

**WESTERN
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CORPORATION**

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DIVISION OF
OIL GAS & MINING

June 29, 1992

ACT/015/002 #2

Ms. Susan White, Biologist
Utah Department of Natural Resources
Division of Oil, Gas, & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

FAXED 6-30-92
CERTIFIED - RETURN RECEIPT
P 143 960 960

Dear Ms. White:

Re: STIPULATION R614-301-742.113 RESPONSE, AND NOTICES OF VIOLATION N91-32-6-1, N91-35-6-1, N91-35-7-1, WESTERN STATES MINERALS CORPORATION, J.B. KING MINE, ACT/015/002, FOLDER #2, EMERY COUNTY, UTAH.

This document is the Response of Western States Minerals Corporation to the Utah Department of Natural Resources, Division of Oil, Gas, & Mining ('UDOGM') Stipulation R614-301-742.113, (and to the subsequent Notices of Violation N91-32-6-1, N91-35-6-1, N91-35-7-1) pertaining to the Western States Minerals Corporation ('WSMC') permit for the J.B. King (aka Dog Valley) Mine site, ACT/015/002, Folder #2, Emery County, Utah.

WSMC strongly believes and requests that the additional matter of the UDOGM decision to require a BOND CLOCK RESET - as set forth in the letter of November 19, 1991 from Ms. P. Grubaugh-Littig, UDOGM Permit Supervisor, is a subaltern extension of the main issues referenced in the Stipulation and N.O.V.'s - and that it therefore should be automatically included as germane to this response.

WSMC believes that the reclamation at the J.B. King site has been accomplished in good-faith, and has been **very successful**. Even though the J.B. King site is universally considered to be 'extremely difficult' for reclamation efforts, the site is becoming more and more 'in-balance' with the natural ecosystems of the area. Current site examination (June '92 and previous) reveals that the vegetative growth has taken a firm hold - and in fact, already meets the approved reclamation vegetation standards on the majority of the site (as measured in 1991). Further, even though thunderstorms which appear to have been substantially in excess of design capacity were experienced at the site in 1991, and some non-critical erosional damage did occur, the site appears to be stabilizing naturally. WSMC presents the following long-term erosional control plan in reference to the J.B. King site.

STIPULATION RESPONSE - LONG TERM EROSIONAL CONTROL

Western States Minerals Corporation believes strongly in the validity of the current **approved** erosional control plan for the J.B. King mine site - and intends to continue to carry out the terms and provisions of that plan. However, in order to address current problems and the concerns of UDOGM representatives, WSMC submits the following modifications to the **approved** plan:

- A.) WSMC will dismantle and remove all silt fences from the J.B. King site.
- B.) Due to the geomorphological and climatic provinces in which the J.B. King site lies, WSMC will cease all attempts at erosional control, or else will regulate the degree of erosion occurring on site to the same rate as naturally occurs in the surrounding region (as evidenced by an "Erosional Reference Area"). In particular, WSMC will expend no further resources on the repair, re-construction, or resurrection of the man-made erosional control structures previously referenced in the plan as the 'feeder' and 'main feeder' ditches. These features will be allowed to naturally erode and further stabilize themselves as the land returns to its natural, pre-mining state.
- C.) Minor erosional rills will continue to be repaired, at WSMC's discretion, with the hand placement of rock or other erosion reducing materials.
- D.) Major erosional damage, caused by one-time 'Act of God' events, will be spot repaired at the discretion of WSMC, utilizing hand methods, motorized machinery, or whatever other method WSMC deems appropriate. The Vegetation Bond Clock will **not** be reset by events of this nature.

Western States Minerals Corporation therefore requests the acceptance of the erosion control measures outlined above by UDOGM in response to Stipulation R614-301-742.113. WSMC further requests that N.O.V.'s N91-32-6-1, N91-35-6-1, and N91-35-7-1 be rescinded by UDOGM, and that the proposed re-setting of the Bond Clock be nullified for the J.B. King Mine.

WSMC presents the following evidence in support of the above plan:

- 1.) Overall reclamation at this site is excellent, as shown, in part, by the previous scientific appraisals of vegetation and erosion, and also by the non-recognition of the site as a previous mine (or even a disturbed area) by persons visiting the site who are unfamiliar with its past history as a mine.
- 2.) The geomorphic province at J.B. King is one of on-going and relatively rapid erosion, resulting in the local and regional erosionally sculpted landforms. T. Munson, UDOGM hydrologist, has stated publicly in a presentation at a Utah reclamation

seminar, that J.B. King is a difficult site, and that the lack of any further work there would probably not result in any significant ill effects. UDOGM's insistence on interpretation of the Utah Coal Rule to "minimize erosion to the extent possible" as "no visible erosion" is irrational and unjustifiable. Taken to the extreme, at some point in the geologic timeframe, implementation of this policy would result in the J.B. King site being 'perched' upon a pedestal from which the surrounding real estate has been eroded away.

