

0050



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Mine file

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April 29, 1992

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 713 890

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. *Rob* Hagen:

Re: TDN X92-02-352-002 TV1, Bear Canyon Mine, Co-Op Mining Company, ACT/015/025, Emery County, Utah

In accordance with the provisions of 30 CFR 842.11(b)(a)(ii)A, I am requesting an informal appeal of OSM's finding that DOGM's response to the above-referenced TDN was an arbitrary and capricious action.

OSM contends that the approved MRP does not demonstrate that all reasonably available spoil will be used in the elimination of existing highwalls, as is required by R645-301-553.520.

While DOGM recognizes there may have been some pre-SMCRA disturbance at Bear Canyon, the Division has required total elimination of highwalls via a Division Order issued November 27, 1990. At the time the order was issued, DOGM felt it was impossible to adequately calculate backfill, hence item 14 of this Order. In responding to the Order, Co-Op identified sufficient spoil to eliminate the highwalls, thus rendering compliance with R645-301-553.520 moot, since a more stringent requirement, elimination of all highwalls is a commitment of the current MRP. The portions of the approved MRP cited in the Division's response substantiates this position.

Subsequent to receipt of your April 17 letter, my staff has reviewed the Bear Canyon Plan, and finds that plan clearly shows elimination of the Highwall as a commitment in the plan on file

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at the time of the oversight inspection regulating in the TDN. If as a result of this review, the Division finds any inconsistencies in that plan, we will order rectification of these to support total elimination of highwalls.

The demonstration of the ability to eliminate highwalls in the MRP is a de facto demonstration of adequacy of spoil volume. I would be pleased to review portions of the approved MRP that substantiates this position with you, should you deem it necessary.

I would ask, however, that upon your determination that highwall elimination has been demonstrated in the MRP that the TDN be vacated, since the demonstration was in the MRP prior to issuance of the TDN.

Best regards,



Dianne R. Nielson
Director

vb
cc: L. Braxton
PFO
TDNBRCNYN