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

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Executive Director
James W. Carter
Division Director

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September 7, 1995

Val Payne
Senior Environmental Engineer
Energy WestPacifiCorp
P.O. Box 310
Huntington, Utah 84528

Re: Permit Renewal, Des-Bee-Dove Mine, PacifiCorp, ACT/015/017, Folder #3, Emery County, Utah

Dear Mr. Payne:

Enclosed please find the Decision Document for the Des-Bee-Dove Mine permit renewal. Please sign both copies of the permit and return one to the Division.

Very truly yours,

James P Braxton
for
James W. Carter
Director

Enclosure
cc: James Fulton, OSM, WRCC, Denver
Lowell Braxton (w/o enclosure)
Daron Haddock (w/o enclosure)
Pamela Grubaugh-Littig
Price Field Office

PERMIT RENEWAL

Des-Bee-Dove Mine

PacifiCorp

ACT/015/017

September 7, 1995

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PERMIT RENEWAL

Administrative Overview

Des-Bee-Dove Mine

PacifiCorp

ACT/015/017

September 7, 1995

Background

The Des-Bee-Dove Mine Complex is one of four mines permitted by PacifiCorp located on East Mountain about seven miles north of Orangeville, Utah. The four mines permitted by PacifiCorp are: the Des-Bee-Dove Mine, Cottonwood/Wilberg, Deer Creek and Trail Mountain Mine.

The Des-Bee-Dove Mine Complex closed in December 1983, due to a fire in the Beehive Mine and for economic reasons. The mine complex was reopened on January 14, 1985 to provide coal to the Hunter Power Plant to partially replace production lost due to the closure of the Wilberg Mine as a result of a fire which started in the mine on December 19, 1984. The Des-Bee-Dove Mine temporarily ceased operations on February 6, 1984. No mining activity has occurred since that date. A memo to the Coal Regulatory staff dated October 11, 1988 from Lowell P. Braxton, Associate Director, Mining entitled "Guidelines for Duration of Temporary Cessation of Operations", outlined that temporary cessation may extend to 15 years.

Junction Haul Road

The Des-Bee-Dove/Wilberg Junction Haul Road was constructed in 1983, in response to public concern for safety because the previous route went through the residential street of Orangeville, Utah. Utah Power and Light Company represented the road as a public road and failed to obtain a permit from the regulatory authority to construct the Junction Haul Road. UDOGM issued a notice of violation to Utah Power and Light Company on July 18, 1984, that required the Junction Haul Road be included in the PAP for a permanent program permit. On July 31, 1984, UDOGM issued a cessation order preventing the Utah Power and Light Company from using the road. The cessation order was terminated on October 1, 1984. The Utah Board of Oil, Gas and Mining reopened the Haul Road under an emergency order pursuant to the approved Utah Coal Program, to allow Utah Power and Light Company to resume production and delivery of coal to the Hunter Power Plant without routing trucks through the town of Orangeville.

The entire permit area, including the Junction, Road, was permitted by OSM in April 1985. The State issued the permanent program permit on September 20, 1985.

Permit Transfer - 1991

The permit was transferred from Utah Power and Light Company to PacifiCorp Electric Operations (aka PacifiCorp) on March 15, 1991.

Ten-Day Notice and State Violation (Erosion on Junction Haul Road)

On June 24, 1991, OSM-AFO issued a ten-day notice (TDN) to the state of Utah because it was OSM's belief that PacifiCorp was violating applicable law by failing to control or prevention erosion on the outslope of the Junction Haul Road. UDOGM issued a state violation to PacifiCorp regarding erosional features appearing on the Junction Haul Road outslope. In compliance with the abatement requirement of the state NOV, PacifiCorp submitted to UDOGM an approved sedimentation control plan that provided for the installation of water bars, a water control berm and a water control diversion along the Junction Haul Road above the road outslopes.

Between August 8, 1991 and November 8, 1991, PacifiCorp implemented the sedimentation control plan and the state violation was terminated on November 8, 1991. It was stated that the implementation effectively prevented most of the road runoff from flowing onto the road outslope.

