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# United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

P.O. Box 46667

Denver, Colorado 80201-6667

DEC 05 2005

DIV. OF OIL, GAS & MINING

December 2, 2005

IN REPLY REFER TO:

Mr. Jack Troyer, Regional Forester  
Intermountain Region  
Federal Building  
324 25th Street  
Ogden, UT 84401-2310

*Inclosure  
0/015/0018  
general  
Copy Mary Ann,  
Wayne H, Pam*

Dear. Mr. Troyer:

On January 23, 2004, you and I met with Bureau of Land Management (BLM) State Director Sally Wisely and Utah Division of Oil, Gas and Mining (DOGGM) Director Lowell Braxton. The Office of Surface Mining (OSM) presented its view that regulations governing surface coal mining on Federal lands prescribed a unified approach to permit approval, including compliance with the National Environmental Policy Act (NEPA). We believed there was a general agreement regarding this approach.

Subsequent events concerning a modification to the permit and mining plan for the Deer Creek Mine located in Rilda Canyon disclosed that the Forest Service had a different view. In that case, OSM directed the development of the environmental assessment, with involvement by the Forest Service and DOGM, and prepared a Finding of No Significant Impact (FONSI). However, the Forest Service declined to rely upon that FONSI and instead issued a separate FONSI. The Service also determined that an additional public notice and comment period were necessary, invoking the provisions at 36 CFR Part 215 prescribing notice, comment, and appeal procedures for projects and activities on Forest lands. We respectfully disagree with those actions, which we believe are inconsistent with NEPA compliance guidance provided by the Council on Environmental Quality (CEQ), which endorse the concept of a lead agency and single NEPA compliance document for each Federal action, and with the regulations at 36 CFR 215.12(h), which provide that Forest Service concurrences and recommendations to other Federal agencies are not subject to appeal. Under 30 CFR 740.4(e)(4), the Forest Service's role in the mining plan review process is one of concurrence (or non-concurrence, as the case may be). Therefore, we do not understand why the Forest Service prepared a separate FONSI and designated that action as appealable. These unnecessary actions have added four months to you providing your concurrence which is necessary for mining plan approval.

By letter dated September 7, 2005, the Associate Director of DOGM asked that OSM assist in coordinating the resolution of conflicts and difficulties between DOGM and the Forest Service. I arranged for OSM Division Chief Jim Fulton to meet with Barry Burkhardt and Alice Carlton of the Forest Service, and Mary Ann Wright of DOGM. I understand that the meeting resulted in all participants having a better appreciation of



each agency's needs. In addition, the Forest Service and DOGM agreed to meet earlier and more often on each specific permitting action. However, the Forest Service was not able to agree to the unified approach discussed during the January, 2004 meeting.

The Forest Service, DOGM, and OSM have overlapping responsibilities with regard to the regulation of surface coal mining operations proposed to take place on Forest Service lands in the State of Utah. OSM continues to believe, in the interest of good government, that a unified approach is best for each of our agencies as well as the public and the coal operators. I believe some of the conflict and difficulties cited by DOGM directly result from the lack of a unified approach. The unified arrangement we are proposing will promote the best use of available agency resources, minimize duplication of effort, and streamline the decision-making process while respecting each of our respective responsibilities.

The arrangement we are proposing will:

- Improve decision-making by making the permit application and mining plan review process more transparent to the public and more predictable and understandable for the regulated community;
- Enable OSM, DOGM, and the Forest Service to work together to catalog threatened and endangered (T&E) species, cultural and historic properties, and address related issues at the earliest possible stages of the review process, thereby putting each of us on the same page with respect to the measures needed to address those concerns;
- Establish the Surface Mining Control and Reclamation Act (SMCRA) regulatory authority (DOGM) as the suggested focal point and the SMCRA permit as the platform for initial data collection, resulting in a complete application;
- Improve the efficiency and effectiveness of the review and decision-making process through greater collaboration and better and more frequent communications among DOGM, the Forest Service, and any other agencies involved; and
- Clarify opportunities for public involvement and decision points for administrative and judicial review.

