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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

August 30, 1988

Mr. Larry Dalton, Resource Analyst
Utah Division of Wildlife Resources
455 West Railroad Avenue
Price, Utah 84501

Dear Mr. Dalton:

Re: Request for Concurrence on Mitigation for Eagle Nest 61C, Utah
Power and Light Company, Cottonwood-Wilberg Mine, ACT/015/019,
Folder #2, Emery County, Utah

Attached is a copy of the August 29, 1988 submittal from Utah Power and Light Company (UP&L) dealing with the taking of eagle nest 61C located in the sandstone escarpment directly above the proposed Eighth East Panel at the Wilberg/Cottonwood Mine.

The Division has evaluated options noted in the August 29 UP&L letter and is prepared to concur with Option No. 3. Prior to any Division action on this, the Division requests input from your agency in regards to this matter. Your assessment of reasonable measures to mitigate the taking of nest 61C is particularly needed.

It is imperative that we provide UP&L with definitive direction prior to the onset of inclement weather so that this issue may be resolved prior to the upcoming nesting season. Therefore, would you please respond either by writing or calling, prior to September 14, 1988. Please feel free to contact me or Brent Stettler of my staff should you have any questions on this matter. Your cooperation is much appreciated in this endeavor.

Sincerely,

A handwritten signature in cursive script, appearing to read 'John J. Whitehead'.

John J. Whitehead
Permit Supervisor/
Reclamation Hydrologist

djh
Attachment
cc: B. Stettler
WP+/24

bcc: D. Smaldone, UP&L

utah
power
& LIGHT COMPANY
MINING DIVISION
P.O. Box 310
Huntington, Utah 84528

file ACT/015/019 #2
C. B. Stettler
J. Whitehead

RECEIVED
AUG 29 1988

DIVISION OF
OIL, GAS & MINING

August 29, 1988

Mr. John Whitehead
Permit Supervisor
State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Dear Mr. Whitehead:

This letter is in regards to mining the 8th East Panel of the Cottonwood Mine beginning directly under the Castlegate Sandstone Outcrop. As you know, UP&L submitted a request to mine this area on May 24, 1988 and supplied further information requested by the Division on June 17, 1988.

The original request stemmed from an agreement between the U.S. Forest Service, Bureau of Land Management, Utah Division of Oil, Gas and Mining and Utah Power and Light (UP&L). During meetings which led to that agreement it was generally agreed by all parties that escarpment failure probably would not occur in the 8th East Panel if longwall mining began directly under the Castlegate Sandstone. The reasons for this are due to geologic conditions and orientation of the panel itself. A primary concern is eagle nest 61C located in the sandstone escarpment directly above the area where mining will begin.

On August 3, 1988, Mr. Clark Johnson, U.S. Department of Interior, Fish and Wildlife Service responded to a request by the Division to review the UP&L request. Mr. Johnson reaffirmed the provisions of the "take permit" which states that "taking" is approved only when the nest is inactive.

UP&L was granted a Certificate of Registration for collecting wildlife on June 20, 1988 by the Utah Division of Wildlife Resources. This certificate expires on December 31, 1988, as does the U.S. Fish and Wildlife "take permit". A provision in the Certificate of Registration states that, "taking is limited to inactive nests only to be lost through actions resulting from coal mining subsidence".

Based on the premise that the Division will approve longwall mining under the Castlegate Sandstone Outcrop in the 8th East Panel then some issues need to be decided. UP&L has the following options:

Option 1:

UP&L does not "take" nest 61C during the fall of 1988. If eagles do not return to this nest next year or the Castlegate Sandstone escarpment does not fail in such a way to disturb nest 61C then this option is viable. If this nest is active next year and destroyed or damaged by escarpment failure then UP&L could face serious consequences.

Option 2:

UP&L does not "take" nest 61C during the fall of 1988. However an agreement with both the U.S. Fish & Wildlife and Utah Division of Wildlife Resources is reached which allows an active nest to be removed next year if in jeopardy of damage. This agreement will have to be structured so that no delay to mining will occur. Obviously mitigation measures will have to be agreed upon which will allow active nests and eagles to be removed at any time requested by UP&L.

Option 3:

UP&L "takes" nest 61C during the fall of 1988. This option would entail screening nest 61C with a wire mesh material so that the nest stays in tact but remains inactive during the spring and summer of 1989. Associated with this option would be possible measures such as setting up air blasts to keep eagles out of the area during 1989.

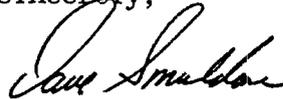
At this point in time the most prudent option for UP&L is number 3. The nest could be "taken" this fall under the terms of the U.S. Fish and Wildlife Take Permit. Assuming that subsidence may occur after mining then the terms of the Utah Certificate of Registration also apply. For safety reasons the nest must be taken before subsidence actually occurs.

UP&L is interested in working jointly with the Division, U.S. Fish and Wildlife and Utah Division of Wildlife Resources on this matter. We are open to either Option 2 or 3 as stated previously and willing to provide reasonable mitigation measures such as reestablishing nesting sites.

If option 3 is chosen, then work must begin no later than September 30, 1988. Therefore, concurrence with this concept is needed by the Division, U.S. Fish and Wildlife and Utah Division of Wildlife Resources by September 15, 1988. Therefore, UP&L requests that the Division approve mining in the 8th East Panel up to the Castlegate Sandstone by September 15, 1988. Additionally it is requested that the Division contact the U.S. Fish and Wildlife and Utah Division of Wildlife Resources to obtain concurrence on either Option 2 or Option 3.

Thank you in advance for your help.

Sincerely,



Dave Smaldone
Director of Permitting,
Compliance and Services

DS/do