



United States Department of the Interior



OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
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Denver, CO 80202-3050

March 21, 2019

Mr. John Baza, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84116

**Re: Clarification Letter: MRP Modification and Phase III Bond Release; Task #5775;
PacifiCorp; Deer Creek Mine; C/015/0018**

Dear Mr. Baza:

Through this letter, the Office of Surface Mining Reclamation and Enforcement (OSMRE) issues a correction to documentation associated with the recent permitting actions and Phase III bond release at the Deer Creek Mine, Rilda Canyon Left Fork Facilities area.¹ This is in response to mischaracterization of a reclamation plan revision as a post-mining land use change, which apparently originated from a letter provided by the United States Forest Service (USFS). OSMRE additionally seeks to clarify agency roles and responsibilities as they pertain to changes in approved Mining and Reclamation Plans (MRP), post-mining land uses, and bond release procedures.

BACKGROUND

On June 4, 2018, the USFS initiated a prescribed burn on Trail Mountain in the Manti-LaSal National Forest. The prescribed burn escaped containment and migrated over East Mountain and into Huntington Canyon. The fire engulfed Rilda Canyon on June 11, 2018, denuding upland areas of the canyon including those above disturbed lands associated with PacifiCorp's Deer Creek mine permit area and the North Emery Water Users Special Service District (NEWUSSD) spring-collection system. Due to the severity of the fire, erosive debris flows are expected to occur prior to the re-establishment of vegetation which could help stabilize surface soils. As a result, regulatory agencies including the Division of Oil, Gas and Mining (DOGM) and the USFS acknowledged the need to expedite construction of emergency facilities to address the anticipated environmental hazards. The USFS developed an emergency plan to construct a catchment basin at the head of Rilda Canyon, within the disturbance footprint of PacifiCorp's Left Fork Facilities permit area, to mitigate expected debris flows and protect municipal culinary water supplied by NEWUSSD. This plan was incorporated into PacifiCorp's permit and implemented under expedited emergency circumstances. On November 6, 2018, DOGM notified OSMRE of PacifiCorp's application for bond release of the 2.33 acre parcel in Rilda Canyon. OSMRE

¹ In a letter dated January 29, 2019, OSMRE provided its concurrence with the proposed Phase III bond release of 2.33 acres at PacifiCorp's Deer Creek Mine, Rilda Canyon Left Fork Facilities area.

participated in the associated field evaluation on November 27, 2018. DOGM determined that PacifiCorp completed all required reclamation in accordance with its MRP and the Utah program, in satisfaction of the bond release criteria at R645-301-880.310 through R645-301-880.330. OSMRE concurred with this decision on January 29, 2019, and continues to agree that PacifiCorp has satisfied all reclamation obligations within this portion of its permit.

DISCUSSION

The USFS administers the surface estate within Rilda Canyon including PacifiCorp's permit area. As the Federal land management agency (FLMA), the USFS is authorized to determine the post-mining land use in accordance with 30 C.F.R. § 740.4(e)(1). While the FLMA is responsible for determining the post-mining land use, it is incumbent upon the permittee to incorporate that land use into its permitted reclamation plan and, after reclamation is complete, demonstrate that the land is capable of supporting the identified use prior to attaining bond release. DOGM administers SMCRA permitting responsibilities pursuant to the Utah program and its State-Federal Cooperative Agreement.² The USFS submitted a request to DOGM on PacifiCorp's behalf to modify the coal mining permit. OSMRE understands that PacifiCorp's MRP was revised to modify the reclamation plan at the USFS's request to construct a permanent catchment basin without changing the existing post-mining land use of wildlife habitat. Under the revised MRP, PacifiCorp was required to complete tasks such as removing a retaining wall and guardrails, and installing a locking gate along a permanent access road. The USFS then completed construction of its catchment basin under the revised MRP in July, 2018.

While OSMRE acknowledges the urgent circumstances under which these requests and approvals were made, we must correct misstatements originating from the USFS's correspondence, which were subsequently included in additional documentation.³ The USFS's letter requested a "post-mining change to the reclamation plan" which was subsequently mischaracterized in PacifiCorp's October 29, 2018, Phase III bond release application as a *post-mining land use change*. A post-mining land use change never occurred nor was such change necessary. The catchment basin was instead approved by DOGM as a permanent feature within the MRP, at the FMLA's request, consistent with the existing wildlife habitat post-mining land use. This changed the previous reclamation plan from a vegetated 2.33 acre wildlife habitat area without water or sediment retaining features to create a large permanent catchment basin within the disturbed area footprint. Because permanent impoundments and permanent access roads do not have revegetation responsibilities, a ten-year revegetation responsibility period was not required after the completion of all permitted reclamation activities.⁴ As such, DOGM's decision to

² See 30 C.F.R. §§ 740.4(c) and 944.30.

³ In its July 2, 2018 letter to DOGM, USFS states:

As the federal land management agency (FLMA), the FS would like to request a post-mining change to the reclamation plan in accordance with 30 CFR § 740.4(c)(2) to include a debris catchment basin for the protection of municipal water supplies at the Left Fork Rilda Portal reclamation site.

Furthermore, with the FS taking control over this area for post-fire mitigation purposes and removing these sites from the mine permit, this action absolves PacifiCorp from any further reclamation obligations and performance standards for these areas being removed from the mine permit.

Letter from Forest Service Ferron District Ranger to DOGM Coal Program Manager at 1 (July 2, 2018).

⁴ See R645-301-542.320, R645-301-542.400, and R645-301-733.220.

approve Phase III bond release without imposing a ten-year liability period was appropriate.

Of potentially greater concern, OSMRE must also clarify misstatements made by the USFS regarding its perceived ability to release permittees from obligations established under SMCRA and the approved Utah coal regulatory program. Specifically, the USFS indicated its intent to “approve final reclamation of the Left Fork Rilda disturbance area . . .” and to “absolve PacifiCorp from any further reclamation obligations and performance standards for these areas being removed from the mine permit.”⁵ The USFS possesses no authority to approve reclamation or absolve permittees of legal obligations under SMCRA. Rather, SMCRA, the Federal regulations, and the Utah State-Federal Cooperative Agreement vest this authority to DOGM. Reclamation work completed must be approved, and liability must be released, by DOGM through appropriate bond release criteria established under the Utah program. Reclamation work in the Rilda Canyon Left Fork Facilities area was approved and bond release was authorized by DOGM with OSMRE’s concurrence.

CONCLUSION

In sum, the USFS incorrectly assumed the authority to absolve PacifiCorp of its outstanding reclamation obligations under a SMCRA permit and employed confusing terminology which resulted in mischaracterization by PacifiCorp of an MRP revision as a post-mining land use change. While these statements were likely made in error due to the emergent nature of the Trail Mountain wildfire, we believe this correction letter is necessary to properly document these occurrences in the permit file and to prevent future confusion.

Sincerely,



Howard E. Strand, Manager
Denver Field Branch

C: Dana Dean, DOGM
Steve Christensen, DOGM
Kenneth Fleck, Interwest Mining Company / PacifiCorp (PacifiCorp)
Chuck Semborski, PacifiCorp
Dennis Oakley, PacifiCorp
Jeff Salow, USFS
Darren Olsen, USFS

⁵ USFS Letter at page 1.