Meanwhile, PacifiCorp and UDOGM organized a task force to determine what other measures might be taken to control or prevent erosion on the road outslope. Members of the task force included representatives of UDOGM, the U.S. Soils Conservation Service (now the National Resource Conservation Service), Utah State University Extension Service, PacifiCorp and its subsidiary, Energy West Mining Company. Although OSM was invited to take part in the task force, OSM-AFO did not participate.

The task force met on November 12, 1991 and concluded that the outslopes' rills and gullies are caused by water erosion and that the erosion control implemented by PacifiCorp should curtail and/or control the erosion.

The task force also concluded that further erosion and rehabilitation measures should be deferred pending completion of a study to evaluate erosion control measures and reclamation alternatives. Pursuant to the task force recommendations, PacifiCorp in 1992, with UDOGM oversight, launched a 3-year study to evaluate various erosion control methods.

On December 2, 1993, an inspector from OSM-AFO conducted an inspection of the mine and observed that "no repair of the outslope rills and gullies had occurred after the issuance of the TDN and state violation in 1991". He concluded that because the rills and gullies had not been repaired, the state violation had been improperly terminated, necessitating issuance of the federal violation to PacifiCorp for its alleged failure to prevent or control erosion on the outslope. The federal violation ordered PacifiCorp to remedy the situation by eliminating the rills and gullies and by stabilizing the outslopes.

In December 1993, in response to the federal violation, PacifiCorp considered using a variety of alternatives to eliminate the rills and gullies. Like UDOGM and the task force, PacifiCorp concluded that efforts to rehabilitate the rills and gullies would destabilize the outslope and might not resolve the erosion problem.

On February 28, 1995, the federal violation was declared invalid and dismissed by Administrative Law Judges Rampton and Sweitzer (attached).

Public Notice

The applicant published notice for the five-year permit renewal for four consecutive weeks in the Emery County Progress ending on August 1, 1995. Two letters were received about the permit renewal, but an informal conference was not requested.

Recommendation for Approval

Approval for the five-year permit renewal is recommended.

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138
(Phone: 801-524-5344)

February 28, 1995

PACIFICORP,	:	Docket No. DV 94-7-R
Applicant	:	Application for Review and Temporary Relief
v.	:	
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE),	:	Notice of Violation No. 93-020-190-05
	:	Des-Bee-Dove Mine, Emery County
Respondent	:	

DECISION

Appearances: John S. Kirkham, Esq., and James R. Haisley, Esq., Salt Lake City, Utah, for applicant;

Jon K. Johnson, Esq., Denver, Colorado, for respondent.

Before: Administrative Law Judges Rampton and Sweitzer

PacifiCorp has filed an Application for Review and an Application for Temporary Relief regarding Notice of Violation (NOV) No. 93-020-190-05. Inspector Thomas Wright of the Office of Surface Mining Reclamation and Enforcement (OSM) issued the NOV to PacifiCorp following a December 1993, Federal oversight inspection of the Des-Bee-Dove Mine, Emery County, Utah. The NOV alleged that PacifiCorp failed to control or prevent erosion on the outslope of a mine road in violation of Utah Administrative Code R645-301-752.210.

PacifiCorp argues that the NOV should be dismissed because OSM has failed to establish a prima facie case showing that a violation occurred. In addition, PacifiCorp argues that the erosion control measures it has implemented are in compliance with the requirements of Utah's erosion control performance standard.

A hearing in the matter was held on January 14, 1994, in Salt Lake City, Utah, before now retired Administrative Law Judge John R. Rampton, Jr. At the conclusion of the hearing, PacifiCorp's Application for Temporary Relief was granted, leaving only the Application for Review at issue. Both parties have agreed to waive further hearing on the Application for Review and have submitted briefs in support of their respective positions, final brief having been filed December 22, 1994. Upon the retirement of Judge Rampton, the case was assigned to the undersigned for decision consistent with 43 U.S.C. § 554(d). Following review of the complete record and the parties' briefs, and for the reasons set out below, I must conclude that no violation occurred and that the NOV should be dismissed.

Statement of the Facts

The State of Utah, pursuant to sections 503(a) and 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1253(a) and 1273(c), has assumed primary responsibility for the regulation and control of surface coal mining and reclamation operations on State and Federal lands within its borders. *See* 30 CFR 944. The State's regulatory program for these operations (the Utah program) is administered by the Utah Division of Oil, Gas and Mining (UDOGM).

