



State of Utah

Department of  
Natural Resources

ROBERT L. MORGAN  
*Executive Director*

Division of  
Oil, Gas & Mining

LOWELL P. BRAXTON  
*Division Director*

OLENE S. WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

October 22, 2004

Certified Return Receipt  
7099 3400 0016 8894 6079

Stephanie Tidwell, Executive Director  
Utah Environmental Congress  
1817 Main Street, Suite 10  
Salt Lake City, Utah 84115

Re: UEC's Freedom of Information Act Request regarding the Muddy Coal Tract on the Manti- La Sal National Forest/SUFCO Mine Permit Modification

Dear Ms. Tidwell:

Your letter, dated March 24, 2004, to Vicky Dyson on the above-cited subject was received at the Division of Oil, Gas and Mining offices October 14, 2004. While the body of the letter appropriately requests information under Utah's Government Records Access and Management Act (GRAMA) it is noted for the record that this act is not synonymous with the federal Freedom of Information Act (FOIA). Thus, this response is guided by GRAMA, not FOIA.

I will respond to your request for documents in the order of the request. First, the Division of Oil, Gas and Mining, (OGM) is a regulatory agency, and does not have a role in the leasing of coal. Director Lowell Braxton did go on record in a letter to the Forest Service (USFS), dated April 6, 2004, questioning the notion that a proposed state leasing activity, which is not a federal action, would trigger NEPA activity. The USFS has since sought and received clarification on its responsibility under NEPA. (See the Forest Supervisor Carlton's April 24, 2004 letter to the Governor's Office.) This and the prior mentioned letter are enclosed. If you have questions regarding the state Muddy Tract leasing, I suggest you contact that leasing agency, which is the School and Institutional Trust Lands Administration at (801) 538-5100. As a side note, no one here at this agency is familiar with the term "Laughlin Land Exchange" which you referenced in your letter.

Second, "the decision to require or not require an EIS prior to leasing" was not OGM's decision to make, as already discussed above. After seeing the Federal Register notice, OGM commented in a letter to the FS, as described above.

Your list skips to Item (4), asking for "any and all studies..." regarding the Muddy Tract. The Manti-LaSal National Forest contracted with Cirrus of Logan, Utah to collect a series of environmental data for this area. The USFS Price office should have this report in its entirety. By collaborative effort with SITLA and the USFS, water data from the Cirrus

Page 2  
Stephanie Tidwell  
October 22, 2004

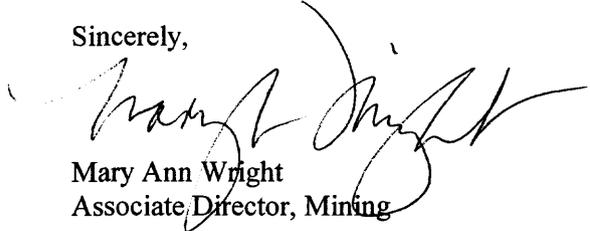
contract was collected and entered into the OGM Coal Mine Water database. This data is available through the OGM website at <http://ogm.utah.gov/coal/edi/wqdb.htm>. You can contact Dana Dean at (801) 538-5320 or email her at [danadean@utah.gov](mailto:danadean@utah.gov) if you need assistance locating this particular data on the Muddy tract in our database.

And last, which is Item # 5, OGM is delegated certain regulatory authority for coal mining and reclamation operations under the federal Surface Mining Reclamation and Control Act (SMCRA) through a Cooperative Agreement between the Secretary of the Interior and the State of Utah. To date, only coal drilling activity has been permitted, and commenced on the Muddy Tract area. A permit change application, which would add the SITLA Muddy Tract to the SUFCO Mine, has not yet been received from Canyon Fuel, and thus mine permitting activity has not yet commenced.

Last, UEC's request for waiver of fees for the above GRAMA request is mooted since OGM is enclosing a CD containing 2003 and 2004 "Muddy Tract" electronic records and the drilling permit records, along with the hard copies of the two letters cited above. The cost for this is minimal since it is less than 15 minutes of our Engineering Technician's time to produce it.

Please realize that at any time, OGM's records for permitting for the SUFCO Mine are available for review in our Public Information Center during regular working hours. UEC is welcome to review these records and copy them at its own expense. Please call me if you have any questions at (801) 538-5306.

