

0001

C/015/015 Incoming #346do



CONSOL ENERGY™

Consolidation Coal Company
P.O. Box 566
Sesser, IL 62884
(618) 625-2041

OK

January 27, 2010

Daron Haddock
Utah Division of Oil, Gas and Mining
Coal Program
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801

Re: Emery Deep Mine Permit C/015/015
Amendment to MRP (Zero Zero North LBA UTU-86038) Wildlife Protection and Enhancement Plan, Burrowing Owl.

Dear Mr. Haddock:

Per Consol's commitment in the MRP at Chapter IX Appendix IX-3, please consider this additional information to satisfy that condition. Enclosed please find three (3) copies of the submittal, and two (2) CD's with the submittal in pdf format. Also attached please find executed C1 and C-2 forms.

If you have any questions concerning this request, please call me at (618) 625-6850.

Sincerely,

John Gefferth
John Gefferth
Environmental Engineer

Attachments

JAG/jag emzznorthLBA.owldog.docx

File in: C/015/015. 2010 Incoming

Refer to:

- Confidential
- Shelf
- Expandable

Date: 01/27/10 For additional information

RECEIVED
FEB 03 2010
DIV. OF OIL, GAS & MINING

APPLICATION FOR COAL PERMIT PROCESSING

Permit Change New Permit Renewal Exploration Bond Release Transfer

Permittee: Consolidation Coal Company

Mine: Emery Mine

Permit Number: 015/015

Title: Zero Zero North LBA

Description, Include reason for application and timing required to implement:

LBA UTU 86038 Zero Zero North Burrowing Owl Protection and Enhancement Plan

01/10

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

- Yes No 1. Change in the size of the Permit Area? Acres: _____ Disturbed Area: _____ increase decrease.
- Yes No 2. Is the application submitted as a result of a Division Order? DO# _____
- Yes No 3. Does the application include operations outside a previously identified Cumulative Hydrologic Impact Area?
- Yes No 4. Does the application include operations in hydrologic basins other than as currently approved?
- Yes No 5. Does the application result from cancellation, reduction or increase of insurance or reclamation bond?
- Yes No 6. Does the application require or include public notice publication?
- Yes No 7. Does the application require or include ownership, control, right-of-entry, or compliance information?
- Yes No 8. Is proposed activity within 100 feet of a public road or cemetery or 300 feet of an occupied dwelling?
- Yes No 9. Is the application submitted as a result of a Violation? NOV # _____
- Yes No 10. Is the application submitted as a result of other laws or regulations or policies?
Explain: _____
- Yes No 11. Does the application affect the surface landowner or change the post mining land use?
- Yes No 12. Does the application require or include underground design or mine sequence and timing? (Modification of R2P2)
- Yes No 13. Does the application require or include collection and reporting of any baseline information?
- Yes No 14. Could the application have any effect on wildlife or vegetation outside the current disturbed area?
- Yes No 15. Does the application require or include soil removal, storage or placement?
- Yes No 16. Does the application require or include vegetation monitoring, removal or revegetation activities?
- Yes No 17. Does the application require or include construction, modification, or removal of surface facilities?
- Yes No 18. Does the application require or include water monitoring, sediment or drainage control measures?
- Yes No 19. Does the application require or include certified designs, maps or calculation?
- Yes No 20. Does the application require or include subsidence control or monitoring?
- Yes No 21. Have reclamation costs for bonding been provided?
- Yes No 22. Does the application involve a perennial stream, a stream buffer zone or discharges to a stream?
- Yes No 23. Does the application affect permits issued by other agencies or permits issued to other entities?

Please attach four (4) review copies of the application. If the mine is on or adjacent to Forest Service land please submit five (5) copies, thank you. (These numbers include a copy for the Price Field Office)

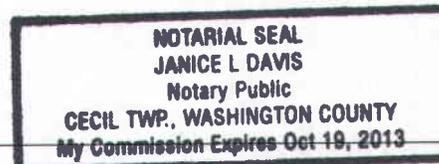
I hereby certify that I am a responsible official of the applicant and that the information contained in this application is true and correct to the best of my information and belief in all respects with the laws of Utah in reference to commitments, undertakings, and obligations, herein.

