0044

File ~~ACT/007/001~~
& ACT/007/009L
~~Copy to Lee~~
Jim

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
BROOKS TOWERS
1020 15TH STREET
DENVER, COLORADO 80202

OFFICE OF THE REGIONAL DIRECTOR

RECEIVED
JUN 3

JUN 19 1981

DIVISION OF
OIL, GAS & MINING

Mr. James W. Smith Jr.
Coordinator of Mined Land Development
Utah Department of Natural Resources
Division of Oil, Gas, and Mining
1588 West North Temple
Salt Lake City, Utah 84116

Dear Jim:

I request that you incorporate the enclosed comments into your Apparent Completeness Review for the Belina Nos. 1 & 2 Mines and the Sage Point-Dugout Canyon Mine.

Sincerely,

for DONALD A. CRANE

Enclosure

UT0013

File ACT/007/001

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Manti-LaSal National Forest
599 West Price River Drive
Price, Utah 84501

2820

June 1, 1981

Mr. John Nadolski
OSM - Reclamation and Enforcement
Brooks Towers - 1020 15th Street
Denver, Colorado 80202

Dear Mr. Nadolski:

The Forest Service has reviewed the Underground Mining Permit Application submitted by the Valley Camp Coal Company for their Belina #1, #2, and Utah #2 mines. The attached comments should be beneficial to Federal, State, and local agencies involved to any degree with this mine permit application.

If there are any questions, please contact us.

Sincerely,

W H Bailey

for
REED C. CHRISTENSEN
Forest Supervisor

Enclosures

Volume 1

Page 13 - The U.S. Forest Service does not own coal. We are a surface management agency for coal.

Page 24 - "43CFR3461 Federal Lands Review,) Unsuitability for mining should have been looked at.

Volume 2

Page 3 - "Any additional portal facilities will be addressed in succeeding permit applications." The Forest Service needs as much lead time as possible on these types of actions so they can be incorporated into our work schedule. This enables us to better meet the needs of the company involved.

Page 4 - "Valley Camp of Utah, Inc., does not anticipate a significant disturbance of any of the sites listed. If such disturbance is necessary, photographic documentation will be made and monitoring procedures will be implemented." If a site, listed or unlisted, is to be disturbed in any manner, the District Ranger must first be notified. The Ranger will make the appropriate decisions regarding the site.

Page 6 - I question the validity that the Blackhawk Formation is 1,900 feet thick.

Page 11 - "The geology of surficial deposits on lands affected by surface disturbance is shown on Soils Map, Map E..." This is a soils map only.

Page 12 - "The structure of the overburden is shown on Columnar Sections..." These sections only show lithologic units. Be more precise in term usage.

Page 12 - "It is our belief that the same condition applies to the Valley Camp, Inc., application as well and are already available to the regulatory authorities via the Skyline Permit Application." Some tests for pyrite content and alkalinity must be made in the Belina #1 and #2 mines to substantiate the above assumption.

Page 12 - "In formation concerning the clay content of floor samples for Valley Camp, Inc., should also be available via the Skyline Permit Application..." Some tests for clay content (volume and type) must be made in the Belina #1 and #2 mines to substantiate the above assumption.

Page 13 - Are these faults going to affect mining? Why or why not?

Pages 20 and 21 - The how of water migration through rock, along with definition is already known. How does confined aquifer, perched water tables, unconfined aquifer, artesian effects, etc., specifically relate to this mine area along with anticipated mining activities?

Page 22 - "During this time, the mine plan area was covered on foot and all seeps and springs that were found are noted on Hydrology Map, Map F." What is the geologic environment of each spring? Where is the rechange area for each spring? How is each spring related to the groundwater regime? How will subsidence effect these springs and seeps?

Page 36 - "Further, a monitoring program is underway and will continue in order to insure the continuing maintenance of the water quality should it be imparted by the mining activities." This application should give a detailed description of the monitoring plan underway.

Page 42 - "Total area extent of the riparian type is very small." How many acres? Does a map show the location of the riparian zones?

