



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



General Correspondence Incoming
CC: John B.
Dana
Steve Schneider
Steve A.
Daron
OK

August 8, 2011

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AUG 10 2011

DIV. OF OIL, GAS & MINING

John Baza, Director
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, UT 84116

Dear Mr. Baza:

On May 16, 2011, OSMRE received a letter from the Southern Utah Wilderness Alliance (SUWA) notifying us of recently enacted Utah H.B. 399 (Environmental Litigation Bond). H.B. 399, in pertinent part, mandates that state agencies and courts require plaintiffs who obtain temporary relief (administrative stay or preliminary injunction) in an environmental action to post a surety bond or equivalent "in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay." SUWA asserts that this bonding requirement is inconsistent with SMCRA and that the Utah State Legislature's passing of H.B. 399 equates to a "de facto" amendment to Utah's State Program that was not adopted through the formal State program amendment regulatory process. SUWA further contends that 30 CFR §732.17(g) prohibits the State of Utah from immediately enforcing the terms of Utah Code Ann. §78B-5-828(b) (ii) (A) as it pertains to Utah's State program until approved as an amendment.

A preliminary review of H.B. 399 indicates that the newly-enacted environmental litigation bond provisions may have resulted in a change in State law that affects the implementation and enforcement of the approved Utah program. Consequently OSMRE is requesting that DOGM address the assertions made by SUWA and determine whether H.B. 399 equates to a change in the approved Utah program. If DOGM concludes that such a change has occurred, please advise OSMRE how DOGM intends to proceed prior to implementing and enforcing the provisions of the environmental litigation bond.

Sincerely,

Kenneth Walker
Chief, Denver Field Division

cc: Stephen Bloch, Attorney, Southern Utah Wilderness Alliance



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August 8, 2011

Stephen Bloch, Attorney
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Dear Mr. Bloch:

Thank you for your May 16, 2011, letter notifying OSMRE of recently enacted Utah H.B. 399 (Environmental Litigation Bond). H.B. 399, in pertinent part, mandates that state agencies and courts require plaintiffs who obtain temporary relief (administrative stay or preliminary injunction) in an environmental action to post a surety bond or equivalent "in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay." You assert that this bonding requirement is inconsistent with SMCRA and that the Utah State Legislature's passing of H.B. 399 equates to a "de facto" amendment to Utah's State Program that was not adopted through the formal State program amendment regulatory process. As a result, you state that 30 CFR §732.17(g) prohibits the State of Utah from immediately enforcing the terms of Utah Code Ann. §78B-5-828(b) (ii) (A) as it pertains to Utah's State program until approved as an amendment. This letter serves as an interim response to your request that OSMRE expressly direct the State of Utah and DOGM accordingly.

A preliminary review of H.B. 399 indicates that the newly-enacted environmental litigation bond provisions may have resulted in a change in State law that affects the implementation and enforcement of the approved Utah program. As a result, we have sent a letter to DOGM asking them to address SUWA's assertions and express their views on how they plan to implement and enforce the provisions of the environmental litigation bond. Once we receive a response from DOGM, we will follow-up with you regarding our course of action. Thank you again for bringing this matter to OSMRE's attention.

Sincerely,

Kenneth Walker
Chief, Denver Field Division

cc: John Baza, Director, Utah Division of Oil, Gas and Mining)