PacifiCorp is the permittee of the Des-Bee-Dove Mine (Mine) located in Emery County, Utah. Since 1987, mining operations at the Mine have been in temporary cessation (Ex. R-1).

On June 5, 1991, OSM Inspector Mitchell Rollings conducted a Federal oversight inspection of the Mine, including the outslope of the Mine haul road which was built in the mid-1980's to provide access to the Mine (Tr. 29, 106, 139, 212; Ex. R-1). He observed pervasive evidence of erosion on the outslope of the Mine haul road in the form of gullies and rills running down the slope (Exs. R-1, R-2, R-3). These gullies and rills had been in existence since at least 1987 (Tr. 161).

As a result of Inspector Rollings' observations, OSM issued to UDOGM on June 24, 1991, a ten-day notice (TDN) stating OSM's belief that PacifiCorp was violating applicable law by failing to control or prevent erosion on the outslope of the Mine haul road (Ex. R-1). UDOGM then issued a State Notice of Violation (State NOV) to PacifiCorp regarding the erosional features appearing on the Mine haul road outslope (Ex. A-B). In compliance with the abatement requirements of the State NOV, PacifiCorp submitted to UDOGM an approved sedimentation control plan providing for the installation of water bars, a water control berm, and a water control diversion along the Mine haul road above the road outslope (Tr. 123, 169-170, 174-176, 180-181). Between August 8, 1991, and November 8, 1991, PacifiCorp implemented the sedimentation control plan sufficiently so that the State NOV was terminated by UDOGM on November 8, 1991 (Tr. 125, Ex. A-B).

The implemented controls effectively prevented most of the road runoff from flowing onto the road outslope (Tr. 131-132, 145).

Meanwhile, PacifiCorp and UDOGM organized a task force to determine what other measures might be taken to control or prevent erosion on the road outslope (Tr. 133, Exs. A-F, A-G). The members of the task force include representatives of UDOGM, the U.S. Soil Conservation Service, Utah State University Extension Service, PacifiCorp, and its subsidiary, Energy Western Mining Company (Ex. A-G). Although OSM was invited to take part in the task force, OSM did not participate (Tr. 133-134).

The task force met on November 12, 1991, and concluded that the outslope rills and gullies are caused by water erosion and that the erosion control measures implemented by PacifiCorp should curtail and/or control this erosion (Ex. A-G). The task force also concluded that further erosional control and rehabilitation measures should be deferred pending completion of a study to evaluate erosion control measures and reclamation alternatives (Ex. A-G). Pursuant to the task force's recommendations, PacifiCorp, in 1992, with UDOGM oversight, launched a 3-year study to evaluate various erosion control methods (Ex. A-H, Tr. 188-189).

William Malencik, a UDOGM Reclamation Specialist and member of the task force, explained the reasoning behind the task force's conclusions. He noted that the road outslope is composed of Mancos shale and is very steep (Tr. 130-131; *see also* Tr. 52). By all accounts, Mancos shale is highly susceptible to erosion (Tr. 52, 130). Nevertheless, the outslope was considered stable, showing no evidence of tension cracks or mass movement and having naturally settled since the road's construction in the mid-1980's (Tr. 136, 139; Ex. A-G). Implementation of additional erosion control or rehabilitation measures would require the use of heavy equipment and disturbance of the slope, loosening the soil surface and destabilizing the steep slope (Tr. 131, 136, 139; Ex. A-G). The task force feared that if such measures failed, their implementation would only exacerbate the outslope erosion (Tr. 136; Ex. A-G).

The failure of these measures was a distinct possibility. In addition to being extremely erosive, Mancos shale is very resistant to revegetation because of its high salt content and tendency to form a hard surface crust (Tr. 128-129, 157). In light of these conditions, it was unclear whether implementation of additional measures, such as mulching, netting, tackifiers, and revegetation, would be effective (Tr. 152-153, 155-156, 161-167).

