

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

June 29, 2009

TO: Internal File

THRU: Steve Christensen, Lead *SKE*

FROM: Ingrid Wieser, Environmental Scientist II *W*

RE: ZZ North Panel and Adjacent Area, Consolidation Coal Company, Emery Deep Mine, C/015/0018, Task # 3339

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SUMMARY:

On December 18th, 2008 Consolidation Coal Company sent an application to the Division to add the controlled ZZ North Panel to the Emery Deep Mine MRP. The area added for the ZZ North Panel would be 74 acres. Additionally in this application, Consolidation Coal Company proposed to reduce the permit area of the Emery Deep Mine to only the disturbed surface areas, which would shrink the permit area from 5,642 acres to 442.5 acres. The old boundary would then become the "adjacent area boundary". The Division sent a list of deficiencies to the permittee and the permittee responded to those deficiencies on June 11, 2009. This memo will address the biology, cultural resources and land use sections of the deficiency response to determine if the R645 Coal Regulations have been met.

The application is recommended for approval.

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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.

PERMIT AREA

Regulatory Requirements: 30 CFR 783.12; R645-301-521.

Analysis:

The Permit Area is described in Chapter IV page 1 and is depicted on Plate III-9 "Permit Boundaries and Bonding Map. In the Description and on the Map, the "adjacent area" is clearly delineated. The Permittee proposes that the old permit boundary become the new "adjacent area". Typically, the Division defines the adjacent area because it can be different according to which regulation it is defined by. The MRP should only include a description of the old and new permit area and not the adjacent area.

The Permittee was sent the following deficiency regarding the permit area:

R645-301-521: The Permittee must provide a description of the Permit area that *does not* define the adjacent area. The Permittee must provide a map depicting the permit area and *does not* depict the adjacent area.

On June 11, 2009, the permittee responded by adding a description of the permit and adjacent area to chapter IV page 1 and to Plate III-9. The Division will allow the permittee to define the adjacent area on the map and in the description for all non-hydrological resources.

Findings:

The information provided in this section is considered adequate to meet the minimum regulatory requirements for this section.

HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION

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

Analysis:

Montgomery Archaeological Consultants, Inc. conducted a level III archaeological survey on September 25, 2007 titled, "Cultural Resource Inventory of Consol Energy's One Emery Mine Exploration Parcel, Emery Count, Utah (T22S, R6E, Sections 22 and 27). MOAC Report 07-323"

The survey resulted in the identification of on new archaeological site (42 Em3876), which is located directly over the ZZ North panel. The site was not eligible for NRHP inclusion and the determination of "no historic properties affected" was made. SHPO concurrence with this determination was received on November 21, 2007 through email (see file 0093 Incoming 2007).

This report is found in Chapter X of the MRP located in the confidential section.

Findings:

Information provided in the application meets the minimum regulatory requirements for this section.

VEGETATION RESOURCE INFORMATION

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

Analysis:

Vegetation resource information can be found in Chapter VIII and plate VIII-1 of the MRP.

The vegetation resource information is only required for the permit area and associated reference area. The area above the ZZ North Panel is considered the adjacent area and *only* requires Fish and Wildlife resource information. Vegetation Resource information is used to predict the potential for reestablishing vegetation and the productivity of the land before mining within the proposed permit area.

Pat Collins will conduct a threatened and endangered species survey in the spring of 2009 to satisfy commitments for task # 3086. In a meeting with John Gefferth and the Division on February 4, 2009, Mr. Gefferth committed to including the ZZ North panel in the biological survey.

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The above-mentioned survey was submitted to the Division as part of the deficiency response as Appendix VIII-5. Surveys of wildlife habitat and sensitive species as well as vegetation mapping were completed by Mt. Nebo Scientific in the spring of 2009. The following conclusions were made or reiterated in the report:

- Shadscale, Sagebrush, greasewood and pastureland were found in the surveyed area.
- No Critical wildlife habitat was found in the area according to DWR databases.
- In 2002, DWR determined that it was unlikely that raptors would occur within the project area.
- No federally listed TES plants or animals will be impacted because no habitat or species exist within the project area.
- Burrowing owls and white tailed prairie dogs are known from previous surveys to exist in adjacent areas, but no significant burrows were found in the project area.
- Photographs of the plant communities as well as TES species that could potentially be found in the project area were included in the report.