Pages 52 and 53 - "If it becomes evident that James Canyon Creek will be impacted, this stream will at that time be inventoried and described as per Eccles Creek." It is better to do an inventory before there are impacts, instead of after.

Page 55 - The Blackhawk is not a group, it is a formation.

Volume 3

Page 3 - "All portals will be sealed, and sites regraded and reclaimed upon completion of mining." Some specific details and plans are needed.

Page 3 - "Engineering methods and standard engineering practices will comply with all legal requirement." What are the engineering methods to be used, so they can be checked.

Pages 3 and 3a - "All structures, dams, embankments, topsoil storage, mine facilities, and pollution control facilities are designed to meet OSM standards." Are there construction drawings with specifications for the above mentioned activities?

Page 3a - "The topsoil will be stored for the life of the mine in a stockpile or used in reclamation efforts as operations permit." What is actually planned?

Page 3a - "The stockpile at the Belina Mine sites was placed by shovel and trucks and will be maintained by seeding and other erosion control measures, as needed." How is the stockpile going to be stabilized and treated?

Page 3a - "The topsoil will also be removed, stockpiled, and stabilized at transfer points along the proposed conveyor route when construction begins." Where are these sites?

Page 3c - "The Utah #2 area was constructed prior to topsoil removal regulation and, therefore, no topsoil is in storage from that area." How will this area be reclaimed?

Page 4 - "Pollution control programs and facilities are devised and constructed to prevent water and air pollution." Be more specific with construction details and specifications.

Page 4 - "Fire protection for the mine and plant facilities is in accordance with State and Federal regulation." What is proposed? More detail is needed so the fire protection setup can be checked.

Page 9 - "Appropriate sediment control measures have been implemented to minimize contributions to runoff outside the Mine Plan Area." What are these appropriate sediment control measures? How were they constructed? Where? Any design drawings and specifications?

Page 14 - "...the sediment will be hauled away from the drainage area and placed in a landfill." Where is the landfill site located? How is it to be reclaimed?

Page 15 - "Monitoring for embankment movement will also be a part of this inspection where applicable." Where is it applicable? How will the monitoring be done?

Page 15 - "If unstable or potentially unstable conditions exist, corrective measures will be taken immediately." What type of corrective measures are anticipated?

Page 26 - "Slopes...will be seeded by...or other acceptable methods." What are these other acceptable methods?

Page 26 - "Hydroseeding may be substituted for the above methods of seeding where practical." What do you really propose?

Page 26 - "In specific cases, other methods of revegetation may be suitable, and may be used if approved." What is really proposed for revegetation and where?

Page 26 - "Soil tests will be taken in areas to be revegetated and fertilizer added as required." What standards are the soil results going to be compared against?

Page 27 - "The topsoil stockpile will be stabilized with seed and erosion control measures to protect the stockpile." What are these erosion control measures?

Page 28 - "When the area will not contribute high sediment load to the streams, the pond will be removed." What is a high sediment load?

Page 28 - "The Utah #2 area..." Up to a point, the Underground Mining Permit Application was concerned with the Belina #1 and #2 mines. Is this permit application for the Belina mines, or the Belina mines and Utah #2 mine? If this is to include the Utah #2 mine, a detailed analysis of the Utah #2 is needed like the Belina mines.

Page 31 - "Therefore, Valley Camp proposed to leave the buildings, parking lot, entrance road, etc., in the office warehouse area, and dispose of the entire complex for a recreation site or other usage." This cannot be a serious thought.

Page 33 - "During reclamation, the road used for material haulage will be treated and retreated as necessary with a dist suppressive material to prevent excessive dust." What dust suppressant will be used?

Page 35 - "Efforts will persist during the entire construction period to affect as little surface area as possible." Is there a map designating what this surface area is?

Page 36 - "Regional water quality will be enhanced by mining activities to the extent that water encountered in the mines in discharged." What about petroleum distillates and other chemicals used in mining operations? How do they improve water quality? What about the fines on the mine floor? Will surface water quantity be affected?

