

C/025/005 Incoming
CC: Joe
Daron
Dana

#4942



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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August 27, 2015

RECEIVED

SEP 10 2015

DIV. OF OIL, GAS & MINING

In reply refer to:

06E23000-2015-CPA-0031

Daron R. Haddock
Coal Regulatory Program
Utah Division of Oil, Gas & Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RE: Agency Notification of North Private Lease Addition, Alton Coal Development, LLC, Coal Hollow Mine, C/025/0005, Task ID #4942.

Dear Mr. Haddock,

We received your notice of July 28, 2015, concerning the referenced permit application. Alton Coal Development, LLC (Alton Coal) has applied to add 295.60 acres, known hereafter as the North Private Lease, to its existing Coal Hollow Mine permit for the purpose of expanding its open pit and highwall coal mining activities. The center of the North Private Lease is located approximately 0.8 miles south east of the town of Alton, Utah. The project will also include relocation of County Road 136, which currently intersects the North Private Lease. The road relocation will occur in year one of the mining operation and is expected to be reestablished to its approximate original location in a time frame ranging from year three to year five of the mining operation. This project is proposed as an extension of mining operations that are occurring or proposed on BLM lands immediately to the south. We are concurrently reviewing the BLM Alton Coal Tract Lease by Application Supplemental Draft Environmental Impact Statement. Depending on the alternative selected in the BLM's Record of Decision, the total acreage of the Alton coal mining operation when considering the BLM and this North Private lease is approximately 4,592 acres.

We appreciate the opportunity to review the permit application and provide feedback to the Utah Division of Oil and Gas (UDOGM) on issuance of the permit. In this letter, we provide the following comments for your consideration.

Impacts to Greater Sage-grouse

The North Private Lease mining operation would result in 230.8 acres of surface disturbance to sagebrush, juniper woodlands, wet meadows, riparian habitats, and irrigated farmland. The

greater sage-grouse population found within the North Private Lease area is one of the smallest populations in the state and occupies the southernmost lek in the species' range (the Sink Valley lek is located approximately 2.5 miles to the south). The area is identified in the 2013 Greater Sage-Grouse Conservation Objectives Team report (USFWS 2013) as a Priority Area of Conservation and is within the State of Utah's Panguitch Sage Grouse Management Area (State of Utah 2013).

Within the Alton-Sink Valley area, greater sage-grouse use sagebrush and wet meadow habitats, alfalfa fields, and pasturelands for nesting, brood rearing, and wintering, but particularly rely on the area for summer brood rearing (Frey et al. 2013). The permit application documents sage grouse habitat occurring in the North Private Lease and the Utah Division of Wildlife Resources has mapped much of the area as crucial brood rearing habitat.

A substantial amount of research has been conducted on the Alton – Sink Valley population of sage-grouse. Due to the relatively small population of sage-grouse using this area and the relatively small sample size used to draw inferences, we caution that the data and the research are not conclusive. However, it is likely that additional mining, particularly when considered cumulatively with the ongoing and proposed Alton coal operations on adjacent BLM lands, could result in the short- or long-term displacement or loss of the local birds; and if displacement occurs, it is unknown whether the grouse would return to the area in the long term, following reclamation. Consequently we question whether this population will continue to persist if mining is permitted in the North Private Lease, as local research indicates this area has been used year-round by grouse.

If UDOGM permits this mining operation, Alton Coal will rely on its Greater Sage-grouse Management Plan and the conservation measures documented in the permit application to reduce impacts to the bird. For example, the Management Plan states that a total of 250 acres¹ will be disturbed by the project, requiring 1,000 acres of habitat mitigation. We agree with the requirement for off-site mitigation treatments at a ratio of 4 acres for every 1 acre disturbed.

The mitigation plan relies heavily on an assumption that once displaced by mining activity, greater sage-grouse will immediately move into mitigation sites (i.e. conifer treatment areas). It is not clear from the permit application whether the proposed mitigation areas will provide for all seasonal habitat needs (i.e., loss of brood rearing habitat) for this sage-grouse population. It is important to mitigate for the loss of the habitat type that would be most affected by development. To compensate for the loss of these vital brood rearing areas, we recommend that mitigation focus on restoring the brood rearing component of sage-grouse seasonal habitat needs and not rely entirely or primarily on conifer treatments to reduce impacts.

Little is known about the success or rate of speed with which sage-grouse may utilize newly restored brood-rearing habitats. To our knowledge there has been little research completed or habitat treatments conducted in the area that focus specifically on creating or improving sage-grouse brood rearing habitat, including restoration or creation of wet meadows or other mesic

¹ A 200ft. buffer of undisturbed habitat along Kanab Creek will be temporally impacted by mining activities. Subsequently, approximately 20 acres will be added to the 230 acres of disturbance resulting in a total of 250 acres.

habitats. Therefore, we recommend that the project proponent commit to ensuring that habitat treatments will keep pace ahead of the mining disturbance. Prior to the onset of mining activities, the applicant should identify and create refuge habitat, with the objective of establishing brood rearing habitat to sustain birds using the Alton-Sink Valley during and post-mining operations. Brood rearing habitats are comprised of sagebrush with abundant grasses and forbs, and include more mesic areas such as riparian areas, wet meadows, and irrigated farmlands.

