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DIVISION OF WILDLIFE RESOURCES

EQUAL OPPORTUNITY EMPLOYER

DOUGLAS F. DAY
Director

1596 West North Temple/Salt Lake City, Utah 84116/801-533-9333

March 4, 1981

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DIVISION OF
OIL, GAS & MINING

Mr. Cleon B. Feight, Director
Division of Oil, Gas and Mining
1588 West North Temple
Salt Lake City, Utah 84116

Attention: James Smith

Dear Cleon:

The Division has reviewed the mine and reclamation plan (MRP) for Eureka Energy Company's Sagepoint-Dugout Canyon mining project. Generally speaking, identification of the wildlife resource associated with the project is only fair; clarification and appropriate discussion to justify the Division's position will follow. The applicant's wildlife mitigation plan is not a plan, since many of the mitigatory activities or actions are preceded by the term "may be" accomplished; in the Division's opinion, a plan is a definite, prescribed activity or action. Also, the MRP indicates that the wildlife mitigation plan is incomplete and will be amended in July of 1981.

The MRP indicates that the project will not impact most of the wildlife species associated with the project. Professional opinion, supported by a myriad of recent studies, shows that activities similar to those proposed by the applicant do have varying negative impacts on wildlife. Thus, there is little or no evidence to support the applicant's position. Only site-specific research will definitively answer that question; fortunately, research is ongoing at Eureka's project, but conclusions cannot be made until termination of the research which is anticipated in 1984.

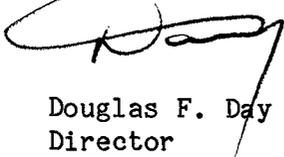
Cleon, from the Division's perspective, development of the coal resource is an acceptable priority within our state, even though such development will undoubtedly impact wildlife. With proper planning and coordination between our Division and industry, most of the site-specific impacts can be avoided, lessened or at least mitigated in some way. Since the MRP is the vehicle for documenting data and plans for a coal mining project, it is important that all identified resource data be accurate and that mitigation plans be specific and complete.

Mr. Cleon B. Feight
March 4, 1981
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The enclosed comments are provided for your use in guiding the applicant in development of a satisfactory MRP.

Thank you for an opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Day", written over the typed name.

Douglas F. Day
Director

Enclosure

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DIVISION OF WILDLIFE RESOURCE COMMENTS FOR EUREKA ENERGY COMPANY'S
SAGEPOINT-DUGOUT CANYON MINE AND RECLAMATION PLAN

Wildlife Resource Information

DIVISION OF
OIL, GAS & MINING

Page I-96 Paragraph 1: Loss of 446 acres of wildland habitat is also a major concern. It is important to note that 90 percent (Table IV F.15, Page #302) of this lost acreage provides in part for the forage and cover needs of mule deer.

Paragraph 2: Noise as a disturbance to wildlife will result from most all but underground activities of the project and not just from the conveyor system.

Page I-116 and 117: Anderson Reservoir and possibly Dugout Reservoir may provide characteristics that would allow establishment of a warm water sport fishery. The applicant should not pass up this opportunity for enhancement of the local areas wildlife resource. Such enhancement will serve as mitigation for other impacts associated with the project. Coordination between the applicant, the local B.A.S.S. Chapter and the Division of Wildlife Resources could result in establishment of a viable largemouth bass fishery.

Page II-304 through 307: Due to the value of the area to wintering mule deer, reclamation of the pinion-juniper and shrub-grass-juniper communities should place no emphasis on replacement of tree species. Grasses, forbs and browse should be the only species utilized. Fourwing and sagebrush would be the most desired browse plants. This will enhance the situation for deer.

In instances where browse species are to be re-established through seedling transplants, a total of 60 to 80 plants per acre is not adequate. Such plantings should approximate 200 to 500 plants per acre dependent upon the site.

Page II-359: The MRP should identify that the sole purpose of the tripartite study--applicant, BLM and UDWR--is to assess the "impacts of coal development on wildlife in Southeastern Utah". Conclusions relative to this formal study will not be available until 1984. It is also unnecessary and confusing for the applicant to include methodology of this formal study (all of page 361 through paragraph 2 on page 367) in the MRP, since data collected to date is of no significant value as baseline information. Adequate baseline information existed prior to initiation of study as Division Publication No. 78-16 and as a supplementary report provided on October 11, 1979 to the applicant.

