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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

*Mine File*

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May 22, 1992

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 540 713 896

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

Dear Mr. Hagen:

Re: Ten-Day Notice X92-02-352-003 TV1, Bear Canyon Mine,  
ACT/015/025, Emery County, Utah

This letter responds to the above-referenced Ten-Day Notice (TDN), the certified copy of which was received at the Division's Offices on April 14, 1992.

Number 1 of 1 reads: "Failure to provide cross sections of diversions. All diversions except D-1D, D-2D and D-7D." Section of regulations believed to have been violated: R645-301-722.200.

Division's Response: This is my second letter addressing the above-cited TDN, and is in response to your May 8, 1992 letter requesting additional information. You provided an additional ten days to respond, and your May 8, 1992 letter was received May 11, 1992.

In my first response, I indicated that the tabular information provided in the permit at pages 7-87 and 7-88 provides a cross sectional perspective of the diversions. On this basis the permittee is not hindering Utah, OSM, or the general public from gaining the information required under R645-301-722.200. Actually, I believe there is more information contained in these tables regarding the specifics of diversions than is contained in many "typical cross sections" that are submitted in satisfaction of 722.200 and 30 CFR 784.29.

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Your response dated May 8 chose to ignore the pragmatic ramifications of reviewing and approving tabularized data to satisfy 722.200. Instead, you chose to quote Webster's dictionary definition of a cross section, rather than addressing the adequacy of the data contained in the tables.

I do not question the need to provide the type of information required under 722.200. I disagree with your May 8, 1992 position that a "732" issue exists. The TDN response which triggered your threat of "732" action has not been found either appropriate or inappropriate, and I am surprised that your May 8, 1992 letter inferred the need for "732" prior to OSM's granting Utah due process for appeal under and proper consideration of the issue.

Your letter asked which part of the Utah Regulations require submission of cross sections for diversions. My response is that this requirement is found at R645-301-722 and R645-301-731, and 731.760. I believe these regulations are Utah's equivalent of 30 CFR 784 sections 23 and 29. Based on the preamble to 30 CFR 784.24, federal authority for these sections is found in the ACT at sections 102, 201(b), 503, 504, 507(b), 515, 516, and other locations as cited.

Section 201 (9) is illustrative with respect to this discussion. This section states that it is the purpose of the ACT to: "assist the states in the development of State programs...which meet the requirements of the Act and at the same time reflect local requirements and local environmental and agricultural conditions." I am not convinced that a "732" achieves this goal.

Section 516 discusses the surface effects of underground coal mining operations. Subsections (9)(B) and (11) discuss minimization of disturbances to hydrologic, fish, wildlife and other environmental values by using Best Technology Currently Available. Clearly there is latitude in the Act to determine what these best management practices should be. If there is latitude in the statute for determining performance, it follows that regulations deriving authority from that portion of the Act have discretion in interpretation. I believe this is the case with the cross section situation.

The fact that cross sections for diversions do not require certification supports the concept that they are intended for illustrative purposes. The type of information that is shown in a cross section enhances the general public's, OSM's, and the state RA's ability to determine compliance with performance

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standards. The tabularized data in the Bear Canyon MRP, cited above, provide as accurate an illustration of anticipated field performance as is provided by a "typical" cross section. In reality, these tabularized data enhance inspections by not burdening an inspector with the need to carry a number of cross sections to the field, when one table effectively summarizes approved field configuration for a large number of constructed diversions. Inspections of diversions compare the detail in the MRP with field configuration to determine if the dynamic of the diversion is erosional, depositional or static. Seasoned inspectors use the MAP data in conjunction with field configuration to determine compliance. The MRP detail requirements for this decision can readily be made with the detail provided in the above-referenced portion of the Bear Canyon MRP.

At Bear Canyon there is no hinderance to inspection, nor permit defect with respect to adequacy of data under R654-301-722. As discussed in the TDN breakout session in Lexington, May 5 and 6, this TDN should be vacated, because no performance standard violation exists, and there is no permit defect.

Sincerely,



Lowell P. Braxton  
Associate Director, Mining

vb  
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tdnbc3