

0050

Outgoing 00150025

From: Jim Smith
To: coop mark
Date: 10/20/2006 3:31:48 PM
Subject: Interim review for Task No. 2669

Mark,

See attached list of deficiencies. Contact Steve Christensen with questions, but Marc Stilson, Wayne Hedberg, and I also provided input.

JIM

CC: dharber@fs.fed.us; Marc Stilson; Mary Ann Wright; Steve Christensen; Wayne Hedberg

**Bear Canyon
Response Preceding 4th Submittal
October 16, 2006**

- **R645-301-724.200: State Appropriated Water Rights-** the most recent Technical Analysis identified discrepancies in the water rights data submitted by the Permittee that still need to be corrected:

Water rights depicted in both Table 7-6 and on Plate 7-12 need to be corrected: #93-251 and #93-316 are incorrectly labeled. According to the Water Rights database, they should be #91-251 and #91-316. #93-251 is listed as being held by the Ferron Corral and Reservoir Co. in T20S R6E. #93-316 is listed in the database as being held by the USDA Forest Service.

Water rights depicted on Plate 7-12 need to be relocated: According to the Water Rights Database, water rights #93-1426 and #93-1425 are located in Section 21 of T16S R8E. They are depicted on Plate 7-12 in Section 20.

- **R645-301-724, -724.100, -724.200, -731.210 and -731.220: Baseline Information and Ground Water and Surface Water Monitoring Plan-**the Permittee must provide written descriptions as to how their proposed monitoring plan will provide adequate baseline information in both the surface and ground water sections-in the Environmental Resource Section, as well as provide an adequate description in the ground and surface water sections in the Operational Plan portion of the MRP regarding water monitoring. To this point in the permitting process, adjustments have been made primarily in the tables outlining the proposed monitoring.

Written descriptions should be made of newly added monitoring sites and how their monitoring (as well as the other sites in the proposed lease addition) will provide adequate baseline information as well as how they will satisfy the Operational Plan requirements for surface and ground water monitoring (i.e. how they are based on the PHC, how they will adequately assess the impacts to the hydrologic balance, detect material damage outside the permit area etc...See R645-301-731).

The Permittee must also provide a description of the various drainages recently identified during recent field surveys on the Right Fork of Fish Creek, how they will be monitored and identify the site numbers that will achieve the proposed monitoring.

In addition, the Permittee must discuss how accurate flow measurements will be made. During a field survey, the use of portable weirs was discussed as an option for obtaining accurate flow measurements on the Left and Right Forks of Fish

Creek (at sites FC-1 and FC-2). Similar discussion must be provided as to how accurate flow measurements will be obtained at the other monitoring sites. Provide descriptions in both the surface and ground water sections of the Environmental Resource Information Section and the Operational Plan Section (R645-301-724, -724.100, -724.200, -731.210 and -731.220).

Remove language on page 7-49 regarding water sampling "3 years prior to mining". Page 7-49 was not submitted to verify that this language has been removed.

- **R645-301-722, -731: Maps, Plans and Cross Sections:** The Permittee needs to modify Plate 7-12 to accurately depict the proper location and ID# for all state appropriated water rights. (See aforementioned State Appropriated Water Rights section for detailed information)

In addition, the Permittee must address the discrepancy in Table 7-14 and Plate 7-4 regarding site SBC-21. In Table 7-14, SBC-21 is also labeled as (16-8-29-1). On Plate 7-4, SBC-21 is labeled as (16-8-18-1).

The Permittee needs to label the major faults located within the proposed lease expansion on all pertinent plates.

The Permittee needs to remove the NW Hiawatha seam from all plates where it is depicted.

- **R645-301-731.210, -731.220: Surface and Groundwater Monitoring:** The Permittee must provide the water monitoring protocol to be utilized during the undermining of perennial streams (outlined on pages 5C-9 and 5C-10 of recent submittal) in the corresponding surface AND ground water sections in the Operational Plan section of the MRP (R645-301-731.210, -731.220).

The Permittee must also commit to providing the Division of Oil, Gas and Mining with weekly e-mail reports for the month prior, during and one month following the undermining of the identified perennial streams (Left and Right Fork of Fish Creek).

In addition, the Permittee must provide written descriptions outlining the proposed water monitoring program in the proposed lease area as discussed in the aforementioned bullet.

The Permittee also needs to revise Footnote #7 on Table 7-14, Water Monitoring Matrix: Operational Phase of Mining. The sentence is a bit confusing.

The Permittee needs to provide language in the ground and surface water sections discussing how weekly water monitoring will begin in the perennial stream

reaches as each panel approaches the respective drainages.

- **R645-301-731.800: Water Rights and Water Replacement-** The Permittee addresses water rights and water replacement in this section. However, R645-301-731.800 deals with water rights and replacement in connection with “surface coal mining and reclamation activities”. The regulation that applies to water replacement in connection with underground coal mining is **R645-301-731.530**. The Permittee must place their water rights and water replacement discussion under R645-301-731.530.

