

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

February 10, 2004

Pete Rutledge, Chief of Program Support
Office of Surface Mining
1999 Broadway, Suite 3320
P.O. Box 46667
Denver, Colorado 80201-6667

Re: Rilda Canyon Facilities (Mining Plan Modification Determination),
PacifiCorp, Deer Creek Mine, C/015/0018, Outgoing Files

Dear Mr. Rutledge:

This letter is in response to your request for reopening, and formally requesting consultation on, the proposed Rilda Canyon surface facilities for the Deer Creek Mine. This division does not view this proposed facility as warranting Department of Interior Under-Secretary approval as a Mining Plan Modification (MPM). The following discussion outlines our analysis of this conclusion.

The Deer Creek Mine has been in operation since 1969. The original mining plan was approved under the Federal lands program on October 11, 1985. The mine plan approval was supported by an environmental assessment (EA) which did not identify significant impacts. The existing Deer Creek permit constitutes more than 24,000 acres, of which about 17,000 acres are federal surface lands. About 96 acres are affected by surface disturbance to date. These disturbances are bonded by a \$3 million surety bond by Travelers Casualty and Surety Company of America. It is also insured for public liability as required under Utah rules, for \$20 million per occurrence and in the aggregate, where applicable by AEGIS, Ltd. Between 1990 and the present, Deer Creek has expanded into further state and federal lease areas via MPM changes, significant revisions, and Incidental Boundary Changes (IBC) as listed below:

- PacifiCorp expanded into the Rilda Canyon Leases (federal leases U-7653, U-06039, U-47977, and SL-050862) in 1994 supported by an EA and FONSI, dated September 27, 1994. In 1995, PacifiCorp expanded its surface facilities into the Rilda area by adding a 2.3-acre fan portal facility with the supporting documentation from the September 27, 1994 EA and FONSI.
- In 1997 Utah DOGM approved the addition of 1,520 acres for coal removal in the North Rilda leases (federal leases U-024317, U-06039, U-2180, and SL-051221). Interior approved the addition as a MPM. This decision was supported by an EA and finding of no significant impact.

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- In 2003, this division approved the addition of a state lease (Mill Fork), adding 5562.82 acres to this underground mine. This proposed Rilda Canyon facilities addition is for 10.2 acres of surface disturbance of which 4.9 acres are on land pre-disturbed by four pre-SMCRA mines that were reclaimed by the Utah AML program in 1988. NEPA review was conducted on the reclamation work that was completed. Utah reviewed this proposal with the permittee this past fall and concluded that the addition of a 10-acre surface facility was not a significant permit revision and was also contained wholly within federal coal lease lands. However, this proposal does require public notice since it occurs within 100 feet of a public road.

Utah does not believe the proposed revision meets any of the criteria listed under 30 CFR 746.18(d). Mine Plan Modifications specifically deal with leased federal coal. This proposal is to develop surface facilities to access state coal. These surface facilities will be permitted under the SMCRA process, which analyzes for all environmental issues. Therefore, this proposal should not be considered as an MPM.

However, in the event that, for adequate reason, OSM determines that the revision does constitute a Mine Plan Modification, Utah certainly urges compliance with 30 CFR 740.4(c)(7). This portion of the Code of Federal regulations requires OSM to be responsible for:

- (i) determining the scope, content and format and ensuring the objectivity of NEPA compliance documents,
- (ii) making the determination of whether or not the preparation of an EIS is required, and
- (iii) all other NEPA requirements.

Utah does not believe these NEPA responsibilities can be delegated.

Also, if OSM determines that NEPA must be undertaken, Utah can provide the services of qualified staff to assist with the preparation of documentation to comply with NEPA as provided in 30 CFR 740.4(c)(7).

Please contact me if you require further information or clarification and coordination. Thank you for the opportunity to formally comment on this issue.

Sincerely,

Mary Ann Wright
Associate Director, Mining

cc: Manti-LaSal
BLM
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