

C/007/047 Incoming

#3779

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APPLICATION FOR COAL PERMIT PROCESSING

Permit Change New Permit Renewal Exploration Bond Release Transfer

Permittee: Carbon Resources, LLC
Mine: Kinney No. 2 Mine Permit Number: C/007/0047
Title: Addition of Raptor Nest 1541 application to US Fish & Wildlife Services for nesting deterrent actions.

Description, Include reason for application and timing required to implement:
Addition of Raptor Nest 1541 application to US Fish & Wildlife Services for nesting deterrent actions.

Instructions: If you answer yes to any of the first eight questions, this application may require Public Notice publication.

- 1. Change in the size of the Permit Area? Acres: _____ Disturbed Area: _____ [] increase [] decrease.
2. Is the application submitted as a result of a Division Order? DO# _____
3. Does the application include operations outside a previously identified Cumulative Hydrologic Impact Area?
4. Does the application include operations in hydrologic basins other than as currently approved?
5. Does the application result from cancellation, reduction or increase of insurance or reclamation bond?
6. Does the application require or include public notice publication?
7. Does the application require or include ownership, control, right-of-entry, or compliance information?
8. Is proposed activity within 100 feet of a public road or cemetery or 300 feet of an occupied dwelling?
9. Is the application submitted as a result of a Violation? NOV # _____
10. Is the application submitted as a result of other laws or regulations or policies?
11. Does the application affect the surface landowner or change the post mining land use?
12. Does the application require or include underground design or mine sequence and timing? (Modification of R2P2)
13. Does the application require or include collection and reporting of any baseline information?
14. Could the application have any effect on wildlife or vegetation outside the current disturbed area?
15. Does the application require or include soil removal, storage or placement?
16. Does the application require or include vegetation monitoring, removal or revegetation activities?
17. Does the application require or include construction, modification, or removal of surface facilities?
18. Does the application require or include water monitoring, sediment or drainage control measures?
19. Does the application require or include certified designs, maps or calculation?
20. Does the application require or include subsidence control or monitoring?
21. Have reclamation costs for bonding been provided?
22. Does the application involve a perennial stream, a stream buffer zone or discharges to a stream?
23. Does the application affect permits issued by other agencies or permits issued to other entities?
24. Does the application include confidential information and is it clearly marked and separated in the plan?

Explain: Federal and Utah regulations regarding protected species.

Please attach three (3) review copies of the application. If the mine is on or adjacent to Forest Service land please submit four (4) copies, thank you. (These numbers include a copy for the Price Field Office)

I hereby certify that I am a responsible official of the applicant and that the information contained in this application is true and correct to the best of my information and belief in all respects with the laws of Utah in reference to commitments, undertakings, and obligations, herein.
Clay Wisdom C.F.O. 04/04/2011
Print Name Position Date Signature
Subscribed and sworn to before me this 4 day of APRIL, 2011
Notary Public: Anthony Scott, state of Utah.
My commission Expires: 05/08/2012
Commission Number: N/A
Address: 500 NW Hwy 333 STA A
City: TULSA State: NM Zip: 871059
OFFICIAL SEAL ANTHONY SCOTT NOTARY PUBLIC STATE OF NEW MEXICO My Commission Expires 05/08/2012

For Office Use Only: Assigned Tracking Number: Received by Oil, Gas & Mining RECEIVED APR 05 2011 DIV. OF OIL, GAS & MINING

File in: [] Confidential [] Shelf [X] Expandable Date Folder 040511 C/0070047 Sec: Confidential For additional

Rollins, Brown & Gunnell Engineers

Brad Price, P.E.

Geotechnical Engineering

Randall Peterson, P.E.

Mining Engineering

Risun Technologies

William Simmons, P.E.

Facilities Engineer

Bill Whitney, P.E.

Facilities Engineer

Gault Group, Inc.

Major N. Kindsfater, B.S.

Environmental Engineer, Air Quality

Ben Grimes, B.S., P.L.S.