Page 37 - "Because the mining activities in the permit area will have minimal adverse impacts on the quality of water and quantity of water in the area, the present users rights will be protected." This is only an assumption on the part of Valley Camp.

Page 41 - "The quantity of water present in surface water sources in the area is anticipated to remain unaffected by mining in the permit area and adjacent area." Subsidence and hydrologic monitoring will determine this, but over a long period of time.

Page 47 - "The mining activities should not adversely affect the hydrologic regime." The subsidence and hydrologic monitoring program will determine this, but after a long period of time.

Page 48 - "The portal area land is a private leased area, and it is probable that the landowner will want to use the area after mining for a cattle holding facility." What does the landowner want? The owner should be consulted.

Page 50 - "The private road leading to the Belina portal sites will be left intact to minimize the impact on the environment as well as to provide access to the recreational area established at the Belina portal sites." Previously, this was only a suggestion on the part of Valley Camp. Now it is assumed to be fact.

Page 51 - "Comments from the landowners are included in this section as figures 3-14, 3-15, and 3-16." Figures 3-14, 3-15, and 3-16 all say, "Contact with the landowner is being made and the comments will be forwarded to the regulatory agency as soon as they are received."

Page 83 - Other surface structures are present besides pipelines. There are Federal and private roads.

Page 85 - "If the creek is impacted, then a monitoring and protection plan will be initiated." Seems a bit late to monitor after the damage is done. Why not monitor before to see when or if the creek is impacted, and have a suitable contingency plan ready to be implemented if monitoring indicates the creek is being affected?

Page 85 - "Currently no roost trees are known and no bald eagles nest in Utah." Is this really true?

Page 82 - "...permit area can be classified as non-renewable resource lands." There are grazing allotments, timber production, wildlife habitats, recreation use, etc., on and around the area.

Map D-1 - Is there a map which shows what the topography will look like after reclamation, 1" - 50'?

There are no geology maps - there are no structure maps.

UT0041

File
ACT/007/009

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAY 14 1981

MEMORANDUM

To: Donald Crane, Regional Director
Office of Surface Mining, Region V

Through: Donald R. Tindal, Associate Solicitor
Division of Surface Mining

From: Suellen T. Keiner, Assistant Solicitor
Regulatory Programs, Division of Surface Mining

Subject: Sage Point - Dupont Canyon Mine

We have received your March 17, 1981, request for an opinion on whether the Sage Point - Dupont Canyon Mine would "interrupt, discontinue, or preclude farming" on an alluvial valley floor. This office has recently responded to an oral request from Mike Bishop of your staff on (we believe) the same alluvial valley floor question. See attached memorandum from Suellen T. Keiner to John Hardaway dated March 3, 1981. Please let me know if the attached memorandum is not fully responsive to your question.

Attachment

cc: John Hardaway
Mike Bishop

MEMORANDUM

To: John Hardaway, Assistant Regional Director, Division of Technical Analysis and Research Office of Surface Mining, Region V

From: Suellen T. Keiner, Assistant Solicitor, Regulatory Programs Division of Surface Mining

Subject: Mine permit applications: Diversion of water by a proposed surface mining operation.

Issue

Mike Bishop of your staff requested that this office prepare a brief memorandum advising you whether a proposed surface mining operation, which has acquired an operating farm's water rights to a stream that irrigates alluvial valley floor lands of that farm may divert such water to its own use during the life of the mining operation.

Conclusion

Yes, the proposed operation could obtain a permit in compliance with the Surface Mining Act. The mere acquisition of a superior water right does not, however, relieve the surface mining operation from requirements of the Act or State law. The Act (Section 510(b)(5)(B)) still requires an operator to demonstrate that the hydrologic balance of the downstream alluvial valley floor (AVF) will be preserved.

Discussion:

a) General hydrology requirements under the Act and its regulations.

Based on the information provided to this office, it appears that an existing farm located on an AVF in a western State has transferred its stream water rights to a proposed surface mining operation located upstream from the farm.