The second full paragraph on page 7-61A needs to be removed. The paragraph states, C.O.P. Coal Development, ANR Inc., United States Forest Service and Huntington Cleveland Irrigation Company are the only companies or agencies that own water rights and would have any legal claim if their water rights were impacted by mining in the proposed lease expansion. According to Marc Stilson of the State of Utah Water Rights Division, this is not necessarily the case. According to Mr. Stilson, there’s always a possibility that someone could have a diligence claim on a water right. Although the proposed lease expansion area is closed for new water right appropriations, it is open for diligence claims. Until the area is closed, the possibility exists that someone could come forward and make a diligence claim. Furthermore, Mr. Stilson pointed out that downstream of the proposed area in the Huntington Creek drainage, there are several more water right holders that could potentially have legal standing in the event of mining related impacts to the resource. For example, Mr. Stilson indicated that PacifiCorp and Craig Johanssen have water rights on Huntington Creek that could potentially be impacted. In light of the aforementioned discussion, the paragraph must be removed from the proposed MRP language, or modified accordingly.

Page 7-61A, 1st paragraph states “If a state appropriated water right is impacted CW Mining will replace it as required under R645-301-731.800 of the Utah State Code”. You may want to consider inserting language to the affect that CW Mining will replace water rights impacted “by mining and/or mining related activities” (or as suggested below for Page 7-61D).

Page 7-61A, 1st paragraph also states “All water resources identified for protection were added to the water monitoring schedule (Table 7-14) and are shown as stars on Plate 7-4”. Is it CW Mining’s assertion that all the stars on plate 7-4 are protected? Is it the intent of the language to say that CW Mining will replace any of the stars/water resources if they are impacted? All of the water resources on Plate 7-4 are identified with stars. Perhaps this is your intent, but if not, a clarification would be in order. Monitoring wells wouldn’t necessarily be considered “protected” water resources.

Page 7-61D’s last sentence must be modified. **R645-301-731.530** states, “The Permittee will promptly replace any State-appropriated water supply that is

contaminated, diminished or interrupted by UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 2991". As such, the Permittee needs to remove the "material damage" language and insert the aforementioned regulatory language from -731.530.

The Permittee needs to clarify the nature of the agreement between C.W. Mining and C.O.P. regarding the replacement of any water rights. Is there a formal agreement; any documentation?

- **Marc Stilson, Utah Water Rights Division Comments:** Marc Stilson made the following suggestions upon reviewing the recently submitted material-

Mr. Stilson suggested that in section 731.800 that instead of using the term "water right", "water supply" should be used. He identified three instances where this occurs; first sentence on page 7-61A, the last sentence on page 7-61D, the first sentence of the last paragraph on page 5C-9 and the first sentence of the second paragraph on page 5C-9.

He suggested removing the word "All" from the third sentence of the first paragraph on page 7-61A. The sentence states "All state appropriated water rights are shown on page 7-12". His feeling was that in light of the ensuing addendum process in the area, that this statement wasn't accurate. He suggested the sentence would be more accurate if it read, "State appropriated water rights with points of diversion within the proposed lease expansion are shown on Plate 7-12". He also suggested the word "All" be removed from the next sentence as well that reads, "All water resources identified for protection..."

Marc Stilson suggested that the paragraph following the list of agencies provided on page 7-61A should be edited or removed.

The term "affected area" needs to be defined. For example the first sentence under United States Forest Service on page 7-61B states, "The U.S. Forest Service owns stock watering rights above the affected area". The Permittee needs to define what the term "affected area" means as these pages will be incorporated into the MRP and it will be unclear at that point as to what "affected area" is referring to. In addition, the language of the sentence needs to be clarified. The U.S. Forest Service has water rights within the proposed lease expansion. It's unclear what "above the affected area" means. "Affected area" is also referred to under the HCIC section on page 7-61C.

Mr. Stilson suggested some changes to the Huntington Cleveland Irrigation Company section on page 7-61C. He suggested deleting the second sentence and instead writing something to the effect of "HCIC's points of diversion for their state appropriated water rights are located downstream of the affected area. Because of this, the stock-watering and irrigation uses for HCIC may not require

replacement right at the source. They do require that the same quantity of water flows downstream to their points of diversion.” He felt that this language would be more accurate. Again, “affected area” needs to be clarified.

The first sentence of page 5C-9 needs clarification. It reads, “Considering the absence of spring, water sources, the negative potential impacts of subsidence within the Bear Canyon Permit Area could easily be offset by potential positive aspects”. Obviously there are numerous springs and water sources in the Bear Canyon Permit Area. Please clarify the intent of this paragraph.

▪ **Miscellaneous editorial comments:**

State of Utah Water Rights Division needs to be included in the list of agencies that were represented during the field surveys on page 7-61A.

Page 5C-10 contains a spelling error. The second full sentence of the first paragraph states, “weekly bases”. It should read “basis”.

O:\015025.BCN\DRAFT\WG2669\DOGM email response.doc