

Gateway Tower West
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1531
801.257.1900
801.257.1800 (Fax)
www.swlaw.com

Denise A. Dragoo
(801) 257-1998
ddragoo@swlaw.com

Incoming, CO250005
4373 &
cc: Joe
Daron
Steve Alder

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

RECEIVED

JUN 28 2013

DIV. OF OIL, GAS & MINING

June 27, 2013

Via E-Mail and Certified Mail, Return Receipt Requested

Ms. Dana Dean
Associate Director of Mining
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, Utah 84114

**RE: Request for Vacation of Fact of Violation; State Violation No. 10123 ("NOV"),
Alton Coal Development, LLC, Coal Hollow Mine, Permit No. C/025/0005**

Dear Associate Director Dean:

On behalf of Alton Coal Development, LLC ("ACD"), we hereby contest the NOV and request that the Division vacate the fact of violation. Contrary to the allegations of the NOV, ACD is in compliance with the terms and conditions of the permit regarding sage grouse habitat improvement and mitigation ("MRP"). The NOV misquotes the requirements of the MRP and incorrectly states that the permit provisions "require the treatment of 240 acres per year" (emphasis added). The MRP actually requires 1700 acres of treatment "during the life of the mine" and simply states that "currently, 1200 acres remain to be treated, or approximately 240 acres per year." MRP, Chapter 3, Appendix 3-5, page 14, paragraph 2, attached.

As set forth in the Greater Sage-grouse Population Monitoring and Habitat Improvement Progress Report, dated March 29, 2013, and approved by the Division on April 11, 2013, 146 acres have been mitigated by rabbit brush treatment and juniper removal, attached. ACD anticipates additional mitigation of some 300 acres prior to filing the next annual report. Contrary to the NOV, the MRP does not require 240 acres of mitigation per year; this is only an average yearly estimate which will vary with mining conditions and availability of mitigation acreage.

This information is provided in accordance with R645-401-600. ACD would be pleased to meet with the Division at 2:00 p.m. on Monday, July 15, 2013, to discuss the inaccuracies in the NOV and the operator's compliance with the MRP. However, in the event that the fact of violation is upheld following these discussions, we request an informal conference before Director Baza seeking to vacate the NOV. We also request an assessment conference to review any proposed assessment regarding the NOV. In addition, to allow for the meeting on July 15,

Associate Director Dana Dean
June 27, 2013
Page 2

2013, ACD requests a 30-day extension in the NOV abatement dates for submission of a vegetation treatment plan until August 18, 2013, and for treatment of 314 acres for vegetation treatment until October 17, 2013.

We appreciate your consideration of our request.

Very truly yours,



Denise A. Dragoo

DAD:jmc
Enclosures

cc: Bob Nead
Larry Johnson
Kirk Nicholes
Dr. Steven Petersen
Daron Haddock
Steve Alder, Esq.

To establish effective plans for habitat improvement and connectivity, UDOGM, UDWR, ACD and interested biologists (such as Renee Chi, Amy Defreese, Kevin Heaton and Lisa Church) will be invited to meet and work on these plans. The purpose for these improvements is to increase connectivity for sage-grouse migration and critical sage-grouse nesting and brood-rearing habitat. The goal for habitat improvement will be returning a sustainable ecological condition (state) that facilitates plant community establishment and increased ecological resilience along with providing improved habitat for sage-grouse.

1700 acres are required during the life of the mine. Currently, 1200 acres remain to be treated, or approximately 240 acres per year. The emphasis of this work will consist of pinyon-juniper removal and some sagebrush/Rabbitbrush treatments. Treatment types (options for habitat improvement) associated with PJ removal include:

- 1) Chaining (and seeding if necessary)
- 2) Lop and scatter
- 3) Bullhog (and seed if necessary)
- 4) Bulldozer / track hoe for knocking trees down (stack and burn optional)
- 5) Prescribed fire (and seed if necessary) and chaining

Pinyon juniper removal efforts will be focused on the following areas (in order of treatment)

- 1) Private lands east of the mine site (Pugh and Heaton, see Figure 6)
- 2) Private lands south of Alton
- 3) Private lands within the occupied sage-grouse habitat regions delineated by the UDWR which includes PJ woodlands from immediately south of Sink Valley through Skutumpah Terrace (Drawing 3-9).

JUL 17 2012

Div. of Oil, Gas & Mining

ACD and UDOGM will reevaluate these habitat improvement plans on an annual basis to ensure that habitat treatments are being implemented with optimal sage-grouse conservation efforts in mind. Vegetation and bird use monitoring will be completed and

then evaluated (ACD and UDOGM) in accordance with procedures described in this appendix.

Connelly, J.W., K.P. Reese, and M.A. Schroeder. 2003. Monitoring of Greater Sage-grouse Habitats and Populations. Station Bulletin 80, College of Natural Resources Experiment Station. Moscow, ID.

INCORPORATED

JUL 17 2012

Div. of Oil, Gas & Mining

Sagebrush density and cover vary widely between each of these sites, representing different levels of sage-grouse habitat potential (Figure 11).

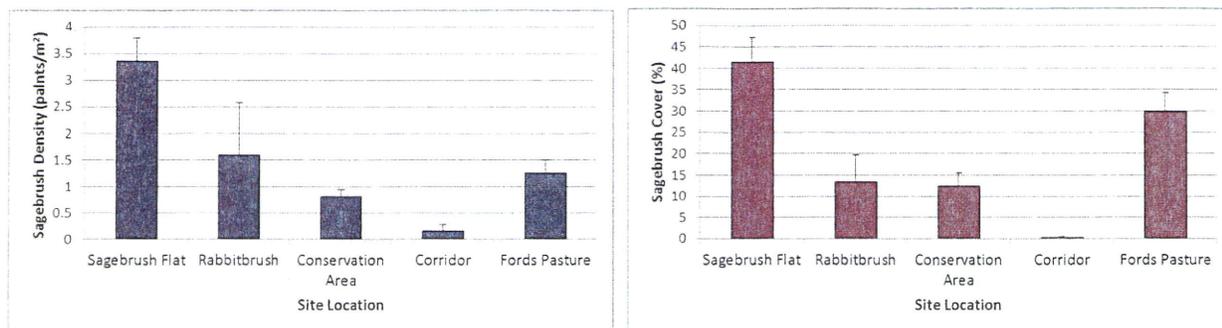


Figure 11. Density and cover of grasses, forbs and shrubs in the Fords Pasture area located 10 miles south of the mine site.

Vegetation Enhancement and Revegetation

Rabbitbrush Treatment

In the valley east of the conservation area, historic sage-grouse use had been recorded. This valley is dominated by large shrubs, including big sagebrush and rubber rabbitbrush. To improve sagebrush conditions and optimal sage-grouse habitat in this valley, rabbitbrush was treated with Tordon 22k to kill individual plants in strips using a truck borne sprayer (operated by Kevin Heaton) (Figure 12; Table 4). Much of the area was treated, and the immediate reduction in rabbitbrush cover and density within this area is expected over the next few years. A total of 53 acres of rabbitbrush invaded sites were treated.

Juniper Removal

Juniper trees were cut and in some cases piled for expanding potential sagebrush habitat and sage-grouse habitat use. The area east of the conservation area (adjacent to and including the rabbitbrush region) was the focus site for tree removal. Trees were cut with chainsaw by employees of ACD. The combined area for both rabbitbrush treatment and juniper removed resulted in a continuous area of 146 acres of usable habitat.

INCORPORATED

APR 11 2013

Div. of Oil, Gas & Mining