

0017



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

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UTAH DIVISION OF OIL, GAS AND MINING  
FACSIMILE TRANSMISSION COVER SHEET

DATE: June 4, 1993  
FAX # (202) 208-2882  
ATTN: W. Hord Tipton, Dpty Dir  
COMPANY Washington - OSM  
FROM: Lowell Braxton  
DEPARTMENT: UTAH - Div. Oil, Gas & Mining  
NUMBER OF PAGES BEING SENT (INCLUDING THIS ONE): 6

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\*\* TRANSMIT CONFIRMATION REPORT \*\*

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 Time : 02'56"  
 Mode : G3 NORMAL  
 Result : OK

*Mine Site*  
*ACT/015/002*  
*Folder #5*  
*JWC*

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

Michael O. Leavitt  
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355 West North Temple  
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801-359-3940 (Fax)  
801-538-5319 (TDD)

June 4, 1993

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 540 713 961

W. Hord Tipton, Deputy Director  
Office of Surface Mining  
Department of the Interior  
1951 Constitution Avenue N.W.  
Washington, D. C. 20240

Dear Mr. Tipton:

Re: Ten-Day Notice, X93-02-190-02 TVI, Western States Minerals (WSMC), J. B. King Mine, ACT/015/002, Folder #5, Emery County, Utah

I am requesting an informal review of the Albuquerque Field Office's (AFO) May 28, 1993, finding (received at the Division office June 1) that the Division of Oil, Gas and Mining's response to the above-referenced TDN is arbitrary, capricious and an abuse of discretion. I ask you to consider the Division's May 21, 1993 letter, and this response in considering the appeal.

The alleged violation that is the subject of the appeal was written for, "Failure to establish a diverse, effective and permanent vegetative cover. Location: North side of refuse area and area shown in green on permit topographic reclamation map disturbed during channel construction."

I believe 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. Given efforts by the operator to establish vegetation via implementation of the approved reclamation plan and subsequent augmentive efforts, such a violation is not appropriate at this time.

The AFO's position that success of revegetation efforts will be judged prior to bond release is not consistent with the 10-year vegetation success standard existent in the Utah program. Utah Admin. R. 645-301-353.110 and R. 645-301-353.140, the regulations cited in the alleged violation, require the permittee



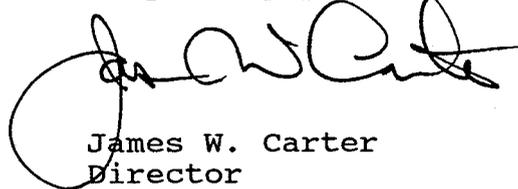
Page 2  
W. Hord Tipton  
June 4, 1993

to establish the cover. In order to uphold this alleged violation, OSM must establish a prima facia case that the operator has not attempted and is not attempting to establish the requisite cover. The AFO merely asserts an opinion that cover is insufficient in the specified areas.

I do not wish to infer that the vegetative cover in the areas cited meets the success standards of the Utah program, but I 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.

In the near future, I plan to meet on site with the operator to discuss the Division's concerns regarding long term vegetation success and to explore avenues that will ultimately achieve bond release. I hope this will aid in the resolution of the OSM and Utah's mutual concern.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is written in a cursive style with a large, looping initial "J".

James W. Carter  
Director

vb  
Enclosure  
cc: E. M. Gerick, WSMC  
R. Hagen, AFO, OSM  
L. Braxton  
P. Grubaugh-Littig  
J. Helfrich

JB6-4

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

Lowell

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Salt Lake City, Utah 84180-1203  
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801-359-3940 (Fax)  
801-538-5319 (TDD)

May 21, 1993

CERTIFIED RETURN RECEIPT REQUESTED  
No. P. 540 713 950

Robert Hagen, Director  
Albuquerque Field Office  
Office of Surface Mining  
Reclamation and Enforcement  
505 Marquette N.W., Suite 1200  
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: Response to Ten-Day Notice (TDN) X93-02-190-02 TV2, Western States Minerals Corporation, (WSMC) J. B. King Mine, ACT/015/002, Folder #5, Emery County, Utah

This letter is in response to the above-referenced Ten-Day Notice (TDN), the certified copy of which was received at the Division on May 14, 1993.

Number 1 of 2 Reads:

"Failure to establish a diverse, effective and permanent vegetative cover."  
Location: North side of refuse area and area shown in green on permit topographic reclamation map disturbed during channel construction. Regulation cited: R. 645-301-353.110 and R. 645-353.140.

Division Response:

I believe OSM's inspector is premature in concluding there is a violation of the Utah's vegetation requirements at the referenced portions of the J. B. King mine site. The alleged violation might be appropriate if Utah had made a finding that adequate vegetation was established at the subject sites, and if OSM presented evidence to support its case, but neither of these is true.



The general revegetation requirements of the Utah program (R. 645-301-353) read as follows: "The permittee will establish on regraded areas and all other disturbed areas except water areas and surface areas of roads that are approved as part of the post-mining land use a vegetative cover that is in accordance with the approved permit and reclamation plan. "The regulations that OSM alleges have been violated, R. 645, 301,353.110 and 353.140 are some of the performance criteria constituting ultimate vegetation success and reclamation bond release.

Utah shares OSM's concern that diverse, effective and permanent vegetative cover be established at all reclaimed sights. The vegetation success standards for bond release in the Utah program contemplate a minimum responsibility of ten years for low precipitation areas such as the J. B. King Mine. However, having prepared the ground and seeded in accordance with the approved Mining and Reclamation Plan, and by virtue of having augmented the seeding in certain areas of the permit, with the intent of establishing the requisite vegetative cover, WSMC is in compliance with the terms and conditions of the permit and Utah program at the time of the inspection.

There is substantial difference in facts between the situation at J. B. King and that of IBLA 87-190, Coal Energy, Inc vs OSM. In the Coal Energy case, Coal Energy admitted steps to reseed were inadequate, and OSM prevailed. At J. B. King, the operator is following the terms and conditions of the permit with respect to seed and augmented seeding.

Issuance of this TDN is a capricious action on OSM's part given the concern Utah has and continues to show regarding vegetation success at J. B. King, given the efforts and in some cases augmented efforts of WSMC, and given the fact that the state regulatory authority has not made a finding of revegetation success. Following the logic of OSM's inspector it would be appropriate to allege a violation of the Utah Program the day following planting of the reclamation seed mix. Please withdraw Number 1 of 2 of X93-020-190-03.

Number 2 of 2

This TDN has been superseded by the issuance of TDN #X93-020-190-03. In a telephone conversation on May 17, 1993, OSM's Tom Wright informed Pamela Grubaugh-Littig, DOGM Permit Supervisor, that he would be reissuing the

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Robert H. Hagen  
May 21, 1993

second part of the TDN, and therefore, a response would not need to be included with this TDN response. We will respond to the new TDN upon receipt of the hard copy.

Sincerely,



Lowell P. Braxton  
Associate Director

vb

cc: E. M. Gerick, WSMC  
P. Grubaugh-Littig