



United States Department of the Interior



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

July 1, 2016

John R. Baza, Director
Utah Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, UT 84114-5801

RE: Utah's Response to Ten Day Notice #X16-140-545-005 – West Ridge Resources

Dear Mr. Baza,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) received your letter, dated June 23, 2016, responding to the Ten-Day Notice (TDN) issued to your office on June 13, 2016 regarding the permittee's compliance with the Vegetation Information Guidelines with respect to reference areas.

Pursuant to OSMRE's INE-35 and applicable regulation, the Field Office shall consider the regulatory authority's (RA) response to a TDN as constituting appropriate action to cause a violation to be corrected or good cause for failure to do so, unless the Field Office makes a written determination in accordance with 30 CFR 842.11(b)(1)(ii)(B)(I) that your response is arbitrary, capricious, or an abuse of discretion under the approved regulatory program. Under the arbitrary, capricious, or abuse of discretion standard, OSMRE will not substitute its judgment for that of the RA, unless the RA's response is arbitrary, capricious, or an abuse of discretion.

Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be abated. Good cause for not taking action includes that the possible violation does not exist, the State regulatory authority requires a reasonable and specified amount of additional time to determine whether a violation exists, or the State lacks jurisdiction over the possible violation or operation.

Arbitrary, capricious, or an abuse of discretion generally means, with respect to an RA response to a TDN, that the RA has acted—

- (1) Irrationally in that the RA's interpretation of its program is inconsistent with the terms of the approved program or any prior RA interpretation recognized by the Secretary of the Interior;
- (2) Without adhering to correct procedures;

- (3) Inconsistent with applicable law; or
- (4) Without a rational basis after proper evaluation of relevant criteria.

FINDING and CONCLUSION

Your response includes sufficient details to substantiate your perspective on why enforcement action is unwarranted. More specifically, your response states “The Division has determined that it should improve its efforts to document the instances when reference areas are monitored...Thus, the Division will implement a policy to have its inspectors and/or biologists visit reference areas during the mid-term permit review process.” Response at 25. This monitoring and documentation addresses the spirit of OSMRE’s concerns which were the basis for the TDN and is appreciated by DFD. Your response also correctly states that the Division’s approved program does not contain any provision specifically requiring vegetation reference area monitoring at five year intervals; therefore no violation of the rules may exist. OSMRE has determined, pursuant to 30 CFR 842.11(b)(1)(ii)(B)(4), that you have shown good cause for not taking enforcement or other action within ten days to cause the identified potential violations to be corrected because the alleged violations do not exist under your approved regulatory program. This determination applies to TDN: #X16-140-545-005. No further action is required under this TDN.

If you have any questions regarding this matter, please contact me at (307) 261-6545.

Sincerely,



Alan Boehms, Denver Field Branch Manager
Denver Field Division