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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Price Field Office
125 South 600 West
Price, Utah 84501

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WATER RIGHTS
SALT LAKE

Robert L. Morgan, State Engineer
Utah Division of Water Rights
PO Box 146300
Salt Lake City, UT 84114-6300

Attention: Greg C. Mladenka, Stream Alteration Specialist

Subject: Stream Channel Alteration Permit Number 97-91-07SA (SCA 97-91-07SA)

Dear Mr. Morgan:

ACT/007/03039

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Thank you for extending the time period to comment on SCA 97-91-07SA. This letter of response describes most of the concerns we expressed at the UDOGM meeting on February 27. We are also including some suggested remedies which would address the concerns to BLM's satisfaction.

The United States Department of Interior, Bureau of Land Management (BLM) is seriously concerned regarding several aspects of SCA 97-91-07SA. These are listed in three general categories as follows:

I. Information deficiencies provided with the permit application, II. Potential impacts associated with the action the permit authorizes; and III. The administrative procedures which were used in processing the permit application. Suggestions to remedy the issues to BLM's satisfaction follow each of the numbered concerns in each category.

Category I. Information Deficiencies In the Original Application:

1. The permit application states: "No dredged or fill material will be discharged." The BLM does not believe this is an accurate statement. It is proposed that 2,211 feet of channel would be filled with earth and manmade materials, with a culvert that will be completely covered over throughout this length. BLM believes this constitutes a discharge of fill material into the "navigable waters of the United States." Runoff of disturbed surface material resulting from the proposed action also falls under the definition of discharge of fill material.

We request, first of all, a written interpretation explaining how the proposed application falls within the limitations of GP-040, i.e., why the proposed action does not require an individual 404 permit and can instead proceed under GP-040.

2. A description of equipment used to fill the channel was not included in the application. BLM believes this information may be necessary to determine applicability of the GP-040 under section 404 of the CWA, as amended. The BLM believes that bulldozers and other heavy earth-moving equipment will be needed to install the 2,211 feet of culvert and bury the natural stream channel. This alone would appear to remove this application from the scope of GP-040.

We request a written interpretation explaining how the proposed application falls within the limitations of GP-040, i.e., why the proposed action does not require an individual 404 permit and can instead proceed under GP-040.

3. The negative declaration of alternatives provided by the applicant does not logically describe a lack of

possible alternatives to altering the stream channel. BLM believes there are reasonable alternatives to culverting 2,200 feet of stream. In a previous version of the Dugout Canyon Mine permit application it was proposed to convey coal out of the canyon. Also, during a field assessment of the area conducted in the spring of 1997, the proposal involved crossing Dugout Creek with a minimal amount of channel disturbance. BLM, Utah Water Rights, DWR, and the applicant were all present at that time. Clearly, there have been at least two alternatives considered other than the one presented in SCA 97-91-07SA.

Suggested remedy: Withdraw the approval and require amendment of SCA 97-91-07SA to include the alternatives which have been considered and rejected, along with justification for whatever decision is reached.

4. BLM is aware that significant changes to the upper watershed have occurred within the past 2-3 years. Specifically, the conifers at the top of the Dugout Creek watershed have been removed as a result of private timber sales. BLM is concerned that this may not have been considered in generating runoff curves and peak discharges.

Suggested remedy: Withdraw the approval and require amendment of SCA 97-91-07SA to ensure that design specifications incorporate any changes in run-off patterns resulting from recent disturbances. Correct the regulatory and design deficiencies which have been revealed by UDOGM hydrologist, Mike Sufilita, in his technical analysis of October 20, 1997.

5. BLM was named as an adjacent landowner in this application. In fact, BLM directly administers part of the land covered in SCA 97-91-07SA, and has received no application for use of the Federal lands affected by SCA 97-91-07SA.

Suggested remedy: Withdraw the approval and require amendment of SCA 97-91-07SA to accurately reflect the proposed action and land ownership, and ensure that whatever decision is reached does not purport to authorize the use of lands over which the state of Utah has no jurisdiction.

Category II. Potential Impacts

1. Runoff from the undisturbed surface would be altered as a result of replacing the existing channel with pavement. If road drainages are diverted directly into the stream channel below the culvert, excess channel erosion could occur, particularly given the clear-cutting of the headwaters of the stream in recent years. The anticipated major channel erosion would occur on BLM-administered public lands as the runoff leaves the paved area and emerges from the culvert.