Permitting Specialist, Professional Land Surveyor

Qualifications to conduct raptor monitoring:

Ben Grimes completed the Raptor Identification Short Course conducted by the Utah Division of Wildlife Resources in March 1999, and has completed over 15 raptor inventories with the Utah Division of Wildlife Resources at the Star Point Mine and at the Willow Creek Mine in Carbon County. Ben has completed numerous raptor monitoring sessions at both mines mentioned above. Ben also completed a Golden eagle nest taking permit application with the US Fish and Wildlife Service and the Utah Division of Wildlife Resources with it's associated inventory of raptor nesting activity of 314 square miles of eagle habitat surrounding the Star Point Mine in Carbon County. He participated in fencing off the Golden eagle nest to prevent harm to the eagles or their eggs. This was possibly the first such deterrent action of this type in the United States. He conducted numerous monitoring sessions of the fenced off nest and the nesting territory. He wrote and presented a paper on this deterrent action project at the Thorne Ecological Institute, Issues and Technology in the Management of Impacted Wildlife, April 8-10, 1991 at Snomass Resort, Colorado. (Underground Coal Mining – A Case Study of Land Surface Disturbance Impacts To Golden Eagles, Thorn Ecological Institute, Issues and Technology In The Management of Impacted Wildlife, No. 5:138-140, 1991).

Ben will be assisted by Sam Grimes, a student in Environmental Studies at Utah Valley University.

R645-301-140

Maps and Plans

All maps included in the permit application document are based on either U.S. Geological Survey Mapping or site specific mapping developed using surveyed aerial control and accepted aerial photogrammetry methods. Maps showing overall permit area and regional information are presented at an AutoCAD scale of 1:1, with produced maps at a general scale of 1" = 1,000', or 1"=2,000' for larger areas, and smaller areas down to 1"=100'. The maps also clearly designate the limits of anticipated surface disturbance under this permit application. Rule R645-301-512 and a number of other regulatory provisions specify that certain designated maps and cross-sections be completed under the direction of and certified by a qualified, registered professional engineer, or land surveyor. Those permit maps which have been certified in compliance with applicable regulatory provisions are identified in Chapter 5, R645-301-512, Certification, Inspection, Reporting, and Emergency Procedures.

The information provided in this permit is designed to adequately address and effect compliance with all applicable regulatory provisions. The summaries of applicable regulatory sections addressed included at the beginning of each permit section provide documentation that all regulatory provisions have been addressed and also serve as a ready reference to verify the completeness of the permit application.

their being ranked as high-priority if utilized during the breeding period though such use is not expected.

The mine plan area provides substantial potential habitat for a variety of raptor species including the: turkey vulture, golden eagle, bald eagle, osprey, prairie falcon, peregrine falcon, American kestrel, northern goshawk, sharp-shinned hawk, Cooper's hawk, red-tailed hawk, Swainson's hawk, rough-legged hawk, ferruginous hawk, northern harrier, barn owl, great-horned owl, northern pygmy owl, long-eared owl, burrowing owl and northern saw-whet owl. Many of these species are of high federal interest pursuant to 43 CFR, 3461.1 (n-1), and all are considered of high interest to the State of Utah. There is some potential, though minimal, for incidental use of the permit area by bald eagles, which is considered a sensitive species in Utah. High-priority and/or critical habitat for certain raptor species exists within the permit area during the nesting/breeding period (February - July). For these species, construction activities within one-half mile of a nest site during the species specific nesting/breeding period should be avoided.

Because certain raptor species may be sensitive to disturbance during their active nesting periods, surveys of those portions of the permit area where surface disturbance has or is anticipated to occur have been implemented intermittently during the period from 2005 through 2007. As a result of these efforts several nest sites have been located in and near the permit area. Locations for these sites are provided on Map 2, Raptor Map. A table on the map shows the determination of species for each nest, and nesting activity if known. As indicated on Map 2, one nest (No 1541) was observed south of the proposed disturbed area in the southwest quarter of 33, T12S, R7E. This nest was categorized during the 2005 helicopter survey as being either goshawk or red-tailed hawk. As discussed further in this Chapter, goshawks prefer conifer stands for nesting and therefore nest No. 1541 is more likely a red-tailed hawk nest. No nesting activity was observed at this nest site during the 2007 nesting period.

Carbon Resources in conjunction with the DWR and UDOGM will conduct two raptor surveys, one in mid-March, 2011 and one in mid-April, 2011 to ascertain the status of nest 1541 prior to initiating any mining activity at the mine site. If the nest is actively being used by raptors, CR will limit any mining activities within one half mile of the nest from March 15, 2011 through August 15, 2011. CR will consult with the U.S. Fish and Wildlife Service and the DWR and the UDOGM biologists if the nest is not occupied prior to initiating mining activities. If the nest site is actively used during this time and the young birds fledge prior to August 15, CR will consult with the agencies listed above as to whether CR can begin activities at the mine site.

Carbon Resources has entered into consultation with the US Fish and Wildlife Service, the Utah Division of Wildlife Resources and the UDOGM regarding nest No. 1541.

