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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
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April 8, 1991



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Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

RECEIVED

APR 11 1991

**DIVISION OF
OIL GAS & MINING**

Re: Ten-Day Letter 91-02-116-001, Violation 2 of 2

Dear Dr. Nielson:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above Ten-Day Letter (TDL):

On February 28, 1991, the Albuquerque Field Office (AFO) conducted a joint random sample oversight inspection of the Cottonwood/Wilberg Mine. *Act 10/15/019*
The inspection resulted in the issuance of TDL 91-02-116-001 (dated March 7, 1991), which was received by DOGM on March 11, 1991. The DOGM response was received by AFO on March 21, 1991, and will be considered a timely response.

The TDL 91-02-116-001, violation 2 of 2, reads: "Failure to backfill and grade surface areas disturbed incident to underground coal mining activities in accordance with a time schedule approved by the Division as a condition of the permit. Location: Proposed Cottonwood Fan Portal site. Regulation believed to have been violated: UMC 817.101(a)."

The DOGM response indicates UMC 817.101(a) was inappropriately cited and further states that there is no counterpart to UMC 817.100 (Contemporaneous Reclamation) approved as part of the State Program.

AFO, after consultation with Western Support Center Program Evaluation staff, believes that the discussion in 55 FR 13773, 13778 dated April 12, 1990, regarding contemporaneous reclamation (R614-301-352), infers that the Office of Surface Mining Reclamation and Enforcement's (OSM) Director recognizes the previously approved Utah rule at UMC 817.101(a) for underground mines, just as OSM recognized the previously approved Utah rule at SMC 816.101(a) for surface mines. AFO agrees with the DOGM response that there is no counterpart to UMC 817.100 (Contemporaneous Reclamation) currently approved as part of the State Program. OSM is

currently processing DOGM's Round II, R614 Rules Amendment package. The contemporaneous reclamation rule at R614-301-352 is included in this amendment and appears to be approvable as proposed. In this context, AFO finds the DOGM response to TDL 91-02-116-001, violation 2 of 2, to be good cause for no action at this time.

The Cottonwood Fan Portal site was excavated in 1980 with the resulting disturbed areas and soil stockpiles revegetated in 1981. The site has not been utilized to facilitate mining since 1981. The approved DOGM permit renewal for permit ACT/015/019 contains two stipulations concerning compliance with UMC 817.24-(1) and UMC 817.41-(1) dated July 6, 1989. The stipulations which required submission of a complete reclamation plan for the Cottonwood Fan Portal site including topsoil redistribution and revegetation plans have been satisfied by the permittee. Applicable sections of the permit including: Part III - Operation Plan at page 3-20.1 through 3-26; Part IV - Reclamation Plan at page 4-4 through 4-4.2 and 4-27 through 4-29, do not document the permittee's intent to develop the fan portal during the approved 5-year permit term nor beyond.

AFO recommends that DOGM re-evaluate the above permit sections after OSM approval of Rule R614-301-352 to ensure the permittee is in compliance with the contemporaneous reclamation provision. AFO believes that either more specific fan portal reclamation timeframes should be requested from the permittee for incorporation into the permit, or definite plans for the utilization of the area for a fan portal in the near future should be requested to provide justification for not commencing final reclamation.

Please address any questions concerning this finding to Stephen Rathbun or Henry Austin at (505) 766-1486.

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office