Suggested remedy: Withdraw the approval and require amendment of the proposed action to consider the changes in run-off patterns which would occur on the undisturbed surfaces of the watershed as a result of culverting the natural channel, and implement erosion controls as needed. This might include an additional sediment-retention pond. Potential solutions might include diverting road drainage into the culvert via additional inlets along the length, or into temporary sediment-retention ponds. Correct the regulatory and design deficiencies which have been revealed by UDOGM hydrologist Mike Sufilita.

2. Ground water recharge via the natural channel would be interrupted by culverting the flows. This could have severe and long term impacts to springs and seeps and associated riparian areas on public lands downgradient of the disturbed areas.

Suggested remedy: Perforate the culvert bottom, or use an arched culvert with portions of the channel bottom left exposed. Monitor springs, seeps, and wells in the vicinity, as well as channel flow below the culvert.

Category III. Administrative Procedures:

1. BLM was not contacted or provided a copy of SCA 97-91-07SA until after the public comment period

ended. Operating procedures of GP-040 require that the State Engineer provide copies of applications under GP-040 to adjacent landowners, as well as an appropriate federal agency, and allow 20 days to submit comments. In this case, the Federal Government is both a landowner and a Federal agency having jurisdiction over much of the lands sought to be used. We believe the operating procedures of GP-040 were not met in processing SCA 97-91-07SA.

Suggested remedy: Withdraw the approved application and require that the applicant reapply and ensure the BLM Price, Utah Office is directly notified and given fair opportunity to review and comment as required in the GP-040 operating procedures. If this is not done, it may be necessary for the United States to seek an injunction in Federal Court.

2. BLM nevertheless provided comments following approval of SCA 97-91-07SA. The concerns expressed in our response were not addressed by the Office of the State Engineer.

Suggested remedy: Give all affected adjacent landowners, including the United States, and the BLM, a fair and reasonable opportunity to provide appropriate comments to avoid future misunderstandings and oversights. See also suggested remedy to No. 1, above.

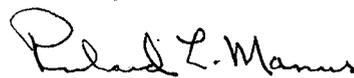
3. BLM was not sent a copy of the Decision Order approving SCA 97-91-07SA until after the 20 day appeal period had ended. As an affected landowner, an adjacent landowner, a respondent, and an appropriate Federal agency, BLM has been denied the right to appeal the approval under informal proceedings.

Suggested remedy: An extension was granted upon request, but only after the application had been already approved. In the future, duplication of effort and delays such as this would be avoided if appropriate GP-040 operating procedures are followed.

Due to the serious nature of the above concerns, BLM requests that the State Engineer withdraw the Decision Order approving SCA 97-91-07SA and require that the application be resubmitted and processed in full compliance with the procedural requirements of GP-040, if GP-040 applies at all, taking into account the above concerns of BLM. We request that the State Engineer take steps as necessary to rectify the deficiencies spelled out in this letter in all future cases. We also request that BLM be properly notified on all future actions that may potentially impact public lands. The BLM does not wish to act as a bar to development, but neither can it be ignored.

If further information is necessary please contact Kerry Flood of this office at 435-636-3600.

Sincerely,



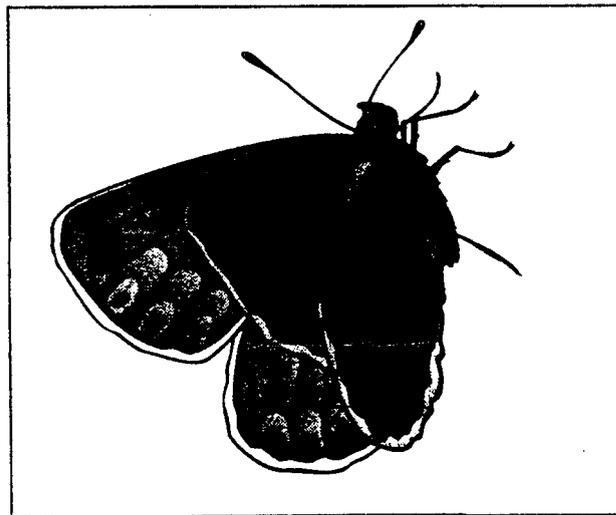
Richard L. Manus
Field Office Manager

**OUR NAME, ADDRESS, AND PHONE NUMBER
HAVE CHANGED!**

Please mail all correspondence and other items to:

PRICE FIELD OFFICE *
BUREAU OF LAND MANAGEMENT
125 SOUTH 600 WEST
PRICE, UTAH 84501

***OUR NEW AREA CODE AND PHONE NUMBER
IS (435) 636-3600***



*** We combined the
Price River and San Rafael Resource Areas
into one Price Field Office, so there is
no longer a need to send duplicate mailings!**