On December 2, 1993, OSM Inspector Thomas Wright conducted an inspection of the Mine and observed that no repair of the outslope rills and gullies had occurred after issuance of the TDN and State NOV in 1991 (Tr. 84-85; Ex. R-12). He concluded that because the rills and gullies had not been repaired, the State NOV had been improperly terminated, necessitating issuance of the NOV to PacifiCorp for its alleged failure to prevent or control erosion on the outslope (Ex. R-12). The NOV ordered PacifiCorp to

remedy the situation by eliminating the rills and gullies and by stabilizing the outslope (Ex. R-12).

Inspector Wright testified that, although he had taken no measurements of the rills and gullies, they appeared to be actively eroding (Tr. 83-84). Measurements taken by PacifiCorp from 1990 through 1993 specifically showed that the gullies were becoming wider and more shallow over time as a result of the sloughing off of the walls of the channels, but that the actual dimensions of the rills and gullies had changed very little (Tr. 90-92, 184).

UDOGM's position is that it weighed the risk of harm against the possible benefit of implementing additional erosion control measures and concluded that the certain harm of initially destabilizing the outslope outweighed the uncertain benefit that additional measures might ultimately produce (Tr. 135-139; Ex. A-G). As Mr. Malencik testified, "[t]he question [was] whether or not all the steps [had] been taken to minimize erosion considering the risk of failure if you did something on the outslope where you'd destabilize that." (Tr. 138-139). He further stated that if UDOGM had been aware of any other current prudent engineering practices that could have been implemented to control or prevent erosion, it would have required their implementation (Tr. 137).

Mr. Malencik concluded that PacifiCorp had done all it could to control or prevent erosion on the outslope in compliance with the Utah performance standards (Tr. 162, 167). OSM Inspector Wright believed that some erosion control measures should have been implemented on the outslope itself, but did not identify any measure which could have been implemented under the circumstances in accordance with current, prudent engineering practices (Tr. 104).

In December 1993, in response to the NOV, PacifiCorp considered using a variety of alternatives to eliminate the rills and gullies (Tr. 204-208). Like UDOGM and the task force, PacifiCorp concluded that efforts to rehabilitate the rills and gullies would destabilize the outslope and might not resolve the erosion problem (Tr. 207-208).

Discussion

In notice of violation proceedings, OSM has the initial burden of establishing a prima facie case as to the fact of the violation. The ultimate burden of persuasion regarding the fact of the violation rests with PacifiCorp as the applicant for review. 43 CFR 4.1171.

In this case, it is questionable whether OSM established a prima facie case. Assuming, arguendo, that a prima facie case was established, PacifiCorp met its burden of showing that no violation occurred because it has implemented all current prudent engineering practices to control and prevent erosion on the road outslope, as more fully discussed below.

The NOV issued by Inspector Wright alleges that PacifiCorp has violated Utah Administrative Code R645-301-752.210 by failing to "control or prevent erosion on road outslopes." (Ex. R-12). U.A.C. R645-301-752.210, in pertinent part, requires PacifiCorp to "control or prevent erosion * * * by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices." OSM claims that some form of erosion control must be on the outslopes themselves in order for erosion control or prevention to be accomplished. As corrective action, the NOV requires PacifiCorp to "eliminate rills and gullies and stabilize slopes." (Ex. R-12)

OSM's position cannot be sustained because the evidence preponderates in favor of a finding that PacifiCorp did all it reasonably could to prevent or control erosion by stabilizing the outslope in accordance with current, prudent engineering practices. The undisputed testimony shows that PacifiCorp had put in place erosion control features including water bars, a water control berm, and a water control diversion. These devices effectively presented road runoff from going onto the road outslope. By the time the NOV was issued, the outslope was stabilized, with very little ongoing erosion.

The great weight of the evidence clearly shows that filling the gullies and/or implementing additional erosion control measures would initially destabilize the slope. The evidence further shows that it is uncertain whether these actions would ultimately result in a reduction, rather than an increase, in erosion on the outslope. Faced with the certain harm of destabilizing the slope and the uncertainty of any ultimate benefit to be gained by attempting to further control erosion, the task force and UDOGM concluded that further attempts to control erosion would not be prudent pending completion of the erosion control studies.