3.) WSMC has incurred substantial expenditures in the past at the J.B. King site for environmental / reclamation studies and projects, and continues to do so - as evidenced in part by the current re-assessment and application for change of vegetation reference area for the site, and by the recently completed, in-depth reappraisal of the erosion control issues undertaken by WSMC both in-house and through outside consultants. Annual expenditures for the J.B. King Mine by Western States Minerals Corporation, since 1981, have been summarized by WSMC Controller B. Vermilya, and are reported in Table 1.

Table 1. - J.B. King Annual Mine Costs

1982	\$ 98,625.
1983	826,291.
1984	679,258.
1985	1,781.
1986	148,039.
1987	171,905.
1988	27,934.
1989	62,615.
1990	15,468.
1991 (as of 11/30)	16,631.
TOTAL	\$ 2,048,547.00

Reclamation expenditures at J.B. King are in excess of \$68,000 per acre; land values in the area are approximately \$2,000 or less per acre; this ratio is inconsistent and unjustified. UDOGM's current interpretation that **no economic or visual impacts resulting from reclamation at the site** can be considered by them when enforcing the rules, while possibly legally correct, is morally and philosophically wrong. Additionally, as an operating mine, J.B. King contributed substantially to the general welfare of the state of Utah - through permit fees, taxes, employment for Utah citizens, etc. If the **substance** of an excellent and successful past reclamation program at the site, coupled with the substantial problems facing American society today are taken into account - morally and philosophically, no further engineering, construction, or expenditures of any kind should be made at the site. Western States Minerals Corporation believes that a portion of the money currently and historically expended at J.B. King has not been particularly well

spent, owing to the repetitive cycle of continuing repairs to the site's man-made erosion control structures induced by thunderstorm runoff. WSMC proposes that alternative erosional control strategies would produce much better reclamation results at the J.B. King site, particularly given the nature of the erosional processes responsible for sculpting the region's landscape.

4.) WSMC believes that it has made a good faith effort to conform to - and abide by - the Utah R614 Coal Mining Rules, and has also been communicative and cooperative in its dealings with UDOGM personnel. Despite these efforts, WSMC believes that current interpretations of certain R614 Rules have been detrimental to overall reclamation at J.B. King, particularly given the specific geomorphological and climatological patterns which prevail in this area. In discussions conducted with UDOGM personnel at various site inspections, field reviews, and other opportunities, the understanding has been that although the UDOGM personnel may agree that the R614 Rules are not written to address the **particular** reclamation needs of the J.B. King site, they also state that field personnel have little leeway for R614 Rule modification or interpretation. While WSMC understands the dilemma posed to UDOGM personnel by this issue, it nevertheless believes that the interpretation, through modification or variance, of certain R614 Rules is necessary to provide the best and most efficient reclamation at the project.

5.) Despite three previous requests, no proof has been made available to WSMC that supports UDOGM's claims that the coal spoil at J.B. King constitutes "acid and toxic forming" material. [One unsubstantiated analytical result showing the material as being 'high pyrite' - approximately 3%, was presented by UDOGM to WSMC just prior to the Informal Appeal Conference held in Salt Lake City, Utah. Even if this one sample is correct, and is representative of the material in the spoil pile - it does not prove the pile to be 'a. & t.f.']. Additionally, the Division's stance that "no coal spoil may be exposed on the site" is apparently based on the 'acid and toxic forming' concept. This concept may well be invalid at the J.B. King site. WSMC has requested proposals for the testing of the coal spoil.

6.) UDOGM has approved the plans for, and overseen, previous erosional control work. Evidence at the mine site indicates that the thunderstorms which caused the erosional 'damage' were considerably in excess of those specified for the design criteria. (Substantiated by verbal opinion of T. Munson, UDOGM Hydrologist, while reviewing the 'damage' on site.) WSMC believes that "Act of God" weather, i.e., thunderstorms which exceed the design criteria of the approved structures, should not result in Notices of Violation (N.O.V.'s). Further, the erosional results of such storms should be left unreconstructed, as the site returns to its natural state. [This is particularly true since no off-site sedimentation has resulted from this erosion.] In addition, the sediment control pond at the property has never been cleaned out - and yet it only contains a small amount of sediment. This would indicate that erosion may not be as great a problem as previously believed by UDOGM.

