

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

February 26, 2009

TO: Internal File

THRU: Priscilla Burton, Team Lead *PB by SWS*

FROM: Susan M. White *SW by SWS*

RE: Permit Application - Coal Hollow Project, Alton Coal Development, Coal Hollow Mine, C/025/0005, Task ID # 3100

SUMMARY:

The Coal Hollow Mine plan was determined to be administratively complete on March 14, 2008. Upon receipt of a complete application the Division must review the application to determine whether coal mining and reclamation operations are limited or prohibited under §40-10-24(4) of the Act on the lands which would be disturbed by the proposed operations. This memo reviews the application to determine whether the proposed operations can be authorized in light of the mandatory prohibitions (R645-103-200). This memo does not review the designations by petition since none have been received.

TECHNICAL ANALYSIS:

AREAS UNSUITABLE FOR COAL MINING AND RECLAMATION OPERATIONS

Regulatory Reference: 30 CFR 761.11; R645-103

Analysis:

Section R645-103 establishes procedures for designating lands unsuitable for all or certain types of coal mining and reclamation operations on state and private lands. The authority to make determinations of unsuitability on federal lands is reserved to the Secretary of Interior. The rules contain two general categories of designation (1) statutory designations and (2) designations by petition.

Statutory designations are described in R645-103-200 and require the Division, upon receipt of a complete permit to determine whether a proposed coal mining and reclamation operation can be authorized in light of the mandatory prohibitions set forth in the Act at §40-10-24(4). These prohibitions include:

- Lands prohibited under public law examples include National Parks, National Forests, Refuges, National Trail Systems, Wilderness, and Scenic Rivers;

- On any lands which will adversely affect public parks or places on the National Register of Historic Sites (with exceptions);
- Within 100 feet of or relocation of a public road, (with exceptions); and
- Within 300 feet of an occupied dwelling, school, church, or public building, (with exceptions).

The general rules for both designations (statutory and petition) require the Division to integrate as closely as possible suitability decisions with present and future land use planning and regulatory processes at the state and local levels.

This review does not analyze designations by petitions to designate lands unsuitable because the Division has not received a petition.

Land Use Planning at the State and Local Levels

Almost 88 percent of the Kane County land base is in federal ownership. The Utah State Institutional and Trust Lands Administration control an additional 8 percent leaving 4 percent of the land in private ownership. Thus any planning on federal or state lands greatly impacts Kane County. The State of Utah develops resource plans on a state level but generally recognizes the local county and municipal governments as having land use planning authority. While the Coal Hollow Coal Mine is all on private property, State policy (§63J-4-401(6)(a)) on federal lands is to:

- Promote multiple use;
- Achieve a high level of mineral output; and
- Support mineral development at the highest reasonably sustainable level.

State code (§63J-4-401(8)(m)) further specifies that on federal lands state policy is that:

- Mineral and energy production and environmental protection are not mutually exclusive;
- It is technically feasible to permit appropriate access to mineral and energy resources while preserving other resources; and
- Development of the solid mineral resources of the state should be encouraged.

The document Kane County Utah General Plan for the Physical Development of the Unincorporated Area Pursuant to Section 17-27-301 of the Utah Code, (Adopted June 1998 and written by Five County Association of Governments) recognizes the presence of extensive mineral deposits and a potential resource for future generations. The plans focus on federal lands because:

"Privately owned land is adjacent to federal and state lands. Management decisions for the federal and state lands directly impact use of, and the economic value of, private land."

One of the stated purpose and intent of public lands policy for energy and mineral resources is:

"The mining industry makes up an important part of the property tax base of the County, and its payroll and expenditures for supplies are important to the economic stability of the County. Mining is one of the historic multiple uses on federally managed land and maintenance of the use is compatible with the multiple use principle."

According to the Kane County Planning and Zoning Map the area within the proposed permit area (T39S, R5W sections 19, 20, 29, and 30) is zoned for Agriculture (AG) and Residential Recreation (REC-R36). The Kane County Land Use Ordinance, July 1, 1998, Revised November 11, 2006 states the purpose of these two zones as follows:

REC-R36: To permit use of designated area for grazing, forestry, mining, recreation, and other activities and to protect the natural resources of the area for the benefit of present and future generations.

