



State of Utah

**Department of
Natural Resources**

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April 15, 2005

Emergency
2005

James Fulton, Chief, DFD
Office of Surface Mining
P.O. Box 46667
Denver, CO 80201-6667

Subject: Response to 2004 Public Outreach Letter

Dear Mr. Fulton:

We received your letter dated March 24, 2005, asking that we provide OSM with a clearer response than our letter to OSM dated March 4. This letter will attempt to better explain Utah's regulatory program regarding impacts of coal mining on water resources and appropriated water rights. We understand the need for OSM to specify to the water users, and particularly the four Emery County irrigation companies, just how OGM intends to administer its regulatory program. The following discussion provides further details and commitments for the Office of Surface Mining (OSM) to conclude its review of the water user's concerns.

- We will reiterate that Utah coal rules regarding water replacement do not apply if a loss of state appropriated water cannot be determined. And, we will continue to coordinate, consult, and meet with the Utah Division of Water Rights to assure protection of the hydrologic balance. OGM will also continue to meet on a periodic basis to work with the water users and the irrigation companies to address these and other water issues.

The Utah regulatory program, which includes R645-301-731.530, requires that *"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, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. OGM will use the baseline hydrologic and geologic information required in Rule 645-301-700, to determine the impact of mining activities upon the water supply."* In this regard, the Division has intensified its outreach to the water users and invited them to advise the Division regarding the monitoring of springs, seeps, and wells early in the permitting process and during the mining operation. OGM will continue to explain and assure that if monitoring detects that State appropriated water is

contaminated, lost, or interrupted, there is no question that the rule requires the water to be replaced promptly by the permittee.

- Another key requirement of the rules is for the permittee to identify all water resources and water rights and the impacts that mining and reclamation activities are projected to have on them. This is the PHC, the Probable Hydrologic Consequences document. During the permitting process OGM will determine the potential impacts on identified state appropriated water. If appropriated water would be impacted (lost, contaminated, or interrupted), the permit will include provisions and a plan for replacement. The permit will also require appropriate monitoring to detect impacts to appropriated water during the mining and reclamation operation. If monitoring detects that state appropriated water has been contaminated, lost or interrupted, R645-301-731.530 requires the water to be replaced promptly by the permittee. This performance standard will apply whether the impacts are anticipated or unexpected.
- OGM must make a finding that impacts to the hydrologic balance will be minimized outside the permit area (R645-301-729.100) This finding is called the CHIA. OGM will work with the permittee to ensure that water monitoring is appropriate to detect changes. OGM does acknowledge that not all monitoring will detect changes, and will (and has) required additional data and imposed further requirements on the permittee.
- OGM will require the operator to monitor to determine appropriate disposal of water encountered while mining to a particular location, unless it can be demonstrated - based on the hydrology and geology of the area - that alternate discharge plans are necessary to minimize the disturbance or prevent material damage to the hydrologic balance. Water encountered during mining will normally be discharged to its originating drainage basin.

Water users may assume that when water is encountered during mining and subsequently discharged from the mine, that there is a loss or interruption of a State appropriated water supply. Unfortunately for the water users, this is not an assumption OGM can use to require replacement of water. Absent baseline hydrologic and geologic information (evidence) being presented regarding impact, OGM may not require that an operator discharge mine water to any particular drainage under the notion of replacing water.

The rights to waters in deep and previously untapped aquifers, is an area of Utah law that is still in flux. Water encountered at depth in Utah mountains is often 'ancient' (shown to not have been at the surface in thousands of years) and, appears to be, not directly connected to surface hydrology: streams, seeps, or wells. The connection between such water and the hydrologic balance of the area may also be indirect or take thousands of years to detect. A discharge of mine water into a given surface stream may be desired by those who seek to put it to use, but such a discharge may or may not minimize the impact of the mining to the hydrologic balance.

- OGM commits to working to improve our outreach to water users during the many stages of the permitting process. Our commitment to regularly scheduled water users meetings is solid.

In summary, OGM continues to commit to: requiring operators to provide baseline data and projected impacts; studying submitted data and any other information and data; making findings based on all available data; closely monitoring the hydrologic balance; a continued dialogue with water users through outreach. Thanks for your continued cooperation. Please call me if you have additional questions, or if you feel we need to set up a meeting to discuss this further.

Sincerely,



Mary Ann Wright
Acting Director, Mining

vs
cc

Mark Mesch, DOGM
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Steve Alder, Utah AG
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