Alongwith the formal study which is ongoing the UDWR has investigated and prepared completion reports on other wildlife matters for the applicants use in preparation of the MRP--(a) determination of corridors of mule deer movement in relation to the proposed conveyor (completion report submitted 8-27-80); (b) identification and ranking of habitat use areas for mule deer (map and completion report submitted 10-11-79); (c) intensity of mule deer use of critical and high-priority portions of the winter range (completion report submitted 11-29-79); (d) determination of raptor breeding territories and aerie sites (completion report submitted 8-21-80); (e) determination of roost trees and concentration areas for eagles (completion report submitted 8-1-80); (f) prairie dog/black-footed ferret survey (completion report submitted 7-10-80); and (g) assessment of the black swift and western blue bird relative to the project area (completion report submitted 7-11-80).

Use of data in the aforementioned reports by the applicant would have precluded most of the Division's comments.

Page 367, Paragraph 3: The methodology should note that monitoring of deer use in relation to the proposed conveyor system is only accomplished during winter periods.

Analysis of post-construction data, if collected, will not determine necessity for placement of crossings; rather, it will determine through experimentation variables that affect deer use of crossings.

It is already a professionally accepted and foregone conclusion that a coal conveyor developed without crossings would be a barrier to deer migration and movement. The ongoing investigation by UDWR has already provided one winters data (1979-1980) for one conveyor alignment. This work will evaluate another proposed conveyor alignment during the 1980-81 winter. The MRP should identify the two conveyor alignments and the recommendations already provided to the applicant for the one alignment. It is important to note that due to the proximity of the studied alignments to one another the data will be utilized as a corridor analysis. The applicant must identify in relation to information already provided the 5% of conveyor that will be closer than 12 feet to the ground level.

Page II-368: Although the applicant's consultant will at some time present a short-term evaluation of mule deer winter range the UDWR has already provided the applicant with similar but long-term information. All of this information must be presented in the MRP. Presentation of such would preclude use of the erroneous statement on Page II-413, paragraph 1 that indicates movement by deer within the winter range does not exist.

Page II-370: The planned use by the applicant of their consultants deer-browse information collected from the 1979-80 winter is seriously questioned. The MRP identifies that the transects were established in January and February after deer had been present for many weeks. It also identifies that many plants were already browsed and some showed heavy use by deer. On the areas being measured mule deer arrive on the winter range as early as November 1 of any given year.

Page II-373 through 380: The MRP fails to make a qualitative interpretation concerning the relative value of each wildlife habitat to the total wildlife resource and individually to high interest species of wildlife. Also, the sections on habitat should be made to be abundantly clear that the wildlife species listed are not all the species present, just examples.

Page II-381 through II-401 and Tables IV-G.4, IV-G.5, IV-G.6, IV-G.7 and IV-G.10: There seems to be no point for identification of species or numbers of individuals observed by various persons associated with the project. This is also true for harvest of wildlife in the Region. In order for in-the-field inventory to disclose a majority of the species present on any area, intensive and comprehensive surveys would have to be conducted over a lengthy period of years, Tables IV-G.3, IV-G.9, IV-G.11 and IV-G.12 adequately identify species having potential to inhabit the project area. Those species having high interest to Utah should be denoted. Also for each species their status as protected or non-protected and population trend should be identified.

For those species that are of high interest to the state the MRP fails to provide a qualitative discussion of their seasonal use areas. An example of this problem is Figure IV-G.4 which fails to qualitatively display the seasonal use areas for mule deer in Unit 27-b.

Page II-382, Paragraph 2: Again ongoing UDWR studies are not designed for collection of baseline occurrence data, just impact data.

Page II-383, Paragraph 1: Beaver are also trapped in Carbon County.

Page II-385, Paragraph 2: The substantial valued yearlong use area for pronghorn antelope does overlap the project area in the vicinity where the Dugout Canyon access road extends through a portion of Clark's Valley. The MRP lacks a map-display of this use area.

Paragraph 4: As has been identified earlier the MRP lacks the appropriate qualitative discussion of seasonal use areas. And again, it lacks the appropriate map display of seasonal use areas for elk in relation to the project.

Page II-387: The applicants notation relative to crucial-critical valued winter range is accurate only to the extent of identifying the origination of the term "crucial-critical". Once a use area has been classified as crucial, critical or crucial-critical, all of which are equal in value, or any of the other three ranking of value used in Utah there are then no other sub or super degrees of value such as the "super-critical" that the MRP erroneously proports to exist. The Division's habitat and use area ranking system has been well explained to the applicant and provided for their use in detailed, written form.

Page II-391, Paragraph 1: Without doubt data produced from field work on mule deer by the applicant's consultant are only preliminary and from short-term observations. Data provided to the applicant by UDWR relative to mule deer are conclusive and represent summaries based upon long-term observations. The MRP must be developed from conclusive evidence based as much as possible on long-term data and observations.

