

# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

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March 8, 2012

TO: Internal File

THRU: Priscilla Burton, Lead *PWB hms*

FROM: Joe Helfrich, Biology

RE: Addendum to Appendix 3-5 and 3-6- Annual Sage Grouse Habitat and Mitigation Report, Alton Coal Development LLC, Coal Hollow Mine, Permit # C/025/0005, Task ID #4039

### SUMMARY:

On January 23, 2012 the Division received an addendum to chapter three, appendix 3-5 of the approved MRP entitled "Greater Sage Grouse Population and Habitat Improvements Progress Report". On February 8, 2012 Division staff met with Dustin Schaible, Rhett Boswell and Bruce Bonebreak from DWR and Kirk Nicholes and Steven Petersen from ACD. Suggested changes and additions to the addendum were discussed. The Division completed the review of the addendum and sent ACD a letter noting deficiencies on February 28, 2012. On March 2, 2012 the Division received a response to the deficiencies noted in the Divisions correspondence dated 02/28/2012. This memo will include a review of the information received on March 2<sup>nd</sup>.

### SUMMARY OF DEFICIENCIES:

***R645-301-120, any responses by the permittee should be presented in a red line strike out format of the original 02/28/2012 submittal that includes a response to each of the Divisions deficiencies. [JCH]***

***If appendix 3-6 is the annual report for the mine, it should be a stand alone document separate from the MRP. Information in appendix 3-6 that is germane to the deficiencies noted in the addendum to Appendix 3-5 should also be included in the permittee's response to those deficiencies. [JCH]***

**R645-301-322, -301-333, -301-342, -301-358,**

Page 3, the last paragraph the permittee needs to elaborate on how the objectives will be accomplished. ***The Division can not determine where in the application this deficiency has***

***been addressed; the current application should include a redline strikeout format and page numbers that correspond to the Divisions review of the previous submittal. [JCH]***

Page 4, the information in table 2 needs to be mapped, analyzed and summarized with conclusions and recommendations. The table and data generated from future observations should include approximate and or actual GPS coordinates and a category for identifying the birds, (male female, juvenile). ***The information has been mapped. The map should be labeled, (Drawing 3-8), to correspond with the other drawings in chapter 3 of the MRP. The text should include analysis, summarization, conclusions and recommendations. Table 2 should be revised to include approximate and or actual GPS coordinates and a category for identifying the birds, (male female, juvenile). [JCH]***

Page 7, the reference to Carl Heaton in paragraph 4 should be figure 1. ***The Division can not determine where in the application this deficiency has been addressed; the current application should include a redline strikeout format and page numbers that correspond to the Divisions review of the previous submittal. [JCH]***

In order to meet the goals outlined on page three of the current appendix 3-5 the permittee should revise page 13 of the addendum to appendix 3-5 to include the following information:

Habitat Restoration, ***The application includes information under the assumed heading, (Habitat Improvement and Mitigation), the permittee needs to verify that this is the same as, (Habitat Restoration). [JCH]***

A map to appropriate scale, 1:24000 or larger, which clearly delineates the following:

The acreage of the vegetation treatment areas that have been completed within the corridor,

The acreage of the conservation area for the sage-grouse that will not be mined,

The acreage of the juniper removal area,

A summary of the acreages for these areas,

***Acreages appear to be included in Appendix 3-6, (the annual report information). This information needs to also be included in appendix 3-5. [JCH]***

A map to appropriate scale, 1:24000 or larger, which clearly delineates proposed vegetation treatment areas for 2012. ***The current application should include a map to***

***appropriate scale, 1:24000 or larger, which clearly delineates proposed vegetation treatment areas for 2012 and or subsequent years up to five based on the current proposal. [JCH]***

***The acres of mitigation completed to date need to be field verified. Funding habitat restoration through DWR is acceptable. However the application needs to include text that clearly describes the locations, methodologies, treatments, estimated # of acres treated per year, monitoring, time frames for completion, right of entry if needed, etc. [JCH]***

***ACD has proposed to provide 45,000.00 to DWR over a five year period ACD should schedule a site visit with, the Division, DWR and interested biologists, (Renee Chi, Amy Defreese, Lisa Church) to determine which areas would be most beneficial to the sage grouse for habitat and connectivity improvement.***

