

STATEMENT Of James Fulton, OSM Field Office Director, Denver Division  
Regarding Reclamation at the Utah White Oak Mine, in Bankruptcy

1. I am personally knowledgeable of the permitting, inspections, and other regulatory actions that have been taken regarding Lodestar Energy's mining activities in the State of Utah and particularly those activities related to permitting, mining and reclamation at the White Oak (Whiskey Creek) Mine.
2. The White Oak Mine was granted a permit to proceed with surface coal mining on October 26, 2001.
3. The approved mining plan required that reclamation would not occur until after the much of the coal was removed from the two seams so that the overburden could be placed in the pit left after the removal of the coal. Accordingly, reclamation was not scheduled to begin and did not begin until after a substantial portion of the coal had been uncovered, and removed from the upper seam, additional overburden had been removed, and the lower seam had been mined. This did not occur until late in fall of 2002.
4. Lodestar Energy, Inc. commenced mining shortly after the permit was issued in October 2001, but DOGM objected to the adequacy of the reclamation bond and granted Lodestar until January 7, 2002, to replace the bond. Eventually, pursuant to an Agreed Order entered in February 26, 2002, by the bankruptcy court, Lodestar was permitted to continue mining. The Agreed Order provided that a reorganization plan would be filed by Wexford or Congress that would provide a replacement bond, or the payment of 10% of the Wexford superpriority to the State of Utah to be used for reclamation. Pursuant to this Stipulation and Order, Lodestar Energy, Inc., was to continue mining until October 28, 2002 when a reorganization plan was to be submitted. Lodestar failed to submit a plan and continued mining pursuant to Court order and eventually pursuant to a court order over the objections of Utah, until the end of January 2003, when mining was stopped due to the auction sale of the mining equipment.
5. Prior to the termination of mining in January 2003, a very substantial amount of coal had been mined and removed and revenues received by Lodestar Energy, Inc., from the White Oak (Whiskey Creek) Mine during the Chapter 11 bankruptcy and very little, if any, contemporaneous reclamation had been completed.
6. All of the surface mining at the White Oak mine was conducted by Lodestar Energy, Inc. during the Chapter 11 phase of its bankruptcy and Lodestar failed to contemporaneously reclaim that mine site as is required by state and federal law.
7. Because Lodestar failed to contemporaneously reclaim the Whiskey Creek Mine, DOGM issued three imminent harm cessation orders to Lodestar in June 2003. The violations covered by those cessation orders were created during the Chapter 11 phase of Lodestar's bankruptcy. OSM also issued two COs for imminent harm of the remaining highwalls and dangerous structures, in February 2004.

8. DOGM has entered into a settlement agreement with Frontier Insurance Company, in Rehabilitation, which will abate much of the environmental damage caused by Lodestar's failure to contemporaneously reclaim the Whiskey Creek Mine. The reclamation work contracted for, under the auspices of Frontier Insurance, will not eliminate all of the conditions at the Whiskey Creek Mine that pose a danger to the health and safety of the public and to the environment. DOGM has made an estimate of the costs of this additional reclamation which includes backfilling dangerous highwalls created by the mining, removing the access and haul road, removing dangerous structures and equipment and completing reclamation at the loadout, and re-establishing the drainage at original grade, and other safety and environmental concerns not able to be fully rectified by the reclamation plan agreed upon with Frontier. The total estimated costs for this additional required reclamation is \$2.6 million. OSM concurs that this assessment for reclamation is reasonable, and that full reclamation should be completed at the site.
9. In the settlement agreement with Frontier Insurance, the State of Utah and OSM reserved the right to pursue its enforcement options against Lodestar and its owners, controllers and *Dix Fork* agents. This right was reserved so that DOGM and OSM could take additional steps to cause Lodestar's violations at the Whiskey Creek Mine to be abated.
10. Through discussions and in agreement with the state of Utah, OSM believes that full reclamation should be achieved at this mine site. Pursuit of Individual Civil Penalties should be made in order to fund the remaining needed reclamation at this mine site.

**I have read this statement and I declare that the foregoing representations are true and correct to the best of my knowledge, information and belief.**

Date: Feb 27, 2004

James Fulton

James Fulton, Office of Surface Mining  
Chief, Denver Field Division