United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

April 16, 2016

John R. Baza
Director
Utah Division of Oil, Gas and Mining
PO Box 145801
Salt Lake City, UT 84114-5801

RE: Response to Ten Day Notice #X16-140-545-004 – Castle Valley Mining, LLC—Bear Canyon Mine

Dear Mr. Baza,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has received your letter, dated April 6, 2016, responding to the Ten-Day Notice (TDN) issued to your office on March 19, 2016 regarding the various violations of noncompliance identified during joint (OSMRE and Division of Oil, Gas and Mining) oversight inspections at the Bear Canyon Mine.

Pursuant to OSMRE's INE-35, the Field Office must consider the regulatory authority's (RA) response to the TDN to constitute appropriate action to cause a violation to be corrected or good cause for failure to do so unless the Field Office makes a written determination in accordance with 30 CFR 842.11(b)(1)(ii)(B)(*1*), that your response is arbitrary, capricious, or an abuse of discretion under the approved regulatory program. Under the arbitrary, capricious, or abuse of discretion standard, OSMRE as a reviewer will not substitute its judgment for that of the RA, unless the RA's response is arbitrary, capricious, or an abuse of discretion.

Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be abated. Good cause for not taking action includes that the possible violation does not exist, the State regulatory authority requires a reasonable and specified amount of additional time to determine whether a violation exists, or the State lacks jurisdiction over the possible violation or operation.

Arbitrary, capricious, or an abuse of discretion generally means, with respect to an RA response to a TDN, that the RA has acted—

(1) Irrationally in that the RA's interpretation of its program is inconsistent with the terms of the approved program or any prior RA interpretation recognized by the Secretary of the Interior;

(2) Without adhering to correct procedures;

(3) Inconsistent with applicable law; or

(4) Without a rational basis after proper evaluation of relevant criteria.

FINDING and CONCLUSION

In your response to the TDN, you have committed to reinstating and modifying the Notices of Violation (NOV's) that were vacated by your office. Specifically, those NOV's are: 19151, 19152, and 19154. Your response also indicates that you have issued a new NOV (21171) to address portions of the original NOV (19153) that "may not have been appropriate to terminate." For this reason, OSMRE has determined, pursuant to 30 CFR 842.11(b)(1)(ii)(B)(*3*), that you have demonstrated appropriate action to cause correction to the aforementioned violations.

If you have any questions regarding this matter, please contact me at (307) 261-6545.

Sincerely,

Alan Boehms

Alan Boehms, Manager
Denver Field Branch, Denver Field Division