Sincerely,



Mary Ann Wright  
Associate Director, Mining

vs  
Enclosure  
cc

Lowell Braxton  
Steve Alder, AAG  
Vicky Dyson, OGM  
Tom Faddies, SITLA  
Alice Carlton, USFS

P:\GROUPS\COAL\WP\041003.EXP\FINAL\UECGRA~1.DOC



State of Utah

Department of  
Natural Resources

Division of  
Oil, Gas & Mining

ROBERT L. MORGAN  
*Executive Director*

LOWELL P. BRAXTON  
*Division Director*

MICHAEL O. LEAVITT  
*Governor*

OLENE S. WALKER  
*Lieutenant Governor*

April 6, 2004

Ms. Alice Carlton, Forest Supervisor  
Manti-La Sal National Forest  
899 West Price River Drive  
Price, UT 84501

Subject: Muddy Creek Area Notice of Intent to Prepare an Environmental Impact Statement to discuss the effects of Coal Mining within the Muddy Creek Area

Dear Ms. Carlton:

I am writing to encourage you to not proceed with your stated intent (Federal Register (FR) V. 69, No. 44, Mar. 5, 2004) to prepare an Environmental Impact Statement (EIS) that would analyze the effects of coal mining in the Muddy Creek Area, Sevier and Sanpete Counties, Utah. For the reasons enumerated below, proceeding with this action may at a minimum be an arbitrary action on the part of the Manti La-Sal National Forest, and may also be a redundant action that violates the spirit of Executive Order 13211 (May 18, 2001) and Executive Order 13212 (May 18, 2001) which are intended to expedite environmentally sound energy development.

1. The Manti-La Sal National Forest does not have unilateral authority to conduct NEPA activity for projects related to coal mine development. This authority is delegated under the Surface Mine Reclamation and Control Act (SMCRA) to the Office of Surface Mining, Department of The Interior. USDA Forest Service roles with respect to coal mine permitting are established by law, and there is no current federal coal mine permitting action in the Muddy Creek environs that mandates NEPA at this time. If such were the case, the USDA would not be the lead agency, as is asserted in your Summary.
2. Your comment in the FR that there are greater than 6,000 acres of federal coal leases in the Muddy Creek environs notwithstanding, there is no federal coal leasing action before the Department of The Interior that warrants NEPA activity by the Bureau of Land Management (BLM) at this time. As you know, NEPA calls for environmental analysis of any "major Federal actions significantly affecting the quality of the human environment". (42USC 4332(c)) However, if a BLM coal leasing action were contemplated, the lead

Ms. Alice Carlton, Forest Supervisor  
Page 2  
April 6, 2004  
Subject: Muddy Creek

agency for such activity would be BLM, not USDA Forest Service. USDA Forest Service's role in a BLM leasing action is clearly defined, and such BLM action is not pending for the Muddy Creek Environs at this time. The FS EIS that is the subject of this comment is not justified or supportable on the basis of some future BLM coal leasing activity.

3. Federal coal leases in the Muddy Creek environs that were conveyed to Utah's School and Trust Lands Administration (SITLA) in the May 8, 1998 School Land Exchange Act do not require NEPA analysis prior to mining, because the terms of the exchange establish the coal as state coal, which is not subject to NEPA. Your published proposal to conduct an EIS is not supportable on the basis of there being leased SITLA coal in the Muddy Creek environs, nor is your assertion that because after mining the lands revert to BLM, an EIS by the FS is currently justified. The position that NEPA is not needed for coal acquired under the May 8, 1998 School Land Exchange Act is further established at Recital 5 of the January 5, 1999 Memorandum of Understanding between USDA-Forest Service and SITLA.
4. While your assumption that mining in the Muddy Creek environs will be underground, and that surface disturbances for the new areas to be mined will be limited to exploration drilling may be correct, this drilling will be conducted under the authority of the BLM, not USDA Forest Service. BLM will be responsible for the environmental analysis, when a specific activity is proposed. There are established procedures that ensure BLM will seek your input if and when exploration drilling is actually proposed. Your Mar. 2004 FR assertion that NEPA is necessary to analyze the environmental effects of drilling that has not even been proposed lacks logic and authority. Ultimately the authority to conduct analysis of exploration drilling is BLM's, not USDA FS's.
5. The authority under the Mineral Leasing Act for the Forest Service to impose conditions for surface protection is established. However, since there is no federal action on Muddy Creek coal tracts, it is reasonable to question what the need for an EIS