OSM presented no evidence to refute this conclusion that any attempt to further control erosion would not be in accordance with current, prudent engineering practices. There was testimony concerning what common erosion control measures could be used on the outslope. Yet, none of OSM's witnesses identified an erosion control method that would be effective or prudent to implement under the difficult circumstances faced by PacifiCorp. For example, vegetation is a common erosion control device. However, by all accounts, implementation of a vegetation program would initially destabilize the slope, with only a small hope of ultimately succeeding in further stabilizing the slope.

In sum, PacifiCorp cannot be faulted for failing to take further action to control erosion when any such action was likely to result in an increase, rather than a decrease, in erosion. The unrebutted testimony of Mr. Malencik shows that it was not prudent for PacifiCorp to take further action, *i.e.*, that utilization of any additional, available engineering techniques to prevent or control erosion would not be considered prudent under the circumstances.

Conclusion

Based upon the foregoing, Notice of Violation No. 93-020-190-05 is hereby declared invalid and is dismissed.

Harvey C. Sweitzer
Administrative Law Judge

APPEAL INFORMATION

Any party adversely affected by this decision has the right to appeal to the Interior Board of Land Appeals. The appeal must comply strictly with the regulations in 43 CFR Part 4 (see enclosed information pertaining to appeals procedures.)

Distribution
By Certified Mail:

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Surface Mining Law Summary
Attention: Marcia Smith
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By Regular Mail:

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Attn: John Heider PSD
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PERMIT RENEWAL

