



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

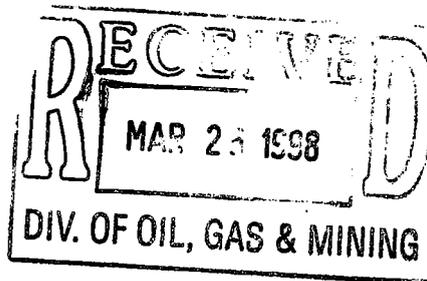
Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Robert L. Morgan
State Engineer

1594 West North Temple, Suite 220
Box 146300
Salt Lake City, Utah 84114-6300
801-538-7240
801-538-7467 (Fax)

March 24, 1998



Ken Payne
Canyon Fuel Company
P.O. Box 1029
Wellington, UT 84542

RE: Stream Alteration Permit No. 97-91-07SA

Dear Mr. Payne:

This office has reviewed the Bureau of Land Management's latest comments regarding your Stream Alteration. In those comments they raise the issue of the State Engineer authorizing work on Federal property. I remind you that a Stream Alteration Permit does not obviate the need to obtain any other required Federal, state or local authorizations. This authorization does not grant any property rights or exclusive privileges, nor does it authorize injury to the property or rights of others. Additionally, would you please provide this office with an updated plan view of your stream culverting project?

If you have any questions, please contact Greg Mladenka at 801-538-7375.

Sincerely,

Robert L. Morgan, P.E.
State Engineer

RLM/gcm/jm

pc: Mark Page - Regional Engineer
Daron Haddock, UDOGM
Richard Manus, BLM

*Act 1007/039 #2
Copy Daron*



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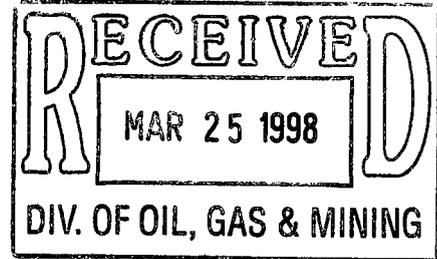
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March 24, 1998

Richard L. Manus, Field Office Manager
U.S. Department of Interior
Bureau of Land Management
Price Field Office
125 South 600 West
Price, UT 84501



RE: Stream Channel Alteration Permit No. 97-91-07SA.

Dear Mr. Manus:

This office has reviewed your letter of March 3, 1998, regarding this permit. I will address your concerns on a point by point basis.

Category I.

1. While this statement is technically inaccurate, the application is not misleading. The applicant was clear on his intent to culvert this reach of Dugout Creek. The applicant likely meant no fill material would be discharged directly into the flowing stream. Regardless, this project was discussed with the Corps of Engineers and they did not require an Individual Permit.
2. GP-40 expressly prohibits use of bulldozers and similar equipment "to push stream bed materials against the stream banks." The purpose of that special condition is to prevent disturbance of stream bed armoring. Also, see number 1 above.
3. Alternatives to developing a load out facility in the canyon were considered. These were not economically feasible, would have a negative impact on Bureau of Land Management (BLM) lands, and require extensive coordination with your agency and the applicant. The applicant does not own property immediately adjacent to the mine site and in discussions it was deemed impracticable to convey coal for nearly 4 miles where Canyon Fuel owns property, adjacent to Dugout Creek Road, in Section 5, T14S, R12E.
4. Utah Division of Oil, Gas, and Mining has conducted further analysis of hydrologic parameters involved in pipe sizing. Their assessment show there is no deficiency in pipe size (see enclosed Technical Analysis and Findings dated March 16, 1998). This office concurs with that assessment.

Page 2
97-91-07SA
March 24, 1998

5. Applicants are required to provide this office with names and addresses of adjacent property owners. This office then makes an effort to deliver the application and associated plans to these individuals/agencies based on information provided. As you are well aware, the State Engineer does NOT have authority to authorize trespass. In a project of this size and scope, there are numerous necessary authorizations prior to commencing work. This office has informed Mr. Ken Payne, of Canyon Fuel Company, that he must obtain all necessary clearance's and/or easements from affected property owners (see enclosed letter).

Category II.

1. It is our understanding that all runoff (up to a 10 year, 24 hour event) from the disturbed area will be routed to a detention pond. The approximate 2000 feet of culverted channel will not significantly affect flows influenced by watershed-level impacts. An energy dissipator will effectively reduce velocities after flow exits the culvert (see enclosed Technical Analysis and Findings dated March 16, 1998).
2. Much of the 2000 feet of stream to be culverted flows over bedrock. It is unlikely that in this short distance the culvert will prevent significant amounts of water from recharging the local aquifer (see enclosed Technical Analysis and Findings dated March 16, 1998).

Category III.

1. This office has made EVERY effort to provide you with this information. This Stream Alteration Application was on the State of Utah Resources Development Coordinating Committee agenda for the August 26, 1997, meeting (Item # 15). The BLM was provided with the biweekly agenda including this. A copy of the permit application was sent to the BLM on August 1, 1997. For some reason, that correspondence was not routed to the correct party in a timely manner. Your letter to Greg Mladenka, of this office, dated September 26, 1997, makes clear that you did receive the application packet, albeit after the comment period ended. In it you requested we table our decision pending investigation into other alternatives. You also state that this would help ensure adequate NEPA analysis is performed. As you are aware, the State Engineer is not involved in, or charged with enforcing NEPA requirements. After finishing our investigation of this application [which included review of comments (including BLM's September 26, 1997, letter), a site visit, and telephone correspondence between Greg Mladenka (State Engineer's Office) and Jaime White of the U.S. Army Corps of Engineers] this office issued a permit for the proposed activity contingent on a number of conditions. GP-040 requirements have clearly been met in processing this application.

Page 3
97-91-07SA
March 24, 1998

2. The State Engineer felt it was impracticable to require Canyon Fuel Company (a private property owner) to coordinate with another property owner (BLM) in order to minimize impacts to the natural stream environment. While the State Engineer discourages and seldom permits culverting of streams (with the exception of legitimate road crossings), in this case justification is apparent due to the amount of coal to be mined and the negative implications of this size facility being located on an open stream. Additionally, the stream is severely down cut through most of the project area and has abandoned its former floodplain. Restoration plans will require the stream be restored to a more functional condition versus its present state. In addition to final reclamation of the site, mitigation measures include enhancement of the stream side riparian community along stream banks in adjacent reaches.
3. There is no requirement for this office to send adjacent property owners a decision notice. However, we commonly do so as a courtesy. In this case, Greg Mladenka did not send your office a copy of the decision. In light of your concerns, we offered to review any comments you wished to provide by March 3, 1998. Hopefully, answers provided in this letter adequately address your concerns. This office wishes to maintain a positive working relationship with other agencies, including the BLM, and welcomes open dialogue in addressing future Stream Alteration issues.

If you have any questions, feel free to call Greg Mladenka at 801-538-7375.

Sincerely,



Robert L. Morgan, P.E.
State Engineer

RLM/gcm/jm

Enclosures

pc: Mark Page, Regional Engineer
Ken Payne, Canyon Fuel Company
Daron Haddock, UDOGM