7.) The J.B. King mine was one of the first to be reclaimed under the Utah Coal rules, has served as the 'test case' in many instances, and was mysteriously exempted from 'grand-fathering' under the interim regulations. Due to this, there should be some

leeway granted the J.B. King site as a result of its experimental status, rather than the current UDOGM interpretation that J.B. King must meet all new and updated Utah Coal Rules. Other Utah coal operators are interested in several aspects of the J.B. King reclamation work, including the inconsistent and capricious interpretations of the Utah Coal Rules, as well as the large discrepancy between the current UDOGM-allowable reclamation bonding costs of around \$20,000 per acre versus the actual expenditures exceeding \$68,000 per acre at this site.

8.) If UDOGM insists upon further interference with the natural erosional processes at J.B. King through additional engineering and construction controls - then the Division should also approve and 'buy off on' any such work. That is, UDOGM should bear some responsibility for the success or failure of further work and expenditures, and there needs to be a predetermined and specific endpoint for WSMC costs and involvement in each major phase of reclamation work at the J.B. King site, not just the ethereal "try it and see if it works" approach that the Division currently employs.

9.) At some point in the life of every work project, the 'law of diminishing returns' comes into effect. This simply means that increasing levels of expenditure are required for less and less actual results. WSMC believes that J.B. King reclamation is now at a point of substantially diminished returns. WSMC has previously proposed and discussed the idea of WSMC performing or funding alternative reclamation or rehabilitative / public safety work at other sites within Utah, rather than continue to expend money and effort on inconsequential activities at the J.B. King site. These proposals have not been acted on by the Division.

10.) As previously discussed with UDOGM, WSMC believes that it must exercise its legal right of due process. WSMC understands that within UDOGM, this process begins with the discussion of issues at the field and permit level, continues to the administrative level through the informal appeal process, and ultimately may be appealed by petition to the Board. WSMC firmly believes in, and intends to continue to work within this system.

11.) WSMC strongly believes that little or no damage or negative consequences will result at the site from a temporary interim period while WSMC pursues its legal right to due process through the UDOGM channels. This belief is due to: A.) the fact that the above referenced N.O.V.'s allude to the resolution of long term problems and solutions; and B.) the currently on-going program of necessary maintenance.

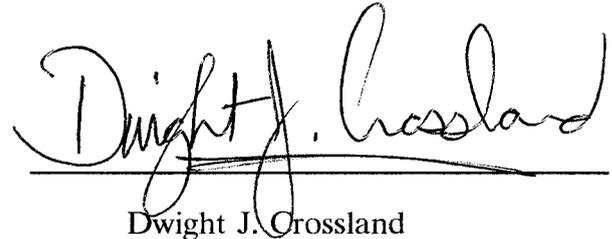
12.) WSMC strongly believes in 'free enterprise' as basic to the economic system of the United States. While WSMC sees the need for - and approves of - a strong system of environmental controls; the over-regulation of business through the stringent application of unattainable and capriciously applied regulatory standards (such as **no erosion**, or the **dis-allowance of economic considerations** at the J.B. King site) is in part responsible for the loss of industry and jobs from the U.S. to foreign countries. The attempt by any agency to apply such unattainable standards (particularly through regulation, rather than legislation) invokes a **responsibility** to fight for the withdrawal or modification of those standards.

13.) Last, with Division approval, WSMC has expended substantial time, effort, and money, on an exhaustive re-appraisal of erosional control methods for the J.B. King site. A 'brainstorming' approach to the problem (which incorporated the idea's and comments of WSMC, UDOGM, RA Consultants, and Hansen, Allen, & Luce personnel) resulted in a number of specific possible alternatives for erosion control. These alternatives were then discussed and evaluated in terms of engineering, economics, and site impacts. Upon final analysis by WSMC, the current erosion control plan (with minor modifications as outlined previously) continues to emerge as the best viable solution to the erosion control situation at the J.B. King site.

WSMC believes the current state of the reclamation work at the J.B. King mine site meets the content and intent of the SMCRA legislation, as well as OSM and UDOGM rules and regulations. Further, WSMC strongly believes that **the existing reclamation is excellent**, is **far more** than 'adequate', and that no further major restorative or reclamation work is justified or required at the J.B. King site. WSMC would welcome UDOGM's cooperation in resolving this issue as rapidly as possible.

If you require any further information, or would like to discuss this issue directly, please call myself or Mr. E. Gerick, at your convenience.

Sincerely,



Dwight J. Crossland

cc: A.B. Morrow, President, Western States Minerals Corporation
E. Gerick, V.P. of Operations, Western States Minerals Corporation
Dr. D. Nielson, Informal Hearing Officer, Director, UDOGM

v. 3.A4