In February 2005, OSM, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency signed a memorandum of understanding (MOU) agreeing to consolidate and coordinate permitting actions related to surface coal mining activities that involve placing fill materials in waters of the United States in connection with a SMCRA permit. The MOU offers a framework to both improve and streamline permit application procedures for each of the agencies. The MOU encourages the development of unified approaches that meet the needs of each

agency, with the SMCRA permit as the platform for the process. I believe the approach taken in the MOU is similar to the unified approach I am advocating for coal mining on Forest Service lands.

In this case, the SMCRA permitting process is governed by the Utah coal regulatory program (including the cooperative agreement between OSM and Utah for State regulation of coal mining on Federal lands), while the Federal regulations at 30 CFR Parts 740 and 746 govern the mining plan review and approval process. Those regulations specify roles for DOGM, the Forest Service and OSM. They were developed by a team that included Forest Service and BLM representatives, as well as OSM.

Under the cooperative agreement with Utah, DOGM has been delegated the responsibility to review and issue a SMCRA permit for proposed operations involving Federal lands. If the Forest Service manages the land overlying the coal to be mined, the Forest Service may require that the SMCRA permit include terms and conditions to protect noncoal resources and it must specify or concur with the proposed postmining land use.

If the proposed operation involves leased Federal coal, the Secretary of the Interior also must approve a mining plan pursuant to 30 CFR Part 746 and section 207(c) of the Mineral Leasing Act before the permittee may begin operations. Under 30 CFR 740.4(e)(4), the Federal surface management agency also must concur with the terms of the mining plan approval. Pursuant to 30 CFR Part 746, OSM is responsible for preparing a mining plan decision document and forwarding that document to the Assistant Secretary-Land and Minerals Management for approval, disapproval, or conditional approval. The mining plan consists of the SMCRA permit application package and DOGM's decision on the application, as well as the Forest Service's concurrence pursuant to 30 CFR 740.4(e)(4). The Assistant Secretary's decision on the mining plan is a Federal action. Under 30 CFR 740.4(c), OSM has the primary responsibility for NEPA compliance actions related to that Federal action. The regulations provide for notification of the Forest Service and other Federal and State agencies and solicitation of their views, but OSM alone is ultimately responsible for determining the scope, content, and format of NEPA compliance documents.

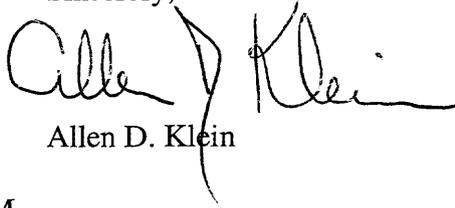
Under 30 CFR 746.18, the same principles apply to proposed revisions to an approved SMCRA permit, provided that OSM determines, using the criteria in 30 CFR 746.18(d), that a proposed revision constitutes a mining plan modification.

To summarize, we do not believe that the Forest Service role in the mining plan review and decision process should be considered an independent Federal action subject to separate NEPA compliance. Providing comments and recommendations to DOGM and concurring with terms of the mining plan approval should be considered part of the process leading to the Assistant Secretary's decision on the mining plan, which is the only Federal action in this process subject to NEPA.

This conclusion is consistent with the "lead agency" concept prescribed by the NEPA compliance regulations adopted by the Council on Environmental Quality. Those regulations envision one NEPA compliance process for each Federal action. In the instant case, we are addressing one Federal action, a single coal mine for which each of our agencies has a responsibility. Thus, only a single NEPA compliance process is required.

In summary, we are advocating the adoption of a single coordinated NEPA compliance process for each proposed mine on Forest Service lands in Utah, with that process tailored to meet the needs of the Forest Service, DOGM, and OSM. Such an approach would streamline the decision-making process, minimize duplication, and represent good government. I would appreciate your consideration of this approach. To that end, I have asked Jim Fulton to contact Barry Burkhardt and Mary Ann Wright to schedule a meeting involving you and I on this topic. I suggest that the meeting include only representatives of Utah DOGM, the Forest Service and OSM and that we limit the number of attendees as much as possible. Please contact me if you wish to discuss this letter further in advance of any meeting that may be arranged.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen D. Klein". The signature is written in a cursive style with a large, sweeping "A" and "K".

Allen D. Klein

CC: John Baza, Mary Ann Wright, DOGM  
Barry Burkhardt, Alice Carlton, Forest Service  
Pete Rutledge, Jim Fulton, OSM