Because we are unsure about the success of replacing brood-rearing habitats, these habitat treatments/mitigation sites should be fully functional and able to demonstrate use by greater sage-grouse prior to the onset of disturbance associated with mining activity. This recommendation is to ensure that the sage-grouse have sufficient quantity and quality of refugia to sustain the population through the duration of mining activities.

We also recommend implementing a comprehensive monitoring plan to ensure that the mitigation sites are successfully used by greater sage-grouse. Following habitat treatments, these areas should be monitored to ensure that the proper habitat treatment prescription was followed and success criteria were achieved. Should the success criteria not be achieved, the permit should stipulate further mitigation requirements prior to the initiation of mining activities.

Under the proposal, portions of Kanab Creek may be impacted. The Greater Sage-Grouse Management Plan and the permit application indicate that mining would be precluded within a 200-foot buffer along the creek; however the creek would still be temporarily impacted by the relocation of county road 136 and placement of three culverts. The habitats found within the associated wetland and riparian areas of Kanab Creek benefit sage-grouse, migratory birds, and a variety of other wildlife species. Because of the importance and relative scarcity of this habitat type to wildlife in the Alton area, we believe it is necessary and correct to include requirements for full mitigation of this resource prior to initiation of mining activities. It is our understanding that the applicant may need a Clean Water Act section 404 permit from the Army Corps of Engineers for wetland impacts associated with the North Private Lease. There may be opportunity for the applicant to coordinate its sage-grouse habitat mitigation requirements with conditions of the 404 permit to incorporate creation or restoration of mesic habitats for sage-grouse brood-rearing.

Threatened and Endangered Species

The permit application includes information on the western yellow-billed cuckoo and Southwestern willow flycatcher, species that are listed as threatened and endangered, respectively under the Endangered Species Act. We note that the text in Table 3-35 is not consistent with text on pages 34 and 36 of *Volume 12, Supplemental Report, Vegetation & Wildlife Habitat of the North Private Lease Area report prepared by Mt. Nebo Scientific, Inc. and revised on June 16, 2015*. We recommend that the text in Table 3-35 (page 3-37) reflect the commitments made on pages 34 and 36 for these two species.

We also recommend the following:

- Table 3-35, page 3-37: Please change the status of western yellow-billed cuckoo from Candidate to Listed Threatened.
- Conduct a suitable habitat assessment for yellow-billed cuckoo, based on guidance in *Guidelines for the identification of suitable habitat for WYBCU in Utah* (June 2015) (Appendix A). If suitable habitat exists, we recommend protocol-level surveys for the species.
- Conduct protocol-level surveys for Southwestern willow flycatcher in the project area.

Migratory Birds

We recommend you evaluate potential impacts to migratory birds and establish measures to avoid and minimize impacts to birds. We recommend you include these measures in the permit, should you determine to issue one to Alton Coal. The Migratory Bird Treaty Act (MBTA) prohibits the take of migratory birds, their parts, nests, eggs, and nestlings. To ensure ground-disturbing activities do not result in the “take” of an active nest or migratory bird protected under the MBTA, we recommend:

- a. Any groundbreaking activities or vegetation treatments should be performed before migratory birds begin nesting or after all young have fledged to avoid incidental take;
- b. If activities must be scheduled to start during the migratory bird breeding season, the project proponent should take appropriate steps to prevent migratory birds from establishing nests in the potential impact area. These steps could include covering equipment and structures and use of various excluders (e.g., noise). Birds can be harassed to prevent them from nesting on the site.
- c. If activities must be scheduled during the migratory bird breeding season, a site specific survey for nesting birds should be performed starting at least 2 weeks prior to vegetation treatments. Established nests with eggs or young cannot be moved, and the birds cannot be harassed (see b., above), until all young have fledged and are capable of leaving the nest site;
- d. If nesting birds are found during the survey, appropriate spatial buffers (recommended to be 100 feet absent site-specific information) should be established around nests. Vegetation removal within the buffer areas should be postponed until the birds have left the nest. Confirmation that all young have fledged should be made by a qualified biologist.

We recommend use of the Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances (Romin and Muck 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor survey and mitigation measures are

provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors.

Summary

We believe that the project could result in negative impacts to greater sage-grouse. If the North Private Lease is permitted, we recommend the following to reduce impacts to the local population:

- Focus mitigation efforts on restoring the brood rearing component of sage-grouse seasonal habitat needs, comprised of sagebrush, grasses, forbs and mesic habitats (e.g., riparian areas or wet meadows).
- Ensure mitigation treatment areas are fully functional and demonstrate use by greater sage-grouse prior to the onset of disturbance associated with mining activity.
- Commit to ensuring that habitat treatments will keep pace ahead of the mining disturbance and including a requirement that ensures treatments of new areas are monitored and that the proper habitat treatment prescription was followed.
- Fully mitigate all unavoidable impacts to wetlands, the stream channel, and riparian habitats be fully mitigated.

