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United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

ACT/0151019

mine file
Cottonwood/Wilberg
& Des-Bee-Dove
TAKE PRIDE IN AMERICA

MAR 5 1991

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MAR 11 1991

DIVISION OF
OIL GAS & MINING

cc L. Braxton
Dennis Drago
Mitchell

Dianne R. Nielson, Ph.D.
Director, Division of Oil, Gas,
and Mining
3 Triad Center, Suite 350
35 West North Temple
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson: *Diane*

This is in response to your February 13, 1991, requests for informal review of ten-day notice numbers 91-02-244-01 and 91-02-244-02 concerning Utah Power & Light Company's Cottonwood/Wilberg Mine (permit number ACT/015/019) and Des-Bee-Dove Mine (permit number ACT/015/017), respectively. The ten-day notices allege that there was a failure to obtain prior written approval in accordance with Utah rule R614-303-300 before the transfer, assignment, or sale of rights granted by permit from the original permittee to its successor, Pacificorp.

In your request for informal review, you ask that all relevant information concerning the issues you raised in a recent and directly related case, Utah Power & Light Company's Deer Creek Mine, TDN 90-02-244-06, be considered as your position in the instant cases.

As I explained in my January 14, 1991, decision in the Deer Creek case and reiterated in my February 4, 1991, follow-up letter, it is a requirement of the Utah program that whenever a person is found to be conducting surface mining operations without an approved transfer, assignment, or sale of permit rights, a violation of the approved regulatory program must exist and, therefore, an enforcement action is required. Under the Utah program at R614-303-310, your agency is required to take appropriate enforcement action in situations where an unapproved entity is found to be engaged in surface mining operations until such time as a transfer, assignment, or sale of permit rights has been approved by your agency. Such enforcement actions are required regardless of whether or not an application for transfer, assignment, or sale has been submitted or is currently being processed by your agency.

Since, as you point out, the facts in the instant cases are identical to those in the Deer Creek case, including your agency's decision not to take the required enforcement action, I

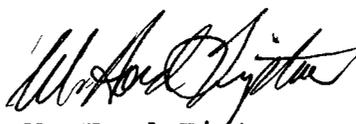
Dianne R. Nielson, Ph.D.

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find no basis to depart from my previous determination that your agency's decision constitutes a failure to take appropriate action. Accordingly, I am affirming the determination of the Albuquerque Field Office Director for the same reasons explained in my January 14, 1991, letter in which I rendered my decision on the Deer Creek Mine case, and hereby order a Federal inspection of the permits ACT/015/019 and ACT/015/017.

I am hopeful that future implementation of the pending memorandum of understanding will eliminate these types of differences between our respective agencies regarding the need to take enforcement actions when violations are found to exist.

Sincerely,



W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: Utah Power & Light Company
P.O. Box 310
Huntington, Utah 84528

Robert H. Hagen
Director, Albuquerque Field Office

Nina Rose Hatfield
Assistant Deputy Director
Operations and Technical Services

Carl C. Close
Assistant Director, Eastern Support Center

Raymond Lowrie
Assistant Director, Western Support Center

Joel Yudson
Assistant Solicitor, Regulatory Programs



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director

Dianne R. Nielson, Ph.D.
Division Director

365 West North Temple
3 Third Center, Suite 850
Salt Lake City, Utah 84103 1203
801-636-6340

February 13, 1991

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 124

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310, Silver Square
625 Silver Avenue, S.W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: Request for Informal Review of Ten-Day Notice X91-02-244-01 TV1, Utah Power & Light, Cottonwood/Wilberg Mine, ACT/015/019, Folder #5, Emery County, Utah

The Division hereby requests an informal review of the AFO's decision to our response concerning the above-referenced TDN. As you have noted, the issues in this TDN parallel those of earlier TDN 90-02-244-6 for the Dear Creek Mine. Therefore, I request that all relevant information from that review be considered in this case.

Thank you for your assistance with this matter.

Best regards,

Dianne R. Nielson
Director

vb
cc: L. Braxton
MI54/13



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

ACT/015/019 orig mine file
EX 3/11/91
C. H. Buxton
T. Mitchell
DRW
D. Drago

March 15, 1991

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 368

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

Re: Informal Review of Ten-Day Notices 91-02-244-01 and 91-02-244-02,
Cottonwood/Wilberg and Des-Bee-Dove Mines, Utah Power & Light
Company

Dear Dr. Nielson:

The Albuquerque Field Office (AFO) has received the final determination of the results of the Division of Oil, Gas and Mining's (DOGM) appeal of the above-mentioned Ten-Day Notices (TDN) by the Office of Surface Mining Reclamation and Enforcement's (OSM) Deputy Director, W. Hord Tipton. To briefly reiterate that finding of March 5, 1991, the Deputy Director affirmed the finding by AFO of DOGM's failure to take appropriate action on both TDN's. After rendering that decision, the Deputy Director ordered a Federal reinspection of the permits in violation.

It is AFO's understanding that one of those permits, ACT/015/019 for the Cottonwood/Wilberg Mine, has been transferred, in full in accordance with the required regulatory guidelines, to PacifiCorp on February 15, 1991. That being the case, a reinspection of the permit for compliance will no longer be necessary. The matter of an outstanding TDN will be closed with the record showing that the violation no longer exists.

ACT/015/017
As to the second TDN, No. 91-02-244-02 for the Des-Bee-Dove Mine permit transfer, it is AFO's understanding that the permit transfer is still pending. This being the case, it will be necessary to reinspect the permit. Your office will be given the opportunity to accompany OSM on

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DIVISION OF
OIL GAS & MINING

Dr. Dianne R. Nielson

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the inspection. Notice of that inspection will be forthcoming. At that time, pending the finding that the violation still exists and should your office decline to take enforcement action, Federal enforcement will be taken.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Hagen", with a long horizontal flourish extending to the right.

Robert H. Hagen, Director
Albuquerque Field Office