Monitoring,

A complete data set from Dr. Frey's monitoring efforts,

***The application includes a reference to the data being obtained by Rhett Boswell, (Cedar City DWR Habitat Biologist). That data needs to be included in the appropriate version of appendix 3-5 before the Division can approve the amendment. [JCH]***

A plan and survey protocol for vegetation and wildlife for the current and future habitat restoration areas,

***The permittee needs to address this deficiency. [JCH]***

A plan, maps and survey protocol for the four aerial, (March 5, March 28, April 11 and April 25), and ground surveys, (lekking, brood rearing, wintering), minimum for sage grouse and presence of other wildlife species should be noted,

***The permittee has stated in the current submittal that "Through a collaborative effort with ACD and UDWR, a sage grouse ground based monitoring program will be designed and implemented....." The design and implementation need to be clearly spelled out in the application including but not limited to:***

***A plan, (detailed narrative in the text), that clearly describes each survey method, (aerial and ground),***

***Individual maps to appropriate scale that clearly delineate the location of each area to be surveyed for both the ground and aerial surveys and,***

***Survey protocol for the four aerial, (March 15, March 28, April 11 and April 25), and ground surveys, (lekking, brood rearing, wintering), minimum for sage grouse and presence of other wildlife species should be noted. [JCH]***

A detailed plan for using decoys to shift breeding activities to alternate lek sites in Sink Valley,

***Shift in Breeding Behavior using Decoys***

***The application should include:***

***A map (to appropriate scale, 1:24000 or larger), that shows the locations, (Sink Valley, Skutumpah Terrace and Fords Pasture) where the decoys will be placed to attract the birds. [JCH]***

A copy of the invoice and receipt of payment from the Division of wildlife services for predator control for 2012 and a commitment in the revised appendix noting the time frame for future predator control and a yearly assessment of the effectiveness of the program,

***The invoice and contract are for 2011, the application needs to include the following information:***

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A revised employee awareness program that includes participation with DWR.

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**TECHNICAL ANALYSIS:**

**GENERAL CONTENTS**

**PERMIT APPLICATION FORMAT AND CONTENTS**

Regulatory Reference: 30 CFR 777.11; R645-301-120.

**Analysis:**

The Divisions' deficiency document sent to ACD on 02/28/2012 was based on the review of the addendum to Appendix 3-5 that was submitted by ACD on 01/23/2012. Any responses by the permittee should be presented in a red line strike out format of the original 02/28/2012 submittal that includes a response to each of the Divisions deficiencies.

Without a reference to the original submittal and specific deficiency, the Division is merely speculating how the deficiencies were addressed in the most recent submittal.

If appendix 3-6 is the annual report for the mine, it should be a stand alone document separate from the MRP. Information in appendix 3-6 that is germane to the deficiencies noted in the addendum to Appendix 3-5 should also be included in the permittee's response to those deficiencies.

**Findings:**

The information in the addendum is not adequate to meet the requirements of this section of the regulations. Prior to approval the following information is required in accordance with; **R645-301-120, any responses by the permittee should be presented in a red line strike out format of the original 02/28/2012 submittal that includes a response to each of the Divisions deficiencies. [JCH]**

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## OPERATION PLAN

### FISH AND WILDLIFE INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

#### Analysis:

##### Protection and Enhancement Plan

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***In the 2012 settlement agreement between ACD and the Division, the Division agreed not to use a 7 to 1, (7 acre habitat restoration for each acre of disturbance mitigation ratio). ACD wanted to know if that ratio would change. Given the current status of the Sage Grouse DOGM could not guarantee that that ratio would remain the same. Therefore a different approach to habitat restoration is being negotiated with DRW, ACD DOGM and the FWS. ACD has proposed to provide 45,000.00 to DWR over a five year period ACD should schedule a site visit with, the Division, DWR and interested biologists, (Renee Chi, Amy Defreese, Lisa Church) to determine which areas would be most beneficial to the sage grouse for habitat and connectivity improvement.***

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**RECOMMENDATIONS:**

The application is not recommended for approval at this time

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