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December 19, 2011

Via E-Mail and Certified Mail, Return Receipt Requested

Mr. John R. Baza, Director
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, Utah 84114

RE: Request for Informal Conference on Fact of Violation and Assessment Conference for Proposed Penalty Assessment for State Violation No. 10092, Alton Coal Development, LLC, Coal Hollow Mine, C/025/0005

Dear Director Baza:

On behalf of Alton Coal Development, LLC (“Alton”), and pursuant to R645-401-700, we hereby request an informal conference to review the fact of the violation for Notice of Violation No. 10092 (“NOV”) regarding the Coal Hollow Mine. The NOV is premature, issued prior to the due date of Alton’s 2011 annual report and should be vacated in its entirety. The annual report documents Alton’s compliance with its sage grouse habitat mitigation program set forth at Appendix 3-5. The alleged violation is based on the very general provisions of R645-300-145 providing that the permittee will comply with the terms of its permit and the requirements of the Utah Coal Program. Alton is in compliance with those requirements.

The NOV was issued prematurely on December 5, 2011, despite the fact that Alton’s annual report, which will address the issues raised in the NOV, is not due until March, 2012. In the event that the fact of violation is upheld, we also request an assessment conference immediately following the informal conference to review any proposed assessment regarding this violation.

The following facts submitted pursuant to R645-401-610 should be considered by the Division of Oil, Gas and Mining (the “Division”) in its deliberations regarding the requested vacation of the NOV and/or determination of any proposed penalties.

1. The NOV asserts that Alton has failed to comply with Special Permit Condition No. 6 and Appendix 3-5 regarding the creation of a corridor between Hoyt’s Ranch and South Alton sage grouse leks in cooperation with the Division of Wildlife Resources (“DWR”), and the approved 2011 sage grouse trapping and monitoring program. The NOV also imposes a new requirement that the employee wildlife awareness program now include representation from the DWR. The NOV was issued by the Division without prior consultation with DWR and was issued prematurely, nearly

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three months prior to the due date for the annual report which documents Alton's compliance with the terms and conditions of the mine permit. In addition, the Division has imposed new requirements by the terms of the NOV which are not currently specified by special permit condition No. 6. Rather than waiting for the annual report or communicating with the operator and providing Alton with an opportunity to address these new requirements, the Division has chosen to take this premature enforcement action. The NOV should be vacated as untimely. In addition, the NOV sets unrealistic timeframes for compliance, requiring the revision to Appendix 3-5 of the approved mining and reclamation plan ("MRP") by no later than January 6, 2012. As stated above, the due date for the 2011 annual report is not until March 2012 and the NOV is entirely premature. If the NOV is not vacated, the compliance period should be extended for at least 30 days until the operator can complete the requested report, the Division and DWR can review the report and the Division and the operator can meet and determine whether additional changes should be required to the MRP. *See* extension request dated December 19, 2011.

2. The NOV dated December 5, 2011, was not received by the operator until Monday, December 12, 2011. At that time, Alton immediately responded by having its wildlife consultant, Dr. Steven Petersen, contact Mr. Joe Helfrich at the Division. Dr. Petersen explained to Mr. Helfrich that the DWR did not grant Alton the requested permit necessary for Alton to take the actions proposed in the 2011 sage grouse trapping and monitoring program. Although Alton had the funding and staffing necessary to implement the program in the spring, 2012, the Color Country Area Resource Management ("CCARM") requested that no further trapping and monitoring of these leks be undertaken until the population trends increase. Therefore, DWR denied Alton authority to implement the trapping and monitoring program. Mr. Helfrich was unaware that DWR had denied Alton a permit to trap and monitor the sage grouse. Dr. Petersen also informed Mr. Helfrich that the information he was requesting regarding the status of the corridor and the status of the trapping and monitoring program would be submitted in Alton's 2011 annual report. The report confirms that vegetation has been removed to create a corridor between Hoyt's Ranch and South Alton leks and details the work accomplished in coordination with the landowner and DWR. Although Alton's report is not due until March, 2012, Dr. Petersen will assist Alton to submit the portion of the report dealing with implementation of Special Permit Condition No. 6 prior to the end of 2011. Once the Division and DWR have reviewed Alton's report, the parties can then determine whether Appendix 3-5 needs to be amended. The abatement requirements of the NOV are premature until the Division can review the report.
3. The Division's new request that the DWR representative be included in Alton's employee awareness program is not required by the Division's rules or Alton's permit. Alton contests the Division's authority to issue an NOV to enforce this new proposal as a mandatory requirement when the operator was not previously informed

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of this request and DWR representation is not required by the terms of the permit or the Utah Coal Program.

We appreciate your consideration of our request.

Very truly yours,



Denise A. Dragoo

DAD:jmc

cc: Bob Nead (via e-mail)
Kirk Nicholes (via e-mail)
Larry Johnson (via e-mail)
Dr. Steven Petersen (via e-mail)
Daron Haddock (via e-mail)
Vickie Southwick (via e-mail)