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STATE OF UTAH
NATURAL RESOURCES
Wildlife Resources

M/015/019

Reg mine file
cc J. Whitehead
B. Stettler

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
William H. Geer, Division Director

1596 West North Temple • Salt Lake City, UT 84116-3154 • 801-533-9333

September 12, 1988

RECEIVED
SEP 16 1988

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-12-3

DIVISION OF
OIL, GAS & MINING

Attention: John Whitehead and Brent Stettler

Dear Dianne:

In regards to the three mitigation strategies proposed by UP&L on August 29, 1988 concerning golden eagle nest No. 61C at their Cottonwood-Wilberg Mine, the following is offered for your consideration.

As you know, Option No. 1 could place UP&L in violation of several state and federal environmental/wildlife laws. Option No. 2 is preferred and could be pursued, but only if a "Permit to Take" were issued by the U.S. Fish and Wildlife Service, along with a companion DWR "Certificate of Registration" for purposes of taking an active nest. Substantial knowledge concerning eagle responses to mining/subsidence could be obtained from such a clinical study. Mitigation Option No. 3 is also acceptable, however, air blasts as a scare tactic need not be implemented. Regardless of which option is selected, the U.S. Fish and Wildlife Service's position should be considered as taking precedent. The Division will issue necessary permits to coincide with USFWS's decision.

The current USFWS permit held by UP&L would allow "taking" of nest No. 61C during any inactive period. "Taking" where by the nest is screened so that it would become inaccessible to eagles is appropriate. Division biologists have developed such a procedure that would maintain the nest for a controlled length of time as inactive. As a result, UP&L would not risk subsidence damage to an active nest, and the adult eagles could not be destroyed. If the nest were not to become damaged from subsidence, the screen could be removed and no further mitigation would be required relative to nest No. 61C. If the nest were to be lost, mitigation would be required; replacement of the nest is the goal.

It is reasonable to suspect that the breeding pair, if forced off of nest No. 61C, would utilize the other known alternate nest (No. 62) that remains in the territory. This nest is considered not to be at risk due to subsidence. It is also possible that a new nest could be constructed by the eagles. If such a new nest were in an area to be jeopardized by subsidence, the USFWS has authorization to "take" the nest, or merely recover the eggs or young. UP&L's current permit identifies this possibility as well as that the company would have to fund such an activity.

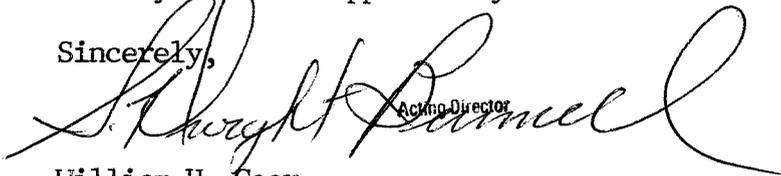
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Dianne, two other golden eagle nests (No.s 61A and 61B) have been lost due to subsidence caused by UP&L in this nesting territory. The company possessed adequate DWR and USFWS permits. At this point in time, mitigation for those losses, if necessary, has yet to be determined. The eagles need another year or two in order to demonstrate if they will rebuild their nests.

Since two suitable nests (No. 62 and No. 61C) still remain, the eagles may not need additional alternative nest sites. The Division in concert with the USFWS, will continue to evaluate this situation. UP&L will be responsible to monitor the eagle nest territory for determination of need for mitigation.

Thank you for an opportunity to review and comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "William H. Geer". The signature is written in black ink and is positioned above the typed name and title.

William H. Geer
Director