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

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October 14, 1998

TO: File

THRU: Daron Haddock, Permit Supervisor 

FROM: Paul Baker, Reclamation Biologist 

RE: Response to Wildlife Concerns, Sunnyside Cogeneration Associates, Sunnyside Refuse and Slurry, ACT/007/035-98A, Folder #2, Carbon County, Utah

**SUMMARY:**

On September 17, 1998, the Division received a proposal from Sunnyside Cogeneration Associates to revise wildlife information in its mining and reclamation plan. This was in response to permit renewal comments from the Division of Wildlife Resources and the Fish and Wildlife Service.

**TECHNICAL ANALYSIS:**

**FISH AND WILDLIFE RESOURCES INFORMATION**

Regulatory Reference: R645-301-322

**Analysis:**

The Division of Wildlife Resources (DWR) commented that bighorn sheep and moose have been found adjacent to the permit area and that elk are transient residents of the area. They said this information should be included in the plan, and the applicant has proposed to add basic biological information about these species and their status in the area to the plan. This response satisfies the comments from DWR.

Both DWR and the Fish and Wildlife Service felt raptor surveys should be conducted by the company to determine nest site locations near the permit area. In a letter dated February 25, 1998, the applicant said they feel it is highly unlikely that its mining and reclamation activities would negatively affect raptor nesting sites. Therefore, they did not feel the recommendations to conduct raptor surveys were justified.

Considering the location of the site and the ongoing nature of activities to remine the refuse disposal area, the Division agrees that raptor studies would have little value. If new areas are to be disturbed, it could still be necessary to survey for raptor nests.

DWR and the Fish and Wildlife Service commented that the plan says bald eagles are endangered and that peregrine falcons are not discussed in the plan. Bald eagles are now listed as threatened, and peregrine falcons have been found in the Book Cliffs area a few miles from the permit area. In response, the applicant included a statement that bald eagles are no longer listed as an endangered species and added information about peregrine falcons. However, the application does not show the status of peregrine falcons as an endangered species. While the application says peregrine falcons are found in the biogeographic area of the mine, this term is very broad and does not necessarily allow one to conclude they have been found nearby. The applicant should include this additional information clarifying the status of bald eagles and peregrine falcons and the location of peregrine falcons.

The Fish and Wildlife Service said measures should be taken to ensure that unauthorized discharges into Grassy Trail Creek do not occur, and both DWR and the Fish and Wildlife Service mentioned the importance of maintaining water flow in the creek. Unauthorized discharges would be subject to notices of violation, and the Division conducts monthly inspections to ensure that sediment control measures work properly. The Division is not aware of a need for additional requirements.

The applicant does not withdraw water from Grassy Trail Creek for its coal mining and reclamation operation. The only water uses over which the Division has jurisdiction are evaporation from sediment control structures and watering roads for dust control. Since this water does not come from Grassy Trail Creek, there is no way for the applicant to reduce withdrawals to maintain flow in the creek.

DWR said the applicant should include a dryland alfalfa, such as Ladak or Nomad, in the seed mixture. They also said the applicant should specify the variety *graveolens* of rubber rabbitbrush (*Chrysothamnus nauseosus* Var. *graveolens*) in the seed mixture. (*A Utah Flora* indicates this is a synonym for *C. n.* Var. *glabratus*.) The applicant responded that its seed mixture was developed under the guidance of the Division and that it will continue to rely on the Division's approval of acceptable interim and final reclamation seed mixtures.

There are numerous varieties of rubber rabbitbrush. Some are palatable to wildlife and livestock, but several are not. Other operators have been required to specify rabbitbrush varieties, and the request from DWR is reasonable.

The seed mixtures for pinyon/juniper/sagebrush and *Atriplex*/grass areas include yellow sweet clover at the rates of one and two pounds per acre drilled pure lived seed respectively. While the Division has recommended this introduced species in the past, there is increasing evidence that it persists and even spreads in areas with adequate rainfall and that it may have

some allelopathic properties. The applicant should replace yellow sweet clover with one of the recommended varieties of alfalfa.

**Findings:**

Information in the proposal is not considered 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 show the current status of peregrine falcons as a listed endangered species proposed for delisting and of bald eagles as a threatened species. In addition, the application needs to clarify the status of peregrine falcons in the area. Several pairs have now been found in the Book Cliffs and Wasatch Plateau, and some have been found within a few miles of the permit area.

**R645-301-342,** A dryland variety of alfalfa, such as Ladak or Nomad, needs to be substituted for yellow sweet clover in the seed mixtures. Also, the applicant needs to specify the variety of rubber rabbitbrush that will be used. While the Division and the Division of Wildlife Resources recommend *Chrysothamnus nauseosus* Var. *glabratus*, a few of the other varieties could also be used.

**RECOMMENDATIONS:**

The proposed amendment should not be approved until the deficiencies discussed in this memorandum have been resolved.