

WildLaw

A Non-profit Environmental Law Firm

January 27, 2006

ATTN: COAL PROGRAM
Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114

Jacobs
1/27/06

RE: Additional Information per January 24, 2006 Informal Conference held for Pacificorp
Deer Creek Mine Permit Renewal Application Objection

To Whom It May Concern:

This additional information is respectfully being submitted per the January 24th Informal Conference held in response to the objection filed on behalf of the Utah Environmental Congress (UEC) for the above referenced project located on the Manti-La Sal National Forest. Utah Admin. Code R645-300-122. With this additional information it is our hope that UEC's objection can be resolved through reasonable and practical conditions being added to the permit renewal. Our objection to this permit renewal is enclosed for reference.

To clarify issues surrounding permit renewals and our objection to this permit renewal, the Division of Oil, Gas, and Mining will allow a permittee to renew its permit unless:

233.120. The present coal mining and reclamation operations are not in compliance with the environmental protection standards of the State Program;

233.130. The requested renewal substantially jeopardizes the operator's continuing ability to comply with the State Program on existing permit areas;

Federal regulations cited in UEC's attached permit renewal objection (atch #1) were incorporated into the state's environmental protection program that allows the state to perform certain limited NEPA related duties. This includes 30 C.F.R. §740.4(c)(7) and section 523 of the SMCRA. The permit renewal also must comply with environmental protection standards and laws including the National Forest Management Act, the Forest Plan, NFMA implementing regulations at 36 CFR§219 that are cited and relied upon in the EA, and NEPA. When the Deer Creek mine plan modification occurred last year, the provisions of these standards, laws, and regulations were not met, and thereby violated the state's environmental protection standards. This is a concern pertinent to this permit renewal because the permit to be renewed contains the modifications made in the second half of 2005 that did not meet required environmental protection standards and laws.

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DIV. OF OIL, GAS & MINING

As a preliminary issue, it is clear that there has been dispute between the Forest Service and DOGM in this process. See attachment #2, a letter from UDOGM staff dated September 7, 2005. A time line of events is included in that letter. UEC was not aware of this dispute at that time, as we had been of the understanding that the Forest Service was going to issue a decision document subject to the Appeal Reform Act regulations (36 CFR§215) , as amended in 2003. Attachment 3 provides supporting reasons for that. It is the legal notices for the 36 CFR §215.6 substantive comment and appeal opportunities for administratively appealable Forest Service actions.

-Additional information that is relevant:

-Attachment 4 is the first part of the July 27 UDOGM decision document.

-Attachment 5 is the August 1 OSM FONSI.

-Attachment 6 is a letter from the Forest Service to UDOGM dated July 6, 2005. This letter, which pre-dates the July 22 EA, the July 27 UDOGM decision document, and the August 1 OSM FONSI, indicated that June 2nd revision to the company's application for surface facilities looked to be consistent with the Forest Plan and it's coal lease stipulations. It also indicates that the F.S. looks forward to continuing to work with DOGM as a Cooperating Agency as it completes the EA and other SMACRA permitting processes. UEC acknowledges that the letter is poorly written because it is not as clear as it could have been, and that may be why it is now being considered as the Forest Service's consent for the modification to the mine permit. However it seems logical that consent for a decision can only be given once the decision has been made.

-Attachment 7 is the December 1, 2005 consent letter from the Forest Service to UDOGM for the modification to the plan, which is presently up for renewal. It says the decision may be implemented on December 20, 2005.

The OSM issued a final decision to implement that modification on December 21, 2005. This letter is in the UDOGM file. That letter is in response to the F.S. consent of December 1st. The USDI BLM completed it's review (attachment 8) on December 23, 2005.

It is not UEC's intent here be involved in the details of resolving disagreements between UDOGM and the F.S., nor is it our intent to force resolution of that disagreement. But from the outside that disagreement reflects poorly on the agencies and we hope it is resolved amicably. Having said that, the UEC is aware of a substantive problem that was created. It is outlined below.

Attachment 7 (FS December 1 consent) outlines substantive conditions not carried into the mine plan modification that also are not contained in the permit that is up for renewal. The consent letter says, "Forest Service consent is conditioned upon the inclusion of terms in the mine plan that requires compliance with the Forest Plan standard for macroinvertebrates." That standard is

found in attachment 9. It's the BCI of 75 for the macroinvertebrates aquatic Management Indicator Species.

UEC requests that this be added as a condition in the permit renewal. We recommend doing this by incorporating this component of the appeal resolution that UEC signed with the F.S. that is attached to our objection. UEC had agreed to a modification of that which was never finalized that resolved company liability concerns. That amended agreement is attached (#10) and relevant text is below:

B) The mine operator shall monitor macroinvertebrates and water quality at 2 locations in Rilda Creek (upstream and downstream of the stream improvement project area). Samples may be collected with the same protocol used by UDWR for the initial, baseline studies. However, the macroinvertebrates monitoring shall be done at least twice each year (dates to be determined by the Coordinating Group) for 5 years after approval of the Rilda Canyon Facility project. This data and any supplemental reports will be included in the annual progress reports that will be submitted to DOGM. BCI will be included in the metrics calculated from the samples. At the end of 5 years, if macroinvertebrate monitoring does not result in meeting the original Forest Plan standard (1986, as amended) of a BCI of 75, the Forest Service will work with DOGM to determine if it is due to mining related activity. If the cause is determined to be mining related, the Forest Service will work with DOGM to identify actions to resolve the macroinvertebrate concerns. DOGM, with Forest Service concurrence, will require the mining company to initiate corrective action. During the evaluation period the Forest Service will make a good faith effort to contact UEC, to meet, review data, and discuss actions available to resolve macroinvertebrate concerns. All obligations established in this agreement expire six years from the day that permitting for the new Rilda Canyon facility is finalized.

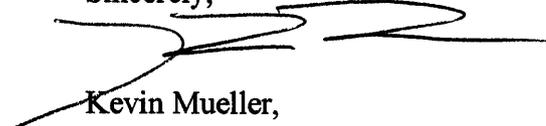
Finally UEC asks you to resolve this issue by also adding part C (below) as a condition of the permit renewal:

C) The approximately 200 acres of timber harvesting said to be included for (big/small game and migratory bird) Wildlife Mitigation on Table 300-5 (page 21 of 'R645-301-300 Biology' document) is removed. It is recognized that removal of the timber harvesting component of Table 300-5 may result in other parts of this measure not occurring.

Our objection outlines why.

Thank you for your offer to submit additional information, and please give me a call any time.

Sincerely,



Kevin Mueller,
Executive Director, UEC

1817 S. Main Street; Suite 10
Salt Lake City, UT 84115
801-474-2626

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