Carbon Resources has made application to the US Fish and Wildlife Service for permission to conduct nesting deterrent actions at nest No. 1541 for the 2011 nesting season only. A copy of the application can be found in Exhibit 4, Other Permits.

Because the construction season at the mine site elevation is very short, and because nesting activity would delay start of construction until fledgelings leave the nest, Carbon Resources LLC petitioned the US Fish and Wildlife Service, for permission to conduct nesting deterrent actions to discourage the birds from nesting within a one-half mile buffer prior to the start of mining activity during the 2011 nesting season. It is believed that the birds will use other sites for nesting. There is ample opportunity for nesting in the general area. This will allow Carbon Resources LLC to start

construction activities during the middle of the nesting season and reduce (or eliminate) the risk that the birds would abandon eggs or young at the nest.

After construction has started or at the end of the 2011 nesting season, Carbon Resources, LLC will remove the nest deterrents. It is our experience that Red-tailed Hawks are very adaptable to mining operations. For example, a pair of Red-tailed Hawks successfully nested for several years at the Star Point Mine in Carbon County, Utah within 30 feet of the main access road to the mine, and within 40 feet of an overland conveyor belt which ran for approximately 20 hours per day.

Deterrent Plan

The deterrent plan includes two components:

1. Preventing, or discouraging the birds from using this particular nest by placing one or more orange construction cones in the nest as long as no eggs are present. Carbon Resources LLC will obtain a Letter of Authorization from the U.S. Fish and Wildlife Services' Migratory Bird Permits office in Lakewood, Colorado before placing nest deterrents. If placing a construction cone is not possible, Carbon Resources will consult with the USFW Service and the Utah Division of Wildlife Resources to find another, non-destructive, method of deterrent.
2. If the birds decide to build another nest within the restricted one half mile zone placing orange construction cones (or other methods as above) in those nests also as long as no eggs are present.

The construction cone/s will be placed by using a long ladder, by climbing the tree, or other methods as needed. Every effort will be taken to avoid disturbing the nest.

Upon completion of the 2011 nesting season, the construction cone/s, or other deterrent methods will be removed so the birds will have use of the nest/s again.

Monitoring Plan

1. Monitoring nest #1541 and the area within the restricted one half mile zone for raptor activity during the 2011 nesting season from mid-March to mid-August (details to follow).

Monitoring will be conducted by observing any visible raptor activity in the nest #1541 area as well as observing activity in the general area that may indicate the raptors start constructing another nest. Observations will be conducted from Highway 96 at the entrance to the mine site using spotting scopes and binoculars or from the closest pad on the hillside across from the nest. Observations will be made from first light until 3 hours after daylight once per week from April 1, through May, 2011. After May, monitoring will be conducted every two weeks. This schedule is based on preliminary discussions with Nathan Darnall of the USFW Service and may be adjusted as necessary. Further monitoring may be necessary and will be determined in consultation with the agencies.

The observers will have a digital camera with a telephoto lens to take photos if possible of raptors in the area.

The observers will also have raptor identification guide books at their disposal to help identify raptors.

A detailed record will be made during each monitoring session, including date, times, raptors observed, species, details of their movements, observers' name, and photographs taken. A

report of weekly monitoring will be e-mailed to the U.S. Fish and Wildlife Service in Utah after each survey. A summary report will be provided to UDOGM at the end of the nesting season.

Mitigation Plan

1. Cooperating in a mitigation plan yet to be determined in conjunction with the USFW Service and the Utah Division of Wildlife Resources. The mitigation plan will be limited to \$3,000, and will not be necessary if no deterrent methods are taken by Carbon Resources.

Schedule

Nesting activities can begin as early as March by Red-tailed Hawks, and April for Goshawks, however due to heavy snow cover this year no activity was observed during the first visit to the nest site by Mr. Greg Hunt of Carbon Resources LLC on March 3. During the first formal monitoring session conducted on March 30, 2011, no bird activity at the nest site was observed.

Future Mining Operations

Construction of the mine facilities and operation of the mine will proceed as planned and detailed in the Utah Division of Oil, Gas and Mining, Mining and Reclamation Plan. We believe that Red-tailed Hawks are particularly adaptable (refer to example given above) to disturbance by mining operations. It is very possible that the subject nest will be used in the future while mining activities are ongoing. Carbon Resources is committed to operating in an environmentally responsible manner. We commit to monitoring the subject nest in the future to document activity at the nest.

