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TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

October 18, 2007

TO: Internal File JK

THRU: Pamela Grubaugh-Littig, Permit Supervisor PGL
Steve Christensen, Senior reclamation Hydrologist, Team Lead SKC

FROM: Joe Helfrich, Senior Reclamation Biologist JH

RE: Updated Chapter 7 and PHC (related to task # 2807), Consolidation Coal Company, Emery Deep Mine, C/015/00015, Task ID # 2821

SUMMARY:

On August 3, 2007 the Division received a response to the documents required by the conditional approval letter for the 14th West panel dated April 11, 2007. The response also stated that it was to be considered as a submittal for full extraction of panels 15 West, 4th East and 6th West. On October 3, 2007 Consol submitted a class three arc survey and additional information for the Zero West panel. This memo will include a review of the conditional approval requirements and the applications for full extraction as related to the biology, cultural resource and Land use sections of the regulations.

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TECHNICAL ANALYSIS:

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION_{[sm:]1}

Regulatory Reference: 30 CFR 783.12; R645-301-411.

Analysis:

Chapter XIII of the approved MRP includes a level three cultural resource ground survey, (Appendix XIII-3), that covers panels 14th West, 15 West, 4th East and 6th West. Concurrence from the SHPO was provided to the Division by way of letter to Wayne Hedberg from Matt Seddon on May 15, 2007. An additional survey for the Zero West area dated September 26, 2007 has been provided and was forwarded to the SHPO for concurrence. SHPO concurrence was received on November 21, 2007 by way of "E" mail from Matt Seddon.

Findings:

The information provided is adequate to meet the requirements of this section of the regulations.

VEGETATION RESOURCE INFORMATION_{[sm:]2}

Regulatory Reference: 30 CFR 783.19; R645-301-320.

Analysis:

A discussion of the vegetation resources above the 4th East, 6th West and 14 and 15 West panels is provided in Appendix VIII-3. Vegetative communities include Greasewood, Shadscale, Saltgrass, Tamarisk, Cattail/Saltgrass, Mat Saltbush, Greasewood /Tamarisk, Baren ground, Dry pasture and Irrigated pasture. A current list of threatened and endangered plant species is also included in the appendix along with a vegetation map of the 14 and 15 West panel areas. Plate VIII-1 has been updated to include a reference, (Appendix VIII-3 figures 1 and 2), to the detailed vegetative communities in panels 4 East, 6 West and 14 and 15 West and Zero North.

Findings:

The information in the application is adequate to meet the requirements of this section of the regulations.

FISH AND WILDLIFE RESOURCE INFORMATION_[sm:]3]

Regulatory Reference: 30 CFR 784.21; R645-301-322.

Analysis:

A narrative describing the wildlife resources above the 4^h East, 6th West panel areas has been included in chapter nine of the MRP. The wildlife report prepared by Mine Reclamation Consultants Inc. includes an inventory and a description of the wildlife resources within the "Permit Area". Although somewhat antiquated, (prepared circa 1980), there is valuable wildlife information that would remain unchanged and apply to the requirements of this section of the regulations. Wildlife Resource information included in the approval of the 14th West panel and 160 acre Fedreal IBC could be applicable to the 15th West and Zero North panels as they are contiguous. Personal communication with Pat Collins from Mount Nebo Scientific and this reviewer on October 17, 2007 included a discussion of the applicability of the current MRP information to this application. Pending a field verification site visit it seemed reasonable that the existing resource and T&E information would apply to the areas referenced in this application.

Plate 10-1 has been updated to include the location of the 4^h East, 6th West and 15th West panel areas; the panels include elk substantial value winter habitat and substantial deer yearlong habitat.

Findings:

The information provided is adequate to meet the requirements of this section of the regulations.

MAPS, PLANS, AND CROSS SECTIONS OF RESOURCE INFORMATION_[sm:]4]

Regulatory Reference: 30 CFR 783.24, 783.25; R645-301-323, -301-411, -301-521, -301-622, -301-722, -301-731.

