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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
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April 6, 1993

TO: Pamela Grubaugh-Littig, Permit Supervisor

FROM: Susan M. White, Reclamation Biologist *SMW*

RE: Review of Certified Letter Dated December 7, 1992, J.B. King Mine, Western States Minerals Corporation, ACT/015/002, Folder #2, Emery County, Utah

## Synopsis

Western States Minerals submitted a document to abate violations and replace permit pages. This memo will review the document dated January 20, 1993, Response To Certified Letter P 540 713 916, Dated December 7, 1992, For The Abatement of NOV N91-35-6-1 and N91-32-6-1, as it pertains to the Utah Coal Mining Rules. I made several recommendations for on site action for the abatement of NOV N91-35-6-1 in a memo dated November 4, 1992; however, Dianne R. Nielson's letter dated December 7, 1992 only required an update of text and maps in the Mining and Reclamation Plan for abatement of the violation. According to the requirements of Dr. Nielson's letter, the operator has submitted sufficient information to abate NOV N91-35-6-1.

## Analysis

Map JBK-1, Revision (1), removed the locations of the silt fences and also deleted the green shading which identified the 3.8 acres of augmentive seeding done in October 1989. Additionally, the map was not recertified after these changes. The area of augmentive seeding must be delineated and the map certified prior to approval of Map JBK-1, Revision (1).

In the amendment titled UMC 817.45 Hydrologic Balance: Sediment Control Measures the operator states that "very little sediment has accumulated behind these silt fences," this statement is incorrect. The appearance of little sediment is due to the operator maintaining and cleaning out the sediment as requested during DOGM inspections and washing of sediment down hill of the fences when not maintained. The operator also states in the amendment that after

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the silt fences are removed the sediment will be spread out evenly. This statement should be changed to read that the sediment will be spread out unevenly.

In the amendment titled 817.103 Backfilling and Grading: Covering Coal and Acid and Toxic Forming Materials the operator states "as the cover material erodes, some of the refuse material will eventually be exposed." Exposure of acid or toxic forming refuse material is not allowed under R645-301-553.252 and R645-301-553.300. Federal Regulations at 30 CFR 817.83(c) (4) require four feet of the best available material to cover the refuse material. The operator has made some attempt to demonstrate that the material is non-acid forming. However, it is premature to make any statement as to the acid and toxic forming potential of this material at this point. The above mentioned statement must be deleted.

Proposed amendment, UMC 817.106 Regrading or Stabilizing Rills and Gullies the operator states that they would like to "reserve the right to provide some limited site maintenance by the use of approved motorized equipment on a case-by-case basis without resetting the bond clock." R645-301-357.100 states that the period of extended responsibility will begin after the last augmentive work. The repair of rills and gullies are considered augmentive work until approved by OSM as part of the Utah program. Even then the approval of repairing rills and gullies after vegetation establishment would be considered augmentive. The repair of rills and gullies as a normal husbandry practice has been decided in the Court Litigation of the September 7, 1988 regulations. National Wildlife Federation v. Interior Department U.S. District Court in the District of Columbia, 31 ECR 1617 June 8, 1990. The decision was that not all rill and gully repair is a normal husbandry practice but "before these repairs can be deemed a normal husbandry practice, the states must prove that the repairs are not augmentative." Therefore, the operators statement concerning the bond clock must be removed. Furthermore, the area in which the gullies were repaired in 1992 must be delineated as augmentative on Plate JBK-1 Revision (1).

In the proposed permit amendment, UMC 817.56 Post Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities, the operator proposes to allow the sedimentation pond to be "left functional at bond release and be allowed to fill in naturally." First the Division has mistakenly approved the retention of the sedimentation pond after bond release as a sediment control structure. No purpose, justification, or land owner comments could be found in the permit for retention of the pond as it relates to the postmining land use as required in R645-301-541.300. Secondly, if the permit did provide justification for the postmining land use, R645-301-542.400 requires that

before bond release the pond must "have been maintained properly and meet the requirements of the approved reclamation plan . . . the operator will renovate such structure if necessary . . ." And R645-301-880.320 requires that prior to Phase II bond release on permanent impoundments that "provisions for sound future maintenance by the operator or the landowner have been made with the Division." The permit does not meet the requirements for retention of a permanent impoundment and therefore must be reclaimed.

### Recommendation

The following items must be corrected prior to approval of the permit amendment pages.

1. Map JBK-1, Revision (1) must:
  - a. be certified;
  - b. add back the green shading (or other designation) to show the 3.8 acres of augmentive seeding in October 1989; and
  - c. delineate where the augmentive rill and gully repair occurred in 1992.
2. The operator must delete the statement that "very little sediment has accumulated behind these silt fences."
3. The operator must delete the word evenly and state that the sediment will be spread out unevenly.
4. The operator must delete the reference to exposure of refuse material.
5. The operator must delete the statement "reserve the right to provide some limited site maintenance by the use of approved motorized equipment . . ." The operator must be informed that any rill or gully repair will be considered augmentive.
6. The Division should issue a Division Order for the sediment pond to be reclaimed after vegetation establishment unless appropriate documentation is provided from the landowner desiring the pond to be left and maintained.