

0020



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

Phone file

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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.

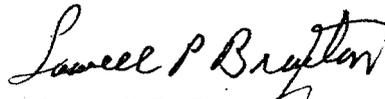
Number 2 of 2

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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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,

A handwritten signature in cursive script that reads "Lowell P. Braxton".

Lowell P. Braxton
Associate Director

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

P 540 713 950

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OFFICE OF SURFACE MINING R & E
STE 1200
505 MARQUETTE NW
ALBUQUERQUE NM 87102

4. Article Number: P 540 713 950

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* U.S.G.P.O. 1989-234-555