Analysis:

This amendment includes updates to Plates VIII-1, (Vegetation and Land use) and 10-1, (Selected Wildlife Information). Plate VIII-1 includes a reference to site-specific information for

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full extraction in panels 4 East, 6 West and 14 and 15 West, found in chapter VIII appendix VIII-3. Plate 10- 1 has been updated to include the results of the 2007 raptor survey and some minor habitat changes.

Cultural Resource Maps^{[sm:]5}

An updated version of Plate X.A-1 has been included in the application; it includes site-specific information for full extraction in panels 4 East, 6 West and 14 and 15 West.

Findings:

The information provided is adequate to meet the requirements of this section of the regulations and the requirements of the conditional approval dated April 11, 2007 for full extraction of the 14th West panel.

FISH AND WILDLIFE INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

Analysis:

Endangered and Threatened Species,

Current T & E species lists for the two IBC's and the 14th West approvals should be applicable to the areas referenced in this application pending a field verification site visit. The list for Emery County has not changed within the past year.

Additional species in Utah's Sensitive species list include the following:

Conservation Agreement Species

Northern Goshawk

Wildlife Species of Concern

Grasshopper Sparrow Short-eared Owl

Burrowing Owl

Ferruginous Hawk Greater Sage-grouse Black Swift

Bobolink

Lewis's Woodpecker

Long-billed Curlew

American White Pelican

Three-toed Woodpecker

Sharp-tailed Grouse

There are four endangered species of fish in the Colorado Fish Recovery Program, (USFWS). Mining practices may alter the flow of water contributing to the Colorado River drainage system. Accordingly mining companies are required to provide DOGM with calculations for mine water consumption or net gain to the Colorado River drainage system. According to the information in Chapter II, page 25a of the Emery mine's MRP it is predicted that mine water consumption figures for full extraction would result in a net gain of 1037.5 acre feet per year. According to the USFWS protocol this net gain would not require consultation.

Bald and Golden Eagles

Chapter nine, Section 10.3.3.1.3, pages 10-87, 88 and 89 include general information about Bald and Golden Eagles at that point in time, 1980. Bald Eagles do not nest in the area but are typically inhabitants during migration as noted then and as of late according to recent TE & S surveys. The data from 2007 raptor survey for the Emery mine indicates that there are no nests within ½ mile of the proposed mining activities.

Wetlands and Habitats of Unusually High Value for Fish and Wildlife

According to the information on plate 10-1, (Selected Wildlife Information), a portion of panel 15 west includes a Burrowing owl nest site and riparian meadow areas. The other panels include elk substantial value winter habitat. Chapter nine Section 10.3.1.4 of the MRP includes a general description of the wildlife habitats within the permit area.

Findings:

The information provided is adequate to meet the requirements of this section of the regulations.

RECOMMENDATIONS:

The application is recommended for approval.

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Minimum Regulatory Requirements:

Describe and identify the nature of cultural historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and local archeological, historical, and cultural preservation groups.

Identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through the collection of additional information, conduct of field investigations, or other appropriate analyses.

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Minimum Regulatory Requirements:

Provide a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. The description shall include information adequate to predict the potential for reestablishing vegetation. The map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife as identified under the fish and wildlife resource information.

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Minimum Regulatory Requirements:

The application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the Division in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under the operation and reclamation plan.

Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

- (1) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;*
- (2) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering*

- special shelter or protection, migration routes, or reproduction and wintering areas; or*
- (3) *Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.*

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Minimum Regulatory Requirements:

The permit application must include as part of the Resource Information, the following maps, plans and cross sections:

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The boundaries of any public park and locations of any cultural and historical resources listed or eligible for listing in the National Register of Historic Places. Each cemetery that is located in or within 100 feet of the proposed permit area. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act. Any other relevant information required by the Division.