AG: To preserve appropriate areas for permanent and temporary agricultural and open space areas as defined herein. Uses normally and necessarily related to agriculture are permitted and uses adverse to the continuance of agricultural activity are not allowed (http://kane.utah.gov/deptinfo.cfm?deptID=8&pnl=1_2).

The Land-use Ordinance indicates that surface and underground mines are not allowed in agriculturally zoned areas; however, zone modifications or conditional use permits are permitted following established procedures subject to Kane County Planning Commission approval. (2009/incoming/0006.pdf). The postmining land use for the land is stated as agricultural use, grazing for livestock production, recreation, hunting, and wildlife habitat.

The Kane County Commission sent a letter of support for the project on June 13, 2007 and again during the public comment period on May 16, 2008 (2008/incoming/0063.pdf). The town of Alton sent a letter to Alton Coal Development, May 9, 2008, "hardily" endorsing the mine (2008/incoming/0038.pdf).

Lands prohibited under Public Law 95-87: All lands are on private (fee) surface and coal, except for a small area of federal coal with private surface, which will not be mined. No lands within the permit area are located within the boundaries of any National designation (MRP Section 411.141).

National Register of Historic Places or Parks: No parks (Section 411.141.1) or places included in the National Register of Historic Places (Section 411.140) are found within the area of proposed coal mining and reclamation operations. (However, fourteen sites eligible to the NRHP were identified in a June 2005 inventory of the proposed permit area. Seven of these eligible sites will be adversely affected by the proposed action. A data recovery plan has been implemented and a mitigation plan or a Cultural Resource Management Plan developed for this

area and the proposed federal lease area. Concurrence on the mitigation plan for the seven sites was received from SHPO on July 14, 2008 (2008/incoming/pdf 0135))

Within 300 feet from any occupied dwelling, cemetery, or public or community building: No mining will occur within 300 feet of an occupied dwelling, building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery. The Swapp Ranch House is located just outside the 300 foot distance (Drawing 1-5).

Within 100 Feet or Relocation of a Public Road: Kane County Road K3900 (also known as County Road 136 or The Sink Valley Road), a class B multiple use public road, is located within the mine permit area and mining boundaries. Kane County Road K3993 (also known as the Robinson Creek Road) is also located within the mine permit area. The rules allow an exception to unsuitability if: (1) an approval from the road authority is obtained; (2) public notice and opportunity for public hearing provided; and (3) a written finding is made that the interests of the public and landowners affected will be protected.

The mine proposes to relocate the K3900 road during mining. The road realignment is within the primary jurisdiction of Kane County and includes a right of way across Public Lands issued by the BLM. Approvals have been sought and obtained from the county and BLM to temporarily relocate the road to the west on Public Lands. After reviewing the Environmental Assessment, dated November 2008, the BLM Kanab Field Office Manager issued a FONSI on December 12, 2008 to allow the right-of-way for the road relocation on Public Lands (Appendix 1-7). Kane County and Alton Coal Development entered into an agreement on November 24, 2008 to relocate the road.

Public Notice of the mine permit application and K3900 road relocation was published March 26th through April 16, 2008 in the Southern Utah News (2008/Incoming/0009.pdf). Information concerning K3993 was not published at this time because the Division was not aware that K3993 was a public road. No comments on the road or requests for a public hearing for relocation of K3900 were received. However requests for public hearing was received on the mine permit application and the Division noticed the public hearing to receive comment on the mine application and road relocation (2008\outgoing\0018.pdf). The Hearing was held June 16, 2008 in Alton, Utah. The relocation of the road was described at the public hearing. No verbal comments were received on the road relocation. One written comment was received concerning the road relocation. The one comment stated the use of the present road for moving farm equipment and livestock, activities which are not compatible with mining. The commenter stated that good fencing and cattle guards would be necessary along the realigned road to enable its use for agricultural activity (2008/Incoming/0129.pdf). The BLM EA and FONSI stipulations require that wherever the alignment crosses a maintained fence, a new cattle guard and gate to be constructed to allow the allotment to remain useable.