Findings:

Information provided in the application is adequate to meet the minimum regulatory requirements.

LAND-USE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.22; R645-301-411.

Analysis:

Land use resource information is located in Chapter X.D. The application updated this section to indicate the area includes the permit and *adjacent* area. Plate VIII-1, the Vegetation and Land use map, shows the land use areas. The map does not include the area above the ZZ North panel. The Permittee is required to identify the land use on the permit and adjacent area. The permittee indicated on the C1 C2 form that an updated copy of Plate VIII-1 had been included in the application, but it could not be found.

The Division sent the following deficiency to the permittee:

R645-301-411: The application needs to include a map of the land use on the permit and adjacent area. Plate VIII-1 does not include the area above the proposed ZZ north panel. The C1-

C2 form indicates that the Permittee submitted a new Plate VIII-1 to be incorporated into the MRP, but Plate VIII-1 was not found in the application.

The permittee updated Plate VIII-1 the Vegetation and Landuse Map. This map now includes vegetation information for the adjacent area boundary revision (above the zero zero north panel).

Findings:

The information provided is considered adequate to meet the minimum regulatory requirements for this section.

OPERATION PLAN

SUBSIDENCE CONTROL PLAN

Regulatory Reference: 30 CFR 784.20, 817.121, 817.122; R645-301-521, -301-525, -301-724.

Analysis:

Renewable Resources Survey

The pre-subsidence survey can be found in Chapter V of the MRP. In the Pre-subsidence survey, the area studied for the survey is described. Plate V-4 depicts renewable resource information relative to the pre-subsidence area. The survey boundary on this map does not include the ZZ North panel area. Renewable resources need to be mapped on all areas of potential subsidence.

The Division was sent the following deficiency:

R645-301-320: Provide a map of the permit and adjacent areas showing the location of renewable resource lands. The current pre-subsidence survey boundary on Plate V-4 does not include the ZZ North panel area.

The The acreage of renewable resources lands is listed in Plate VIII-1 (Vegetation and Landuse Map). Plate V-4 is an old pre-subsidence survey, and all current renewable resource lands including those located over the ZZ North panel are included on Plate VIII-1.

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Findings

The information provided is considered adequate to meet the minimum regulatory requirements for this section.

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

Information regarding fish and wildlife resources in and adjacent to the permit area is located in Chapter IX and on confidential Plate 10-1.

Chapter IX includes surveys from 1980 to present of the permit and adjacent area. Plate 10-1 indicates the presence of active prairie dog towns, Raptor, American Kestral and burrowing owl nests, and substantial and critical Deer and elk habitat. The data shown on this map is from surveys conducted in 1980. The Permittee committed to conduct wildlife surveys, specifically for burrowing owl habitat in the Application for Full extraction pillar splitting task # 3086 in the spring of 2009. In a meeting with John Gefferth on February 4, 2009, Mr. Gefferth confirmed that the wildlife survey for task # 3086 would encompass the ZZ North area as well. The permittee needs to acknowledge this commitment in the application.

The following deficiency was sent by the Division:

R645-301-320: Please include in the text a commitment to conduct a biological survey of the ZZ North area that includes a survey for threatened, endangered and sensitive species in the spring of 2009. Also include a commitment that if threatened, endangered or sensitive species are found, the Permittee will contact the Division and other regulatory agencies to discuss necessary mitigation or avoidance measures.

The permittee must commit to updating plate 10-1 after the wildlife surveys are complete in the spring of 2009. The map should indicate the survey boundary, and locations of endangered, threatened or sensitive species and potential habitats.

In response, the permittee included the biological survey that was conducted by Mt. Nebo Scientific in the Spring of 2009. No TES species were located and Plate 10-1 does not need to be updated because it indicates baseline data.

Findings:

The information provided is considered adequate to meet the minimum regulatory requirements for this section.

RECOMMENDATIONS:

The application is recommended for approval.