwestern willow flycatcher nests are at lower elevations than those in the proposed addition to the permit area, but it is suspected there could be some at high elevations, such as near Fish Lake in Sevier county. They nest in dense willow patches, and the area along Huntington Creek above Electric Lake could potentially provide some habitat. The riparian area along James Creek is mostly wet meadow, and the application says the main species in the area are Kentucky bluegrass, bentgrass, Ross sedge, water sedge, Nebraska sedge, Baltic rush, and tufted hairgrass. While the Division is aware of some willow patches, they are not dense and would not provide the type of habitat needed by this species.

TECHNICAL MEMO

Four fish species on the list in Table 2.9-4 occur in the upper Colorado River drainage basin, and although they would not be in the permit area, the mine has the potential, through water depletions, of adversely affecting these species. These potential effects are discussed in the fish and wildlife protection section of this analysis.

Findings:

Information in the application is not adequate to meet the requirements of this section of the regulations. Prior to final approval, the applicant must supply the following in accordance with:

R645-301-322, The application needs to include a plan for monitoring the fish and macroinvertebrate populations of Burnout and James Creeks.

R645-301-724, The applicant needs to monitor water flows in James Creek near Electric Lake. This needs to be done at least monthly intervals while the site is accessible and should be done on approximately the same dates each year. Flume F-9 should be added to the water monitoring plan so data is submitted to the Division on a regular basis.

R645-301-322, The applicant needs to update the list of threatened and endangered species in Table 2.9-4.

LAND USE RESOURCE INFORMATION

Regulatory Reference: R645-301-411

Analysis:

The application includes no new information about land use in the proposed addition, so it is assumed the land uses are the same as those in the current permit area. These uses include recreation, grazing, and wildlife habitat. Since the vegetation communities are essentially the same as in the current permit area, it is reasonable to expect these same uses.

Findings:

Information in the application is adequate to meet the requirements of this section of the regulations.

OPERATION PLAN

PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES

Regulatory Reference: R645-301-411.140

Analysis:

The proposed addition to the permit area contains no known cultural resource sites, so no protection plan should be needed. In a letter dated August 14, 2000, the Division of State History concurred with the Division's assessment that no sites would be adversely affected by mining in the Utah Power and Light Tract.

Findings:

Information in the proposal is adequate to meet the requirements of this section of the regulations.

FISH AND WILDLIFE PROTECTION PLAN

Regulatory Reference: R645-301-333

Analysis:

Protection and Enhancement Plan

The application includes no changes to the wildlife protection and enhancement plan, and with the exception of the James Creek area, no additional protection, enhancement, or monitoring plans are needed. The Fish and Wildlife Information section of this review discusses the information needed for James Creek.

To mitigate for the potential loss of Burnout Creek as spawning habitat, the applicant paid for a fish ladder to be constructed at Boulger Reservoir. The intent of this fish ladder was to allow fish access to the upper part of Boulger Creek where they could spawn in case Burnout Creek became unavailable. According to the Division of Wildlife Resources, fish use the fish ladder, but it is not known whether fish from Electric Lake are able to spawn in the upper part of Boulger Creek as a result of the fish ladder. In a meeting held August 24, 2000, representatives of the Division of Wildlife Resources agreed they would be willing to survey for fish in Boulger Creek similar to what the applicant needs to do in Burnout and James Creeks.

TECHNICAL MEMO

The application needs to contain a commitment to mitigate any negative mining-caused effects on James Creek. It is uncertain whether mining has caused any effects on fish using Burnout Creek as spawning habitat or if there will be any effects on the fish in James Creek. The fish and macroinvertebrate studies and the water monitoring required under R645-301-322 and R645-301-724 should determine these effects for James Creek. If there are no effects, no mitigation will be required. If these studies determine there are adverse effects, the applicant will need to work with the Division and the Division of Wildlife Resources to determine appropriate mitigation measures.

Areas containing surface water and aspen are generally considered critical summer range for deer and elk. Also, all riparian areas are critical habitat. Most of the proposed addition to the permit area is in one of these categories.

Undermining the area should have little effect on the value of the area for a terrestrial wildlife habitat. Trees sometimes fall or lean when an area subsides, but this should have little effect on wildlife populations, especially since there are no known raptor nests in the area. The most likely effects are on the stream and riparian areas, but the Burnout Creek study found no effects on terrestrial riparian vegetation.

Endangered and Threatened Species and Bald and Golden Eagles

Any water depletions are considered to negatively affect the threatened and endangered fish of the upper Colorado River basin. The application includes no new information about additional water use, and, according to verbal information from the applicant, this is because the mine would use no more water if this amendment is approved than it is currently using. Therefore, there should be no additional negative effects.

Because the proposed addition to the permit area contains no habitat for threatened or endangered species, no protection or mitigation measures are needed. There are also no known bald or golden eagle nests in the area.

Findings:

R645-301-330, The application needs to contain a commitment to mitigate any negative effects of mining on the fish and macroinvertebrate populations of James Creek.

RECOMMENDATIONS:

The application should not be approved until the deficiencies discussed in this memorandum have been adequately addressed.