The preamble to the Department's rule states that mining would be permitted if the operator can show that, "in the case of alluvial valley floors outside the permit area, the hydrologic balance of the valley floor will not be materially damaged during or after mining" (emphasis added). 44 F.R. 15094, March 13, 1979. This position was implemented in the permanent program rules at 44 Fed. Reg. 15376, and codified at 30 C.F.R. 785.19(e)(1)(ii)(B):

> No permit ... shall be approved ... unless ...:
>
> (e)(1)(ii) The proposed operations would not materially damage the quantity and quality of water in surface and underground water systems that supply those alluvial valley floors that are -
>
> ...
>
> (B) Outside the permit area of an existing or proposed surface coal mining operation.

This regulation, although generally upheld in litigation, has been remanded to the Department by the U.S. District Court for the District of Columbia for revision to exempt from its requirements undeveloped range lands and small farm acreage. In Re: Permanent Surface Mining Regulation Litigation, C.A. 79-1144 (D.D.C., February 26, 1980). The court found that the Secretary exceeded his statutory authority by not allowing the alluvial valley floor hydrology of undeveloped rangelands and small farm acreage outside the permit area to be damaged, just as it could be damaged inside the permit area. Slip op. at 53. In your review of mine plans and permit applications, you should be mindful, therefore, that interruption of small farm acreage and undeveloped rangelands on AVFs can be allowed as an exemption from the requirements of 30 C.F.R. 785.19(e)(1)(ii)(B).

In practical terms, this rule provides that, if the operator can demonstrate that the diversion will not affect ongoing or prospective agricultural activities which are significant to farming on AVF lands (except undeveloped rangelands and small farm acreage), then the operation may obtain a permit. If any ongoing or prospective agricultural activities on the AVF are not dependent on the diverted water or will not be impacted because of the development of alternative water sources, then the operation can also obtain a permit.

On the other hand, the Act still does not allow a mining operation to impair permanently the hydrologic balance of downstream areas, even undeveloped rangelands and small farm acreage. Section 515(b)(10)(F) of the Act requires operations to:

> [preserve] throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country.

The water resource performance standards that implement Section 515(b)(10)(F) are generally found at 30 C.F.R. 816.41 - 816.57. These require, inter alia, the planning of mining activities "to prevent long-term adverse changes in [the prevailing hydrologic balance] that could result from those activities." 30 C.F.R. 816.41(a). Thus, any permit issued to the proposed operation "shall require that such surface coal mining operation will meet [these] applicable performance standards. ..." SMCRA Section 515(a). A careful and critical scrutiny of the hydrologic protection provisions contained in the mine plan and permit application is, therefore, advisable.

b) Relationship of hydrology requirements to State water law.

Mr. Bishop apparently had been advised that, in accordance with the applicable state law, the farm's transfer of its water rights to the proposed operation has created a priority or superior water right in the proposed mining operation. Although a priority right was created, this does not grant the operation the unlimited use of the water. Limitations to that use will depend on the individual State's water law. In Colorado, for example, certain limits may be placed on the priority user's water rights consistent with decreed rights of the District Water Court. See 45 Fed. Reg. 82181, December 15, 1980. Thus, Section 717(b), which requires the replacement of water supplies affected by a surface coal mine operation, "does not protect water users from the determination of their rights" in accordance with State water law. Ibid. Irrespective of the protections provided in the performance standards of the Act and the Department's regulations, actual diminution of water supply becomes a matter to be decided between users under State law, as provided in Section 717(a) of the Act.

Consequently, transfer of priority water rights to the proposed surface mining operation does not relieve that operation from the requirements and limitations of the Act and State water law. The permit applicant must still meet all applicable statutory and regulatory requirements. If problems of water supply (diminution, etc.) develop between the senior and junior water users, however, these become a matter to be determined through the application of State water law.

DOCKET
DSN-CHRON
SUBJECT
R/F:NAGEL:sjr:2/19/81:Sandra Tape 1
S
Nagel file copy