Jonathan M. Pachter
Print Name

Jonathan M. Pachter 1/20/10
Signature, Position, Date
General Manager, Environmental Services

Subscribed and sworn to before me this 20th day of January, 2010

Janice L. Davis
Notary Public
My commission Expires: October 19, 2013
Attest: State of Pennsylvania } ss:
County of Washington



For Office Use Only:

Assigned Tracking
Number:

Received by Oil, Gas & Mining

RECEIVED

FEB 03 2010

DIV. OF OIL, GAS & MINING

NOTARIAL SEAL
JANICE L DAVIS
Notary Public
CECIL TWP. WASHINGTON COUNTY
My Commission Expires Oct 19, 2013

CH IX APP IX-3

Zero Zero North LBA UTU-86036

Wildlife Protection and Enhancement Plan

Burrowing Owl

During the Environmental Assessment phase of this project a burrowing owl was noted using an active prairie dog colony. Refer to Burrowing Owl Survey in Chapter VIII Appendix VIII-6 titled Biological Resources of the Zero Zero North LBA UTU-86038, Mt. Nebo Scientific, Nov 2008.

Per consultation with the State of Utah, Division of Oil, Gas & Mining (DOG M), Utah Division of Wildlife Resources (DWR), Bureau of Land Management (BLM) and US Fish and Wildlife Service (USFWS), Consol plans to implement a protection and enhancement plan for the burrowing owl prior to March 1, 2010. The prairie dog colony, as depicted in the above mentioned appendix at page 6 Figure 1, resides on private surface owned in fee by Consol that has been tilled in the past.

~~One recommendation from the USFWS that may be implemented is for Consol to work with DOGM to locate a remote area to add burrowing owl nesting dens provided by DWR. This enhancement project will be complete prior to the March 1, 2010 burrowing owl nesting period.~~

~~Consol will work with DOGM to prepare and submit a protection and enhancement plan prior to March 1, 2010.~~

The following Wildlife Protection and Enhancement plan was prepared by Mt. Nebo Scientific in consultation with USFWS, DOGM, DWR and BLM

Inserted 10/09

Revised 2/10

BURROWING OWL PROTECTION & ENHANCEMENT PLAN AT THE MILLER TRACT OF THE EMERY MINE

February 1, 2010

Patrick D. Collins, Ph.D.
Mt. Nebo Scientific, Inc.
Research & Consulting
Springville, UT 84663

INTRODUCTION

Consol Energy operates the Emery Coal Mine in south-central Utah. Future plans include expansion of the mine into an area called the Miller Tract. When this area is mined, Consol expects subsidence of up to 4 ft and the potential of cracks to occur at ground surface. The subsidence will be gradual, rather than an abrupt event.

A portion of the surface of the Miller Tract supports an active white-tailed prairie dog (*Cynomys leucurus*) colony. This vicinity of this colony has also been the subject of burrowing owl studies (Figure 1). A burrowing owl (*Athene cunicularia*) was sited exiting one of the abandoned prairie dog burrows during biological surveys that were conducted in the field season of 2008 (Figure 2). Both the white-tailed prairie dog and the burrowing owl have been placed on Utah's Sensitive Species list as a "wildlife species of concern". The State of Utah, Division of Wildlife Resources (DWR) states that species of concern "*are those species for which there is credible scientific evidence to substantiate a threat to continued population viability. It is anticipated that wildlife species of concern designations will identify species for which conservation actions are needed, and that timely and appropriate conservation actions implemented on their behalf will preclude the need to list these species under the provisions of the federal Endangered Species Act*". Additionally, the burrowing owl is protected under the Migratory Bird Treaty Act.

Subsidence may collapse burrows used by white-tailed prairie dogs and individual dogs may be killed; however, planned subsidence may have minimal impact on burrows due to the way the land is expected to move (gradually). This should minimize the impact on prairie dogs, but the effects of subsidence on burrows are unknown at this time. If burrows collapse, prairie dogs can dig new burrows or may be able to reopen collapsed burrows. Finally, because of the population size of the resident prairie dogs in the Miller Tract area (as well as their capability to adapt and dig additional burrows), little impact is expected by subsidence on the overall population in this area. Still, data will be collected to address the uncertainties about the effects of subsidence on burrows and the prairie dog colony.

A plan that includes conservation measures to protect burrowing owls by creating additional nesting sites that should hold up to subsidence as well as potentially increase productivity by reducing predation is described below.