Page II-391, Paragraph 3: The MRP presents satisfactory data on recent mule deer use of the herd unit and project area. But, it fails to summarize that deer numbers have been much higher in the past than they are now. Deer numbers have decreased but are showing an increase in recent years. The Division's management goals are to increase numbers back to carrying capacity of the range.

Page II-401, Paragraph 1: In Utah the relative abundance of bald eagles is considered to be endangered, not fairly common. This species does winter in the state and the project area is ranked as being of substantial value to the bird. During winter and in local areas this bird can be observed on a regular basis. But its status is unquestionably listed as endangered.

Page II-402: The literature citation for Thompson (1979) has been left out of the MRP.

Page II-404, Table: This table is rather vague and "glosses over" a very complex problem.

Potential Impacts

- a. Biological opinion is that any animal impacted in any way would suffer from some form of stress. Stress is a far reaching, complex descriptor of which the professional biological community has only a minimal understanding.

- b. The assumption that any of the species would suffer from changes in mortality or natality is purely a guess. Impacts from the applicants proposal will be complex. It is likely that some local species will be benefited while other are negatively impacted.
- c. Generally speaking, for all species other than T & E species there is concurrence that some habitat will be destroyed or altered. Thus it is a foregone conclusion that animals not physically destroyed will be displaced.

Severity of Impacts

This area of the Table is purely subjective and must be qualified with objective analysis. Current research throughout the nation is showing that evaluation of impacts on a wide array of wildlife is complex with varying responses by individual species. Professional biological opinion has always suspected this to be the case since each specie has specific and individual life requirements.

Action to be Taken

This area of the Table is not in agreement with the mitigation plan to the extent there is considerable difference between the terms "to be" and "may be".

Page II-405, Paragraph 2: The MRP does not provide discussion on how existing hayfields "may be" improved following reclamation. If the applicant intends to claim enhancement of the hayfields as a mitigation appropriate discussion must be included in the MRP. Another appropriate mitigation could be permanent termination of depredation complaints by the applicant for mule deer and the Division's response to such as was accomplished in the spring of 1980.

Page II-406, Paragraph 2: Increased human activity will also result in increased illegal kill of all protected species. This impact is well documented locally and in other areas experiencing rapid growth associated with energy development.

Page II-406, Paragraph 3: The MRP has noted that there are some situations where wild ungulates appear to have acclimated to mining activity. It would also be important to note in the MRP that this situation does not occur frequently as compared to the number of mines on wildlands. Where this situation exists, mine personnel have taken the initiative to ensure that the animals are not unnecessarily disturbed. This demonstrates that there is some potential for this response by wintering mule deer at the applicant's project.

WILDLIFE MITIGATION PLAN

Page II-407, Paragraph 1: Since the MRP identifies that the mitigation plan is not complete and will not be completed until July, 1981, review comments will not be of an indepth nature.

Generally speaking, the mitigation plan is not a plan in that many identified actions are preceded by the term "may be" accomplished. A plan is a definitive action that "will be" accomplished. In most areas of the plan more specific detail is needed. As an example, just how will seminars be conducted in terms of topics and periodicity and more importantly who will instruct the employees.

Page II-411, Paragraph 2: UDWR has not determined that most deer migrate to winter range via canyons west of Fish Creek Canyon. The Division has determined that only a small proportion of the deer migrate to winter range via Fish Creek and Dugout Canyons. It is suspected that most numbers of deer originate at points to the west of Fish Creek but intensive study has never been attempted.

Page II-413, Paragraph 1: UDWR has conclusively demonstrated that deer once on the winter ranges associated with the project show a pattern of movement that carries their migration onto the critical area. This position was demonstrated from two different measurements and casual observations by UDWR biologists and the applicant's field consultant.

- (1) Intensive sampling of deer pellet groups on the project area following the 1978-79 winter showed that deer use on winter range was 37 percent more in the critical valued use area as compared to the high-priority use area. This report was submitted for the applicants use on 11-29-79.
- (2) Per usual evaluation of data on Table IV-G 1 and 2 shows that the intensity of deer use along conveyor Sections 7, 8 and 9 (critical valued range) is much greater than use along conveyor Sections 3, 4, 5, 6 and 11 (high-priority valued range) during the period from December 9, 1980 to April 28, 1981. The intensity of deer use along Sections 3, 4, 5, 6 and 11 increased from May 5 to May 23 demonstrating the sheet migration of deer from the crucial-critical range to high-priority range.
- (3) All biologists, Larry Dalton (UDWR), Charlie Greenwood (UDWR) and Mary Boucek (ERT), who have conducted extensive field work during winter on the project area have made unsolicited comments to the effect that tracking of deer showed a definite movement by deer toward the Mahlares Ranch area. It is this use area that has been ranked as critical.