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

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
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Salt Lake City, Utah 84114-5801
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November 17, 1997

Chuck Semborski
Geology Permitting Supervisor
Energy West Mining Company
P. O. Box 310
Huntington, Utah 84528

Re: 1993 Exploration Request for Removal from Disturbed Area, PacifiCorp, Trail Mountain Mine, ACT/015/009-97C, File #2, Emery County, Utah

Chuck
Dear Mr. Semborski:

The Division has reviewed the above-referenced permit amendment requesting a change in the disturbed area of the Trail Mountain Mine from 24.84 acres to 10.69 acres. Exploration disturbances within the permit area added 14.15 acres to the existing 10.69 acres of disturbed area in 1993. In 1994 the exploration rules were changed and exploration activities within a permit area were not required to be included in the disturbed area. The Division finds, in the enclosed memo, that the area associated with the 1993 exploration activities can be removed from the disturbed area.

The submitted changes to the permit, pages 3-11 and 3-33, Volume II, are hereby approved effective November 3, 1997. A stamped approved incorporated copy of these pages is included for insertion into your Mining and Reclamation Plan.

If you have any questions, please call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lowell P. Braxton".

Lowell P. Braxton
Acting Director

vb

Enclosures

cc: J. Kaiser, USFS, Price
R. Manus, BLM, Price
R. Singh, OSM, Denver
PFO

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November 10, 1997

To: File

From: Daron R. Haddock, Permit Supervisor

A handwritten signature in black ink, appearing to read 'DRH'.

RE: Removal of Exploration area from the Disturbed area, PacifiCorp, Trail Mountain Mine, ACT/015/009-97C, Folder #3, Emery County, Utah

BACKGROUND

In 1993 PacifiCorp drilled five exploration holes which disturbed approximately 14.15 acres. At the time DOGM rules were written such that all exploration within a permit area would be considered part of the surface disturbance. Therefore the 14.15 acres were permitted subject to the requirements of reclamation, bonding, and extended liability period associated with disturbed areas. In 1994 the Utah coal rules were changed to make them more consistent with the Federal Rules. The rule change established that exploration on federal lands within a permit area would not be regulated under DOGM and therefore would not be considered part of the SMCRA Disturbed area. Now PacifiCorp has applied to have the 1993 exploration disturbance deleted from their permitted disturbed area.

DISCUSSION

It has been questioned whether or not the Division can release the 1993 exploration disturbance since the rule change did not happen until September 27, 1994.

Since the rule change was accomplished to make the state rules consistent with the Federal rules, it can be argued that the exploration should never have been permitted as disturbed area in the first place and therefore releasing it would only be in line with the existing federal regulations. It is not a question of retroactive application of the Utah rules. The 5 drill holes put in by PacifiCorp in 1993 were certainly considered to be exploration on Federal Lands and the 1994 rule change makes it clear that exploration on federal lands will be guided by the appropriate part of 43 CFR. (This is regardless of when the exploration occurred.) The Federal regulations at 43 3480 through 3487 pertain to operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U. S. C. 181, et seq.). The responsibility for administration of the Mineral Leasing Act is vested with the BLM.

Further, the 1994 rule change makes it clear that minor exploration disturbance is not subject to being classified as disturbed area under the SMCRA permit. This is regardless of land ownership.

FINDING

On federal lands where the requirements of 43 CFR 3480-3487 apply, the responsibility for regulation of coal exploration is vested with the BLM. All lands previously permitted by DOGM as disturbed area which fall in the category of exploration should not be considered disturbed area under SMCRA. The Trail Mountain application for removing the 14.15 acres from their disturbed area should be approved.

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