ARTIFICIAL BURROWS

Locations

Seven (7) artificial burrows will be constructed within the Emery Mine permit area in February 2010 if field conditions are favorable. The first such burrow will be constructed in the subsidence zone of the Miller Tract at the mound where the 2008 owl was sited. Two more artificial burrows will be constructed within the same subsidence zone. Although subject to change due to unforeseen site constraints when field surveys and burrow construction begins, the locations for the proposed artificial mounds, tunnels, and nests are shown in Figure 1.

Burrowing owls often return in the spring to nest in the same burrow, or one nearby, after their winter migration journey. It has been documented by others that if a previous season's nest or burrow has been destroyed or is otherwise unavailable, the owl pair will usually find another burrow within 100 meters of their



Figure 2: Burrow Sites & Nesting Habitat

previous nesting site. Consequently, two more burrows will be placed just outside the subsidence zone at a distance of less than 100 meters from the 2008 burrow and about 50 meters apart from each other. Attempts will be made to utilize existing but abandoned prairie dog mounds. If abandoned mounds are not present within the prescribed distance here, artificial mounds will also be created for placement of the burrows. Tall, woody vegetation (i.e. greasewood) in the immediate area of any newly-created mounds will be removed to simulate natural mounds and adjacent area physiognomy.

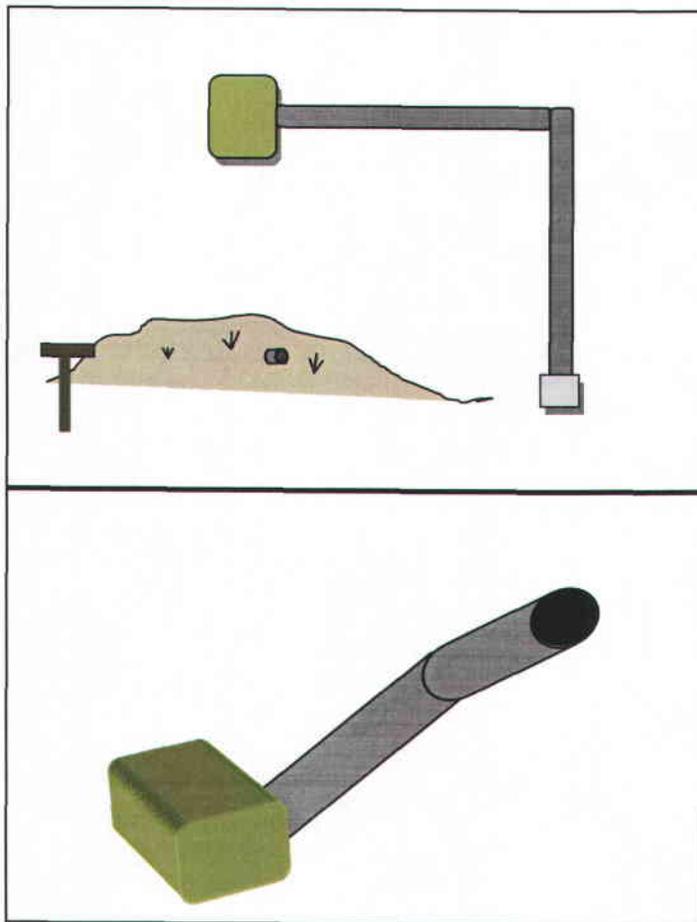
Finally, two more artificial burrows and nests will be constructed within a remote subsidence zone to test the affect of subsidence on them. The location of this test area will be planned in conjunction with the current mine plan. The entrances to these burrows will be closed off to prevent owls from nesting in them during the test period. As above, attempts will be made to utilize existing abandoned mounds for burrow construction, but if they are not present, artificial mounds will be created here too. Exact locations of these burrows will be mapped once they are constructed; follow-up

inspections will be made after the area subsides to observe and report any impacts to them.

It should also be mentioned that extreme care will be followed to minimize any impact to hibernating or active prairie dogs during construction of all artificial burrows.

Design

As mentioned, abandoned prairie dog mounds will be utilized for construction of the artificial burrows. The possible exception to this is the one mound where the owl was sited in 2008. In this case an artificial burrow and nest will be created in the same mound. One (or possibly two) burrow(s) leading to one nest will be constructed at this mound. In areas where the mounds are not present, artificial mounds will also be created utilizing the average dimensions for height and width of the existing natural mounds of the area.