Noise will inevitably result from the mining operation, however, we believe noise levels will be acceptable. It should be noted that the town of Scofield is located only 1500 feet from the subject nest, as well as Utah Highway 96, which has a rather high volume of truck traffic.

Construction activities at the mine site will include earth moving and typical construction of buildings, conveyor belts, mine openings and associated mine facilities. Normal construction equipment will be used such as dozers, scrapers, track hoes, and cranes. Blasting may be necessary, but we believe it will be very minimal, if necessary at all. Avoidance

Carbon Resources has a raptor proof power pole design included in the Utah Division of Oil, Gas and Mining, Mining and Reclamation Plan. Every effort will be made to minimize any risks to raptors in the area of the mine. Employees at the mine will be instructed to avoid harassment of all wildlife and particularly raptors.

For more information about raptor species of special status including the ferruginous hawk, bald eagle and northern goshawks, refer to Table 2A.

The long-billed curlew is listed by the UDWR as a species of concern, and is rare to the Wasatch Plateau. This species has a strong affinity for riparian and shoreline areas. For more information about this species, refer to Table 2A.

The whooping crane is listed by the UDWR as exterminated in the Wasatch Plateau. For more information about this species, refer to Table 2A.

The yellow-billed cuckoo is a federally listed Candidate species. It has also been described as rare in the Wasatch Plateau. This species prefers woodland areas, and is thought to nest primarily in the eastern United States. For more information about this species, refer to Table 32A.

The burrowing owl is listed by the UDWR as limited in the Wasatch Plateau, sensitive and a Species of Concern. This species prefers open, dry grasslands, agricultural and range lands associated with burrowing animals, particularly prairie dogs, ground squirrels and badgers. For more information about this species, refer to the above (R645-301.220) and also Table 2A.

The black swift is listed by the UDWR as a Species of Concern, and as uncommon in the Wasatch Plateau. For more information about this species and its presence in the project area, refer to Table 2A.

The three-toed woodpecker is listed by the UDWR as a Species of Concern, and as uncommon on the Wasatch Plateau. This species exhibits a strong preference for the bark insects of spruce trees, and inhabits coniferous forests at submontane and montane elevations, and therefore is considered to be uncommon to the mine plan area. For more information about this species and its presence in the project area, refer to Table 2A.

White pelicans can be found in and near Scofield Reservoir to the north of the mine site, however, due to this birds requirement to be very near water bodies, it is unlikely that they would be found in the mine area. For more information about this species and its presence in the project area, refer to Table 2A.

Mammals

Sixty six (66) species of mammals, as listed by Table 2, "Potential Wildlife Species of the Wasatch Plateau", are believed to be potential inhabitants of the biogeographic area in which the permit area is located. However, only 32 mammal species are classified as known, likely, or potential residents of the permit area. Of the 32 potential state high-interest species possible in the region, the occurrence of 17 are either known, likely, or possible in the permit area. Seven (7) species are listed by the UDWR on the Utah Sensitive Species List include: fringed myotis, Townsend's big-eared bat, spotted bat, white-tailed prairie-dog, kit fox, black-footed ferret, and Canada lynx. These species have been addressed in the above and also Table 2A.

Although not listed by the UDWR as sensitive species, mule deer, elk, and moose are very important species in the State of Utah and have been discussed above in "High-Value Habitats" (R645-301.220).

Special Status Wildlife Species of the Wasatch Plateau

Table 2 shows the species of the Wasatch Plateau and the likelihood of encountering these species in the Kinney No. 2 Mine project and adjacent areas. The table also lists the special status of these species, or whether they are threatened, endangered or otherwise sensitive by federal and state law. Finally, Table 2 shows potential habitat for fourteen (14) species that have been listed as "Wildlife Species of Concern" (C3), one (1) species listed as a "Conservation Agreement Species" (C2), two (2) as "Candidate" species (C), two (2) listed as extirpated (EXT) and one (1) listed as "threatened" (T) according to UDWR records and based on current listings. The following Table 2A lists these sensitive wildlife species and describes their relevance to the Kinney No. 2 Mine permit and adjacent areas.

EXHIBIT 4- Other Permits

UPDED Permit

Air Quality Permit

UDOT Highway Access Permit

MSHA Permit

Carbon County Conditional Use Permit

**Utah DNR Div. of Water Rights, Small Dam Permit
(Negative Determination)**

Utah Department of Commerce License Number

Dwelling within 300 Feet Waiver Letter

Archeological Clearance

Raptor Nest 1451 Permt with US Fish & Wildlife Service