



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL, GAS AND MINING

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January 19, 1994

To: James W. Carter, Director
 Lowell P. Braxton, Associate Director

From: Pamela Grubaugh-Littig, Permit Supervisor *PL*

Re: Bond Requirement Question and Legal Opinion Requested for Castle Valley Ridge Federal Lease, Star Point Mine, Cyprus Plateau Mining Corporation, ACT/007/007, Folder #4, Carbon County, Utah

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In a memo to you both, dated January 12, 1993, I raised two questions about a possible bond requirement for the potential "impacted water" at the Star Point Mine relative to the proposed Castle Valley Ridge Federal Lease:

- 1) Does the mitigation agreement between the Castle Valley Special Service District and Cyprus Plateau Mining Corporation for potential impacts to the Tie Fork Well need to be included in the permit application package? and
- 2) Does Cyprus Plateau Mining Corporation need to post a bond for the mitigation of this potential impact?

In response to Lowell's questions, see attached, I have researched the regulation and found that the mitigation agreement should probably be included in the permit application package (see R645-301-750, R645-301-724.320, R645-301-724.500, R645-301-724.600, R645-301-700, R645-301-725.100, R645-301-725.200, R645-301-728.100, R645-301-729.100, R645-301-729.200, R645-301-731 and R645-301-731.211).

If this agreement is included, then this obligation would be included as part of the permit and the bond liability, R645-301-820.351 and R645-301-830.

I am requesting a legal opinion about these questions. The determination of the dollar amount for this obligation may be difficult to determine. This permitting action is currently being finalized and a timely response is respectfully requested. Thank you.





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Please check the regulations for bonding. I'm not aware of any requirement to bond beyond reclamation of surface facilities. If I'm correct the T.A. should note the mitigation agreement, and I suggest the

January 12, 1994 agreement be appended to the

agreement. Please let me know what your regulatory record on bonding shows in this regard.

cc: JWC

TO: James W. Carter, Director
 Lowell P. Braxton, Associate Director

FROM: Pamela Grubaugh-Littig, Permit Supervisor *plg*

RE: Question About Bond Requirement for Castle Valley Ridge Federal Lease, Star Point Mine, Cyprus Plateau Mining Corporation, ACT/007/006-93C, Folder #4, Carbon County, Utah

The question has arisen about a possible bond requirement for the potential "impacted water" at the Star Point Mine relative to the proposed federal lease UTU-64263, Castle Valley Ridge. This permitting action was determined complete on March 1, 1993. Castle Valley Special Service District protested this permitting action to include this additional land for mining. Objections were raised including, but not limited to, issues of water rights and the impact of mining on the quality and quantity of ground water and surface water in the Huntington Creek drainage. By letter dated October 11, 1993 from the Castle Valley Special Service District (CVSSD), the Division was notified that CVSSD withdrew the protest due to the fact that the parties (CVSSD and CPMC) had signed a mitigation agreement to cover Cyprus Plateau's mining effects in the area and the possible impacts to the Tie Fork well.

Two questions arise relative to this situation:

- 1) Does the mitigation agreement need to be included in the permit application package?
- 2) Does Cyprus Plateau Mining Corporation need to post a bond for the mitigation? The bond estimate depends upon the requirement of the approved permit and reclamation plan.

Please advise. The technical analysis (TA) is being prepared currently and these questions need a timely response. Thank you.