Nesting burrows will be excavated with a backhoe. Once excavated, nesting boxes will be placed at a depth of 4 feet below ground surface (Figure 3). Each of the nesting boxes will be made from a 17.5 inch X 12.0 inch irrigation valve box (or similar size and box). A 4-inch hole will be cut in the side(s) of the nesting box to accommodate the tunnel attachment. For adequate drainage, current literature suggests that most artificial nests created for burrowing owls do not have artificial floors, rather the bottom of the nests are usually comprised of the resident soil material. Because damage caused by subsidence may be an issue here, these nests will also have an artificial floor connected to the walls of the nest. Holes will be drilled in the bottom however, to facilitate drainage.

Figure 3: Artificial burrow and nest views including: top, side with mound and perching post, and 3-dimensional (not to scale).

Soil and/or straw may be placed inside the nest to create a soft floor space.

The tunnel to the nest will be created using 8-10 ft long sections of corrugated 4-inch ADS pipe. This pipe will slowly bend in the center to a 90° angle (horizontal) to decrease daylight to the nest. The pipe will also bend approximately 45° (vertical) from the nest to the surface opening creating a gentle angle for the owls to enter and exit the nest through the tunnel. The top half of the ADS pipe will be encased with polyvinyl chloride (PVC) pipe (or alternative entrance reinforcement material or design) to decrease deterioration as well as protection from predator attacks. Also as a means for escape from predators as well as providing additional ventilation to the nests, a second tunnel may be created to the nest box in some of the sites. Finally, perching posts will be placed near some or all of the artificial burrows.

Surveys, Monitoring & Burrow Construction

February 2010

A reconnaissance trip will be made to the site to: plan, identify and mark locations for construction of the artificial mounds, burrows and nests. Because the goal is to *not* impact prairie dogs by construction of the burrows, prairie dog activity will also be noted at this time to aid in marking locations for potential mounds and burrows. The site will also be assessed to help plan the dates for artificial burrow construction.

Based on February's weather and the presence of favorable site conditions (and partly based on the information collected during the reconnaissance trip above), artificial burrow construction will be completed later that same month or soon after.

March 2010

A survey will be conducted in the Miller Tract area in March 2010. The purpose of the survey will be to assess the activity level of the resident prairie dogs and to monitor any activity of burrowing owls returning from their southern migration to choose potential nesting sites. Because they will be most active in the daytime this time of year, the surveys will be conducted mid-day. The surveys will monitor both prairie dogs and burrowing owl for two days.

April 2010 – July 2010

Two survey periods will be conducted between April 15th and July 15th, or during the peak breeding season for burrowing owls. Mining operations with the potential for subsequent subsidence may also help drive the survey periods, but the first survey will be conducted in April 2010.

Current burrowing owl survey protocols will be employed for the field studies. The April survey period will include visiting the observation stations on four separate occasions. The visits will be planned for two morning and two evening surveys. The morning surveys were to be conducted from one hour before until two hours after sunrise, whereas the evening surveys will be conducted beginning two hours before until one hour after sunset.

In addition, within this same survey period, prairie dog surveys will be conducted during the daytime when they are most active. Burrowing owls are also active during this time, so these surveys will also note any owl activity.

The next survey period has been planned for June 2010. The same protocol will be conducted as the April survey described above. All appropriate parameters and data will be recorded during the survey periods.

Pre- and Post-Subsidence Surveys

As mentioned above, the mine plan may dictate the surveys. If mining activities and subsequent subsidence were to occur outside the entire breeding season (March 1st and August 31st), the post-mining surveys may not need to be conducted at all. In that case, artificial burrows will still be in place as conservation measures for burrowing owls as well as potentially increasing productivity by creating more nesting habitat for the birds.

It has been suggested that monitoring be conducted 10 days prior to and following subsidence in an attempt to record the impacts to the owls. If mining operations occur during this breed season mentioned above, the surveys will be planned accordingly.

April 2011 – July 2011

Depending on the mining, subsidence and survey results in 2010, follow up studies and maintenance of the artificial burrows may be conducted in 2011. These plans will be made in cooperation with DOGM and the Emery Mine once these events occur.

A final report that describes the results of all surveys described above will be provided to DOGM in the Emery Mine's annual report.