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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

April 23, 2018

Ken Fleck, Manager of Geology and Environmental Affairs
Interwest Mining Company
P.O. Box 310
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions, and Order for Violation NO21195, PacifiCorp, Deer Creek Mine, C/015/0018

Dear Mr. Fleck:

On June 9, 2017 an Informal Assessment Conference was held at the Division of Oil, Gas and Mining regarding a violation Issued to PacifiCorp at the Deer Creek Mine. As a result of the facts given at the conference I have vacated the violation and directed the Division to reflect that in the record. The assessed fine of \$660 is hereby rescinded.

Sincerely,

Dana Dean, P.E.
Associate Director
Assessment Conference Officer

DD/vs

cc:

Daron Haddock

John webster

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At the request of Interwest Mining Company (IMC) an informal conference was held June 9, 2017 at 10:00 a. m. at the offices of the Utah Division of Oil, Gas and Mining, 1594 West North Temple Street, Salt Lake City, Utah 84116. Dana Dean, Associate Director of Mining for the Utah Division of Oil, Gas and Mining was the presiding officer and conducted the conference. Steve Alder, Assistant Utah Attorney General assisted The Associate Director at the conference. The Division presented the facts pertaining to the Notice of violation and the Operator presented evidence and witnesses to explain their objections. At the end to the presentations the matter was taken under advisement. Having considered the statements and evidence presented by the parties and their representatives, the Division makes the following Findings of Fact, Conclusions of law and Order.

Findings of Fact

1. Interwest Mining Company (IMC) is the operator on behalf of Pacificorp, the Permittee of the Deer Creek Mine C/015/0018 located in Emery County, Utah.
2. On April 7, 2017 the Division of Oil, Gas and Mining (Division) as part of its annual inspection of the mine requested information concerning the 2016 annual raptor survey.
3. The Division was advised that the Permittee did not conduct a raptor survey during the 2016 year and issued Notice of Violation #21195 (NOV) on April 10, 2017.
4. Interwest Mining Company submitted a written request on April 26, 2017 for an informal conference to contest the fact of the violation and the amount of the penalty. The conference was scheduled by the Division for June 9, 2017.
5. The Division, Inspector Lisa Reinhart presented the facts and reasons for issuing the NOV. Lynn Kunzler of the Division explained the calculation of the penalty. Meg Osswald, Assistant Utah Attorney General assisted the Division at the conference.
6. Ken Fleck responded on behalf of IMC. Megan Mckay, inhouse counsel for Pacificorp was present and represented IMC. Also present on behalf of IMC was Dennis Oakley.
7. The violation was based on the obligations at Volume 11, Page 18 of the MRP and item #9 of Protection and Enhancement Plan to conduct annual surveys as a requirement under Utah Admin. Code rule R645-301-330.
8. The abatement action required by the NOV was to conduct the survey for the 2017 year since it was not possible to abate the failure to comply by a survey for 2016 year. The Permittee was advised that if they wanted to reduce the survey area or to make the requirement dependent on the location of surface disturbing activities a modification to the mine plan should be requested.
9. The permittee has a history of conducting surveys without problems or interruption since the early 1980s and this is the first year since that time that no survey has been completed.
10. Past survey efforts have involved extra efforts to collect data using helicopters and other equipment in cooperation with the Utah Division of Wildlife Resources.

11. The Rilda Portal was constructed in 2006 and is slightly more than one-half mile from the nearest raptor nest as documented by Laura Roman, a biologist for Utah Division of Wildlife.
12. Due to the plans to shut down the mine, the Rilda Portal was the only part of the mine that was active during the 2016 year and the work there consisted of maintenance of ventilation fans and monitoring of the mine since mining had ceased in January 2015.
13. The Permittee believed it was not required to conduct a survey due to the lack of surface disturbing activity during the 2016 year and because the nearest known next was more than 1/2 mile away from the Rilda Portal.
14. The Division inspector confirmed that there is only one nest within 1/2 mile of the Rilda Portal and that there was no other mining activities during the 2016 year, but they should revise the MRP if no they desire to discontinue the annual raptor survey requirement during active mining and reclamation.
15. The inspector also advised the permittee at the hearing that the MRP states that there are three nests in the 1/2 mile radius of the portal and that they should revise the MRP to correct the error. The one nest near the portal was active in 2016 according to the Division inspector.

Conclusions of Law

1. The Rules require that the permittee in coordination with the wildlife management agencies adopt a Wildlife Resource Enhancement and Protection Plan. R645-301-330
2. MRP requires annual surveys of raptor nest if there are surface disturbing activities within one half mile of a known nest.
3. The Permittee did not modify the obligation to conduct surveys although it has ceased and discontinued mining and surface disturbing activities.
4. The operations near the Rilda Portal did not cause subsidence or surface disturbance since the truck traffic was on existing roads and was not reasonably expected to impact the identified nest that nearest the portal.
5. Based on the lack of surface disturbing activities by the Permittee during the 2016 year, the Permittee was not required by the MRP to conduct a raptor survey.

Based on the foregoing findings and conclusions, the Notice of Violation is vacated.

SO DETERMINED AND ORDERED this 23rd day of April 2018

A handwritten signature in blue ink, appearing to read 'Dana Dean', is written above a horizontal line.

Dana Dean, P.E., Associate Director

Division of Oil, Gas and Mining