



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
WASHINGTON, D.C. 20240



JUL 28 1993

Mr. James W. Carter
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and Mining
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RECEIVED

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DIVISION OF
OIL GAS & MINING

Dear Mr. Carter:

Thank you for your letter of June 4 requesting informal review of the Albuquerque Field Office (AFO) Director's determination that your agency did not take appropriate action with respect to ten-day notice (TDN) number X93-02-190-02 (Western States Minerals (WSMC), J. B. King Mine, permit number ACT/015/002). The TDN alleges a failure to establish a diverse, effective and permanent vegetative cover contrary to Sections 301-355.110 and .140 of the Utah regulations.

In your request for review, you assert that establishment of a diverse, effective and permanent vegetative cover is a performance standard that must be met as a prerequisite to reclamation bond release. You argue that given the efforts by the operator to establish vegetation in accordance with the reclamation plan and by virtue of subsequent augmented seeding with the intent of establishing vegetative cover, there is no violation of the permit or Utah program. You maintain that in order to affirm the AFO with respect to the alleged violation, the AFO must establish a prima facie case that the operator has not attempted and is not attempting to establish the requisite cover. You do not believe a violation can be sustained as long as the operator continues to be willing to take appropriate measures to ensure ultimate attainment of the performance standards.

The rules cited in the TDN require the establishment of an effective and permanent vegetative cover capable of stabilizing the soil from surface erosion. The record shows that this 30 acre minesite was graded and initially seeded in 1985 and a 2 acre area that needed to be reaffected was subsequently reseeded in 1989. At least four of your agency's inspection

reports over the last 16 months document that revegetation attempts have not been successful and appear to be declining. Moreover, your agency has documented that substantial erosion is occurring for which enforcement action has been required.

I can only conclude from this and from my viewing of photographs of the minesite that the performance standards cited in the TDN have not been met. I disagree with your argument that as long as the operator is attempting to establish vegetation, there are no grounds to substantiate a revegetation violation. While I would agree that it would not necessarily be a violation if revegetation failed after prudent seeding efforts, it would be a violation under the Utah program if such failures are not corrected through subsequent reseeding within a reasonable time (i.e., no later than the next planting season).

In this case, there is nothing in the record to indicate that after the initial seeding in 1985 or after the minor reseeding in 1989 that further diligent efforts were undertaken by the operator within subsequent planting seasons in order to establish an effective and permanent vegetative cover. Consequently, the events the revegetation performance standards were designed to prevent, surface erosion and delay in achieving the postmining land use, have occurred.

Based on the foregoing, I find that there is reason to believe that the alleged violation exists. Because enforcement action has not been taken to address this violation as required for any violation of the Utah program, I find your response to the TDN to be arbitrary, capricious and an abuse of discretion. Accordingly, I affirm the determination of the AFO Director and hereby order a Federal inspection.

Sincerely,



Deputy Director

cc: Western States Minerals
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