Chronology

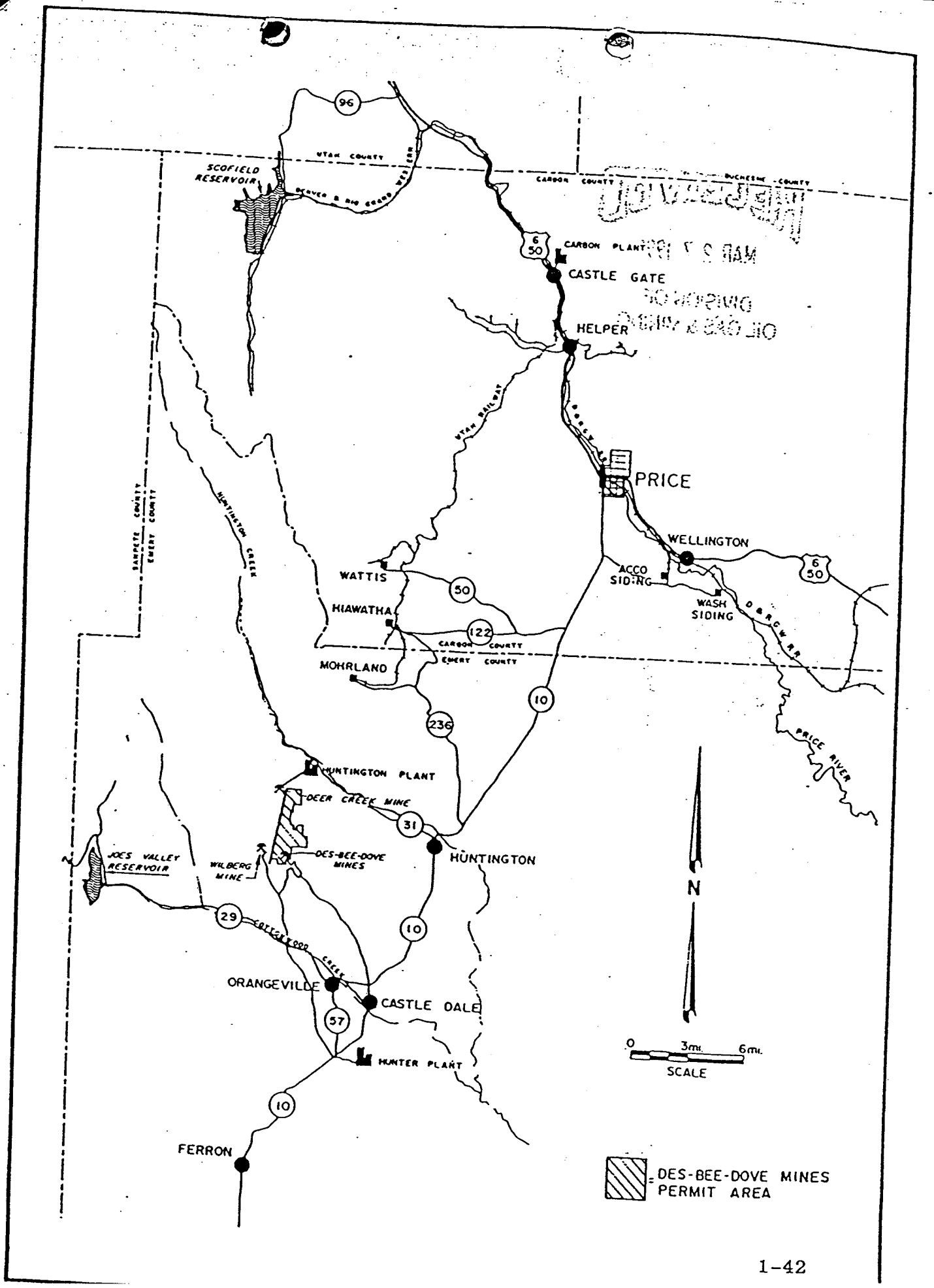
Des-Bee-Dove Mine

PacifiCorp

ACT/015/017

September 7, 1995

April 28, 1995	PacifiCorp submits permit renewal application.
June 29, 1995	Division issues Determination of Completeness.
July 1, 1995	PacifiCorp initiates public notice for four consecutive weeks.
August 25, 1995	Comments were received from the BLM, but an informal conference was not requested.
August 29, 1995	Comments were received by the Craig Smith, representing Huntington-Cleveland Irrigation Company.
August 31, 1995	Memo to File from Pamela Grubaugh-Littig, stating that Division management will respond to Craig Smith prior to proceeding and there is administrative delay in the permit renewal process.
September 6, 1995	Letter to Craig Smith from the Division verifying that comments were received, but an informal conference was not requested.
September 7, 1995	Permit renewal issued.


96
UTAH COUNTY
SCOFIELD RESERVOIR
DENVER & RIO GRANDE WESTERN
CARBON COUNTY
DUCHESNE COUNTY
6
50
CARBON PLANT
CASTLE GATE
HELPER
UTAH RAILWAY
PRICE
WELLINGTON
ACCO SIDING
WASH SIDING
D & R G W RR
PRICE RIVER
SANPETE COUNTY
EMERY COUNTY
HUNTINGTON CREEK
WATTIS
50
HIAWATHA
122
CARBON COUNTY
EMERY COUNTY
MOHRLAND
10
236
HUNTINGTON PLANT
DEER CREEK MINE
31
HUNTINGTON
JOES VALLEY RESERVOIR
WILBERG MINE
DES-BEE-DOVE MINES
29
COTTONWOOD CREEK
ORANGEVILLE
CASTLE DALE
57
HUNTER PLANT
FERRON
N
0
3mi.
6mi.
SCALE
= DES-BEE-DOVE MINES PERMIT AREA