Director of the Division, John Baza, issued a Findings and Order for the informal conference (2008\outgoing\0024.pdf) within 30 days of closing the conference. The findings associated with K3900 were: (1) there is not sufficient information concerning the details of the

road relocation to make the necessary findings; (2) additional information will be available when the right-of-way is issued and Kane County and Alton Coal Development are in final agreement; and (3) when additional information is available the Division will provide opportunity for public hearing and a finding concerning the road relocation.

Once public notice is again provided and if no additional information is obtained on K3900 the Division could make a finding that the interests of the public and landowners affected will be protected based upon the following:

- The re-routed road will not be used as a mine road or haul road. The relocation provides for public health and safety by rerouting the road outside the mine permit area so that public use and mine use is separated. Once mining concludes the road will be reestablished to near its original configuration.
- Kane County and Alton Coal Development entered into an agreement titled: An Agreement to Temporarily Close, Relocate, and Replace Kane County Road Number K3900, Known As The Sink Valley Road. The recitals state: "WHEREAS, for the public health, safety and welfare, a portion of Kane County Road K3900 will be relocated outside the boundaries of the Mine Permit Area during the period of mining activities within the Mine Permit Area ("Relocated Section") and then restored to its original location." (Appendix 1-7, County Road 136 (K3900) Approvals and Agreements).
- The FONSI issued by the BLM Kanab Field Office Manager on December 12, 2008 (Appendix 1-7) recognizes in the rational for the decision that:
"This relocation provides for more recoverable coal as well as for the health and safety of the public by preventing the interaction of large mining equipment with public traffic."

The mine permit application needs to provide documentation that the mine has approval from the road authority to temporary close K3993. With these approvals and after public notice and opportunity for public hearing the Division then can make a finding on whether or not the interests of the public and landowners affected will be protected.

Findings:

This review documents the Division's decision as to whether the proposed coal mining and reclamation operation can be authorized in light of the mandatory prohibitions set for the in the Act. The final determination cannot be made until a finding is made County Road K3900 (136) and K3993 relocation and closure protects the interests of the public and landowners. The below findings provide for a preliminary determination of suitability.

- Suitability for permit application is in conformance with State and County land use planning and regulations. State regulations and policy promote multiple uses, and support and encourage mineral development. Kane County land use plans recognize the mineral resources of

the county and their importance to the economic stability of the county. Kane County and Alton Town Inc. are supportive of the mine.

- The area to be mined is within private surface and coal except for a small area of federal coal that will not be mined. There are no Federal lands or adjacent Federal lands prohibited under Public Law 95-87 proposed to be disturbed by coal mining.
- No parks or places included in the National Register of Historic Places are found within the area of proposed coal mining and reclamation operations.
- No mining will occur within 300 feet of an occupied dwelling, building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.
- Kane County Road K3900 (also known as County Road 136 or The Sink Valley Road), a class B multiple use public road, is located within the mine permit area and mining boundaries and will be relocated during mining. Public Notice and Hearings have been conducted on the relocation. County and BLM approvals have been obtained for the relocation. This document makes a preliminary finding that the interests of the public and landowners affected will be protected; however as directed by Director Baza's Order the Division must provide additional opportunity for public hearing and a final finding concerning the road relocation made. No finding can be made on public road K3993.

The following information must be provided, in accordance with:

R645-103-234.100, The Applicant must provide documentation that the mine has approval from the road authority to temporary close K3993.

R645-301-115.100, The Applicant must acquire a zone modification or conditional use permit for mining in an Agricultural Zone from the Kane County Planning Commission.

RECOMMENDATIONS:

A notice should be published notifying the public that additional information is available on the road relocation and the Division will take public comment and provide an opportunity for a public hearing on the relocation of County Road 136 and K3993.