This response has been prepared under the authority of and in accordance with the provisions of the Utah Coal Mining Rules R645-300-121.300, R645-300-121.310, R645-300-121.3210 and the Utah Coal Mining Act (UCA Section 40-10-1 et. Seq.). We appreciate the opportunity to review and comment on this application. If you have any questions or need further information please contact Jay Martini, Fish and Wildlife Biologist, at (801) 975-3330 ext.144.

Sincerely,



Harry Crist
Utah Field Supervisor

cc: BLM – Cedar City (Attn: Keith Rigtrup) – by email
UDWR – Cedar City (Attn: Rhet Boswell) – by email
EPA – Denver (Attn: Molly Vaughan) – by email

Literature Cited

Frey, S.N., R. Curtis, and K. Heaton. 2013. Response of a small population of greater sage-grouse to tree removal: implications of limiting factors. *Human-Wildlife Interactions* 7: 260-272.

Romin, L.A., and J.A. Muck. 2002. U.S. Fish and Wildlife Service. Utah field office guidelines for raptor protection from human and land use disturbances.

State of Utah. 2013. Conservation plan for greater sage-grouse in Utah. February 14, 2013. 80pp.

USFWS. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. USFWS, Denver, CO. February 2013.

Appendix A: Guidelines for the identification of suitable habitat for WYBCU in Utah

The purpose of this guidance is to assist agencies and project proponents in identifying areas that meet minimum criteria as potentially suitable breeding and nesting habitat for yellow-billed cuckoo in Utah. Areas that meet the minimum criteria should be (1) avoided by 0.5 mile², or (2) surveyed, and/or (3) carried forward for evaluation of potential effects.

Step 1: Identify and delineate all riparian habitats within 0.5 mile of the proposed action, below the elevation of 8,500 feet.

Step 2: Identify suitable cuckoo breeding and nesting habitat, including associated foraging areas. Riparian patches used by breeding and nesting cuckoos vary in size and shape, ranging from a relatively contiguous stand of mixed native/exotic³ vegetation to an irregularly shaped mosaic of dense vegetation with open areas. The following parameters characterize suitable breeding and nesting cuckoo habitat:

- Vegetation⁴ that is predominantly multi-layered, with riparian canopy trees and at least one layer of understory shrubby vegetation;
- Patches of multi-layered vegetation (as described above) that are at least 12 acres (5 ha) or greater in extent and separated from other patches of suitable habitat by at least 300 meters;
- Somewhere within a patch, the multi-layered riparian vegetation (as described above) should be at least
- 100 meters wide by 100 meters long. This is to avoid patches that may be long enough to meet the minimum area (12 acres) but are so narrow that they are unsuitable-- 750 m x 75 m (length x width) for example; and,
- Open areas, or gaps of multi-layered vegetation within a patch are less than 300 meters.

Breeding and nesting cuckoos will forage in riparian patches that have an overstory canopy *only* and are within 300 meters (m) of the edge of suitable breeding and nesting habitat. Identify suitable foraging habitat of nesting cuckoo to include single layer overstory canopy that is within 300 meters of suitable breeding and nesting habitat.

² A 0.5-mile buffer is likely the largest buffer necessary to preclude impacts to the species from noise, light and human disturbance. Regardless, this buffer could be adjusted according to the type of activity and noise that is generated (for example, oil well drilling as opposed to construction vehicle traffic).

³ Western yellow-billed cuckoo have been documented nesting in tamarisk, consequently, the presence of tamarisk should not eliminate a vegetation patch from a suitability determination. However the odds of cuckoo occurrence decrease rapidly as the amount of tamarisk cover increases.

⁴ Riparian overstory and understory vegetation that supports suitable cuckoo habitat may include: cottonwood (*Populus spp*), willow (*Salix spp*), alder (*Alnus spp*), walnut (*Juglans spp*), boxelder (*Acer spp*), sycamore (*Plantanus spp*), ash (*Fraxinus spp*), mesquite (*Prosopis spp*), tamarisk (*Tamarix spp*), and Russian olive (*Elaeagnus angustifolia*). Suitable understory vegetation does not include grasses or forbs although herbaceous vegetation is often present alongside shrubby understory.

References

Halterman, M., M.J. Johnson, J.A. Holmes and S.A. Laymon. 2015. A Natural History Summary and Survey Protocol for the Western Distinct Population Segment of the Yellow-billed Cuckoo: U.S. Fish and Wildlife Techniques and Methods. 45 p.

Laymon, S.A. 2015. Personal Communication. Senior Wildlife Biologist, Sacramento Fish & Wildlife Service Office.

U.S. Fish and Wildlife Service. 2014. Final rule determining threatened status for the western yellow-billed cuckoo. Federal Register 79: 59992-60038.