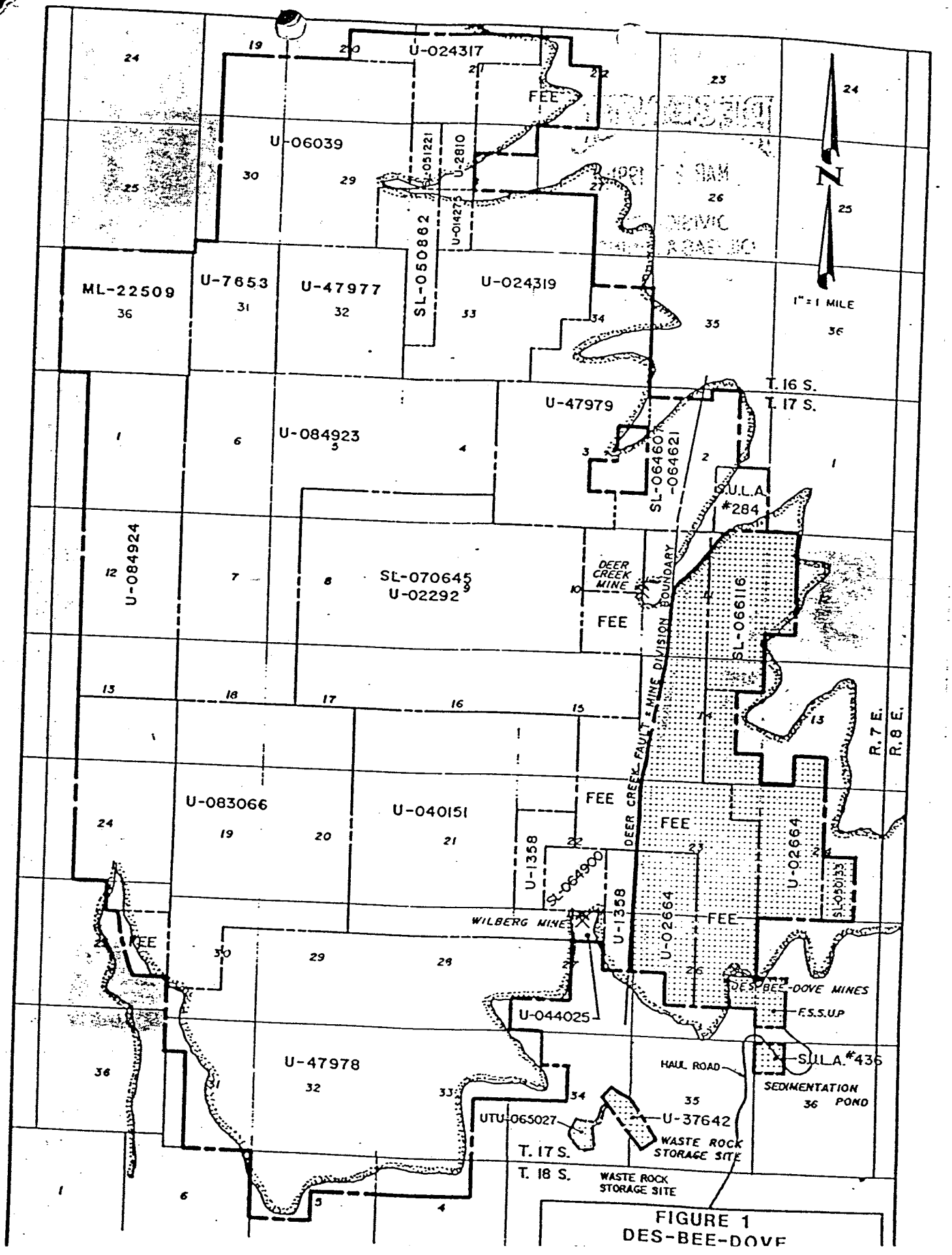


FIGURE 1
DES-BEE-DOVE

FINDINGS

FIVE-YEAR RENEWAL

Pacificorp
Des-Bee-Dove Mine
ACT/015/017

Emery County, Utah

September 7, 1995

1. Application for the permit renewal was made on April 29, 1995. (R645-303.233.100)

2. The terms and conditions of the existing permit are being satisfactorily met. (R645-303-233.110)

3. The present coal mining and reclamation operations are in compliance with the environmental protection standards of the State Program. (R645-303-233.120)

4. The requested renewal does not substantially jeopardize the operator's continuing ability to comply with the State Program on existing permit areas. (R645-303-233.130)

5. The permittee has provided evidence of having liability insurance (R645-303-233.140) (Associated Electric and Gas Insurance Services Limited, Policy number XO296A1A95, from February 24, 1995 to February 24, 1996).

6. The permittee has provided evidence that a performance bond is in effect for the operation and will continue in full force and effect for the proposed period of renewal (R645-303-233.150) (St. Paul Fire and Marine Insurance - Surety Bond 400 JN 6139 in the amount of $1,837,712).

7. For the most recent permit term, permit changes ordered by the Division and violations requiring a permit change have been incorporated into the permit.

A:\FIVEYR.TA

FEDERAL

PERMIT
ACT/015/017

September 7, 1995

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
(801) 538-5340

This permit, **ACT/015/017**, is being renewed for the state of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

PacifiCorp
P. O. Box 310
Huntington, Utah 84528

for the Des-Bee-Dove Mine. A Surety Bond is filed with the Division in the amount of $1,837,712, payable to the State of Utah, Division of Oil, Gas and Mining and the Office of Surface Mining Reclamation and Enforcement (OSM). The Division must receive a copy of this permit signed and dated by the permittee.