90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and

conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements

- 724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and
- 724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
- 724.400. Climatological Information.
- 724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:
- 724.411. The average seasonal precipitation;
- 724.412. The average direction and velocity of prevailing winds; and
- 724.413. Seasonal temperature ranges.
- 724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.
- 724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.
- 724.600. Survey of Renewable Resource Lands. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the applicant will provide a survey that shows whether aquifers or areas for the recharge of aquifers exist within the permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of aquifers or areas for the recharge of aquifers. Renewable resource survey information will be incorporated into the subsidence control plan listed under R645-301-525.
- 724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.
725. Baseline Cumulative Impact Area Information.
- 725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.
- 725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.
- 725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.
726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.
727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.
728. Probable Hydrologic Consequences (PHC) Determination.
- 728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.
- 728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.
- 728.300. The PHC determination will include findings on:
- 728.310. Whether adverse impacts may occur to the hydrologic balance;
- 728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;
- 728.330. What impact the proposed coal mining and reclamation operation will have on:
- 728.331. Sediment yield from the disturbed area;
- 728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;
- 728.333. Flooding or streamflow alteration;
- 728.334. Ground-water and surface-water availability; and
- 728.335. Other characteristics as required by the Division; and
- 728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the

- proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose.
- 728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.
729. Cumulative Hydrologic Impact Assessment (CHIA).
- 729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.
- 729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.
730. Operation Plan.
731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures. The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.
- 731.100. Hydrologic-Balance Protection.
- 731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:
- 731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and
- 731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.
- 731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:
- 731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and
- 731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.
- 731.200. Water Monitoring.
- 731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:
- 731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;
- 731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately

- requirements of the State Program and permit, whichever is later.
- 820.320.** With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under R645-301-830 and 830.400. The scope of work to be guaranteed and the liability assumed under each phase bond will be specified in detail.
- 820.330.** Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas will be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.
- 820.340.** If the Division approves a long-term, intensive agricultural postmining land-use, in accordance with R645-301-413, the applicable five- or ten-year period of liability will commence at the date of initial planting for such long-term agricultural use.
- 820.350.** General.
- 820.351.** The bond liability of the permittee will include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under R645-301-413.
- 820.352.** Implementation of an alternative postmining land-use approved under R645-301-413.300 which is beyond the control of the permittee need not be covered by the bond. Bond liability for prime farmland will be as specified in R645-301-880.320.
- 830. Determination of Bond Amount.**
- 830.100.** The amount of the bond required for each bonded area will:
- 830.110.** Be determined by the Division;
- 830.120.** Depend upon the requirements of the approved permit and reclamation plan;
- 830.130.** Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology and revegetation potential; and
- 830.140.** Be based on, but not limited to, the detailed estimated cost, with supporting calculations for the estimates, submitted by the permit applicant.
- 830.200.** The amount of the bond will be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case will the total bond initially posted for the entire area under one permit be less than \$10,000.
- 830.300.** An additional inflation factor will be added to the subtotal for the permit term. This inflation factor will be based upon an acceptable Costs Index.
- 830.400.** Adjustment of Amount.
- 830.410.** The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond will be adjusted by the Division from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.
- 830.420.** The Division will:
- 830.421.** Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under R645-301-860.260 of any proposed adjustment to the bond amount; and
- 830.422.** Provide the permittee an opportunity for an informal conference on the adjustment.
- 830.430.** A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Division providing that the permittee's method of operation or other circumstances reduces the estimated cost for the Division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of R645-301-880.100 through R645-301-880.800.
- 830.440.** In the event that an approved permit is revised in accordance with the R645 rules, the Division will review the bond for adequacy and, if necessary, will require adjustment of the bond to conform to the permit as revised.
- 830.500.** An operator's financial responsibility under R645-301-525.230 for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under R645-301-890.
- 840. General Terms and Conditions of the Bond.**
- 840.100.** The performance bond will be in an amount determined by the Division as provided in R645-301-830.
- 840.200.** The performance bond will be payable to the Division.
- 840.300.** The performance bond will be conditioned upon faithful performance of all the requirements of the State Program and the approved permit, including completion of the reclamation plan.
- 840.400.** The duration of the bond will be for the time period provided in R645-301-820.300.
- 840.500.** General.
- 840.510.** The bond will provide a mechanism for a bank or surety company to give prompt notice to the Division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.
- 840.520.** Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division, upon notification