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DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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April 29, 1991

W. Hord Tipton
Deputy Director
Office of Surface Mining
Department of the Interior
1951 Constitution Avenue NW
Washington D.C. 20240

Dear Mr. Tipton:

Re: Appeals of Ten-Day Notice Responses
TDN 91-02-246-2 TV2, Crandall Canyon Mine
TDN 91-02-116-3 TVI, Cottonwood/Wilberg Mine
TDN 91-02-246-1 TV1, Deer Creek Mine

The purpose of this letter is to appeal the inappropriate responses by OSM-Albuquerque to the above-referenced TDNs which have been issued to the Division. The initial Division response to the TDNs and AFO's responses to the Division are attached. Also attached is OSM's April 18, 1991 letter regarding roads.

The Division hereby requests that you vacate the TDNs and forego any further TDNs regarding permitting of roads until the state and OSM have completed their review and approval decisions concerning rulemaking/program amendments. The justification for this recommendation is presented in the initial responses from the Division (attached) and the following reaction to the AFO's responses.

1. The AFO's misinterpretation of the status of the record on haul roads in Utah is disingenuous at best and borders on dishonest.

2. AFO assumes that the Division has already made decisions regarding roads. This is simply not true. The purpose of the state rulemaking is to provide authority and information for such reviews.

3. AFO was informed by the Division in March that the draft roads policy which it reviewed in its March 5, 1991 letter was not the same policy which was referenced in the state's rulemaking. AFO had been sent a copy of the final policy and proposed rule. Bob Hagen informed me that he was aware of the distinction

between the draft and final policies and that any comments on the final policy would be reserved for the program amendment review. However, AFO continues to reference the draft policy and its March 5, 1991 letter rather than the final policy. There are important differences.

4. The Division has not categorically excluded public roads from permitting.

5. The Board's emergency rule puts the state in compliance with its own rules and statutes and allows the Division to make the requests for information which are necessary to evaluate the roads in question.

6. The Division can take no other action in response to the TDNs until the rulemaking/program amendment process is complete. Furthermore, OSM has received comment from more than one respondent to the program amendment, stating that any road permitting actions taken by the Division during the term of the emergency rulemaking should be overturned. This should extend to TDN responses.

Thank you for your consideration of these concerns.

Best regards,

Dianne

Dianne R. Nielson
Director

lsj
cc: R. Hagen
T. Mitchell
L. Braxton
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