Sec. 1 **STATUTES AND REGULATIONS** - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.

Sec. 2 **PERMIT AREA** - The permittee is authorized to conduct underground coal mining activities on the following described lands within the permit area at the Des-Bee-Dove Mine, situated in the state of Utah, Emery County and located:

Township 17 South, Range 7 East, SLM

Section 11:	**E1/2, E1/2 W1/2**
Section 12:	**W1/2 NW1/4, NW1/4 SW1/4**
Section 13:	**SE1/4 SW1/4**
Section 14:	**W1/2, W1/2 E1/2, NE1/4 NE1/4, SE1/4 SE1/4**
Section 23:	**All**
Section 24:	**W1/2, W1/2 SE1/4**
Section 25:	**W1/2 SW1/4**
Section 26:	**N1/2, N1/2 SE1/4, NE1/4 SW1/4**
Section 35:	**Portions of the E1/2 E1/2**
Section 36:	**Portions of the N1/2 NW1/4**

Township 18 South, Range 7 East, SLM

Section 2:	**Portions of the W1/2 NE1/4, Portions of the NE1/4 SW1/4**

This legal description is for the permit area of the Des-Bee-Dove Mine.

The permittee is authorized to conduct underground coal mining activities and related surface activities on the foregoing described property subject to the conditions of all applicable conditions, laws and regulations.

Sec. 3 **COMPLIANCE** - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

Sec. 4 **PERMIT TERM** - This permit expires on August 30, 2000.

Sec. 5 **ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the prior written approval of the Division Director. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13{e} and R645-303-300.

Sec. 6 **RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:

(a) have the rights of entry provided for in 30 CFR 840.12, R645-400-220, 30 CFR 842.13 and R645-400-110;

(b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

Sec. 7 **SCOPE OF OPERATIONS** - The permittee shall conduct underground coal mining activities only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.

Sec. 8 **ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(b) immediate implementation of measures necessary to comply; and

(c) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

Sec. 9 **DISPOSAL OF POLLUTANTS** - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.

Sec. 10 **CONDUCT OF OPERATIONS** - The permittee shall conduct its operations:

(a) in accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and

(b) utilizing methods specified as conditions of the permit by the Division in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 11 **EXISTING STRUCTURES** - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

Sec. 12 **RECLAMATION FEE PAYMENTS** - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

Sec. 13 **AUTHORIZED AGENT** - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.

Sec. 14 **COMPLIANCE WITH OTHER LAWS** - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq,) and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.

Sec. 15 **PERMIT RENEWAL** - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 16 **CULTURAL RESOURCES** - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the Division. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by Division within the time frame specified by Division.

Sec. 17 **APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.

Sec. 18 **SPECIAL CONDITIONS** - There are special conditions associated with this permitting action, as described in Attachment A.

The above conditions (Secs. 1-18) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them. These conditions may be revised or amended, in writing, by the mutual consent of the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

THE STATE OF UTAH

By: Janice P Brafton for J.W. Carr

Date: 9/8/95

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.

_____

Authorized Representative of the Permittee

Date: _____

ATTACHMENT A

CONDITIONS

LIB 9-8-95

1. PacifiCorp must notify the Division within 14 days of the decision on the appeal of outstanding federal cessation order C94-020-370-002, 1 of 1.

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

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

March 8, 1995

Val Payne, Sr. Environmental Engineer
PacifiCorp
P.O. Box 1005
Huntington, Utah 84528

Re: Five-Year Renewal Submittal, Des-Bee-Dove Mine, PacifiCorp, ACT/015/017, Folder #2, Emery County, Utah.

Dear Mr. Payne:

This letter is to remind you that the five-year renewal application must be submitted to the Division by April 29, 1995. Pursuant to R645-303-232, this application must include at a minimum: a) Evidence that liability insurance is provided, b) evidence that the performance bond is in effect for the operation and will continue in full force and effect for any renewal request, and c) a copy of the proposed newspaper notice for the renewal as required by R645-300-121.100.

If you have any questions, please call me.

Sincerely,

Pamela Grubaugh-Littig
Permit Coordinator

blb
cc: Lowell P. Braxton