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

R27

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March 26, 2001

TO: Internal File

THRU: Mike J. Suflita, Project Lead *MS*

FROM: Paul B. Baker, Reclamation Biologist *PBB*

RE: Utah Power and Light Tract, Canyon Fuel Company, LLC., Skyline Mine, C/007/005-IB00B-1

SUMMARY:

On July 6, 2000, the Division received a proposal from Canyon Fuel Company to add 459 acres to its permit area. The Division responded with a technical analysis dated November 1, 2000, and received a revised proposal February 21, 2001. 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:

GENERAL CONTENTS

IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; 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 and the associated land ownership maps. The information appears to be complete for coal ownership. There is one entity shown on Drawing 1.6-1 as owning land contiguous to the revised permit area that is not included in the text of the application. This needs to be corrected.

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:

R645-301-112.500 and R645-301-112.600, Surface land ownership information shown on Drawing 1.6-1 is not consistent with the information shown in the text, and this needs to be corrected.

VIOLATION INFORMATION

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; 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: 30 CFR 778.15; 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.

Findings:

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

LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; 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.

Section 114 of the application contains a legal description of the permit area and the area proposed to be added. The legal description of the proposed addition appears to correspond to the maps in the application.

Findings:

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

PERMIT TERM

Regulatory References: 30 CFR 778.17; R645-301-116.

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:

TECHNICAL MEMO

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

PUBLIC NOTICE AND COMMENT

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

Analysis:

Because this is an incidental boundary change and not a significant revision, no public notice is required.

Findings:

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

FILING FEE

Regulatory Reference: 30 CFR 777.17; R645-301-118.

Analysis:

The Division only requires the filing fee for new permits and not for changes, renewals, or transfers of existing permits.

Findings:

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

ENVIRONMENTAL RESOURCE INFORMATION

HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.12; R645-301-411.

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 RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.19; R645-301-320.

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 2.7.1-1b, the soils map, should be added to the current plan, but it does not say whether Drawing 2.7.1-1a should be added or if it should replace the same drawing in the current plan. The Division assumes it is to be added like the soils map, but the applicant needs to make this clear on the C2 form.

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

Findings:

TECHNICAL MEMO

Information in the proposal is adequate to meet the requirements of this section of the regulations. Drawing 2.7.1-1a does not have enough information to replace the vegetation map in the current plan but should supplement it, but the C2 form does not give instructions.. The applicant should correct the C2 form and show how the Division should handle this map.

FISH AND WILDLIFE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 784.21; R645-301-322.

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; however, the applicant commits to conduct multi-pass electrofishing to estimate fish populations in Burnout and James Creeks for two consecutive years and then every three years thereafter. The fish surveys will be done in the fall. According to the application, the first fish survey was done October 16, 2001, but this is a typographical error that should be corrected.

In addition to the fish survey, the applicant commits to do a macroinvertebrate study of James and Burnout Creeks twice a year for two consecutive years and every three years thereafter. The surveys will be done in the spring and fall, and the fall survey will coincide with the fish survey. According to the application, the first macroinvertebrate survey was done October 16, 2001, but this is a typographical error that should be corrected.

The surveys will continue for three years after active mining and subsidence stop unless statistical analysis demonstrates impacts have occurred or may occur. If damage occurs, mitigation efforts will be made to alleviate the mining impacts.

The commitments in the application have been discussed with the Division of Wildlife Resources and are in accordance with the decisions made in those discussions.

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 applicant has updated information about threatened and endangered species in Table 2.9-4. 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.

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 includes what appears to be a typographical error that should be corrected. It says fish and macroinvertebrate studies were first done in James and Burnout Creeks in 2001, but this should probably be 2000.

LAND USE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.22; R645-301-411.

Analysis:

TECHNICAL MEMO

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: 30 CFR784.17; R645-301-411.

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 INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

Analysis:

Protection and Enhancement Plan

The environmental resources section of this analysis discusses commitments the applicant has made to monitor fish and macroinvertebrate populations in James and Burnout Creeks.

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.

The application contains 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 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 incidental boundary change area should have little effect on the value of the area for most terrestrial wildlife habitat. Trees sometimes fall or lean when an area subsides, and this can affect some bird species. Although nearly all birds are protected, raptors tend to be of greatest concern. There are no known raptor nests in the James Creek area. There is a goshawk nest in the Burnout Creek area, but the Division is unsure of its exact location in relation to mining. The current mining and reclamation plan contains commitments to monitor suitable raptor habitat in advance of mining, so this area should be checked before being mined. It appears from Drawing 3.1.8-3 that this area will be mined in 2002 or 2003.

According to the plan, if any nests are identified, they will be carefully monitored for subsidence-related damage during the nesting season. If the goshawk nest can be found and if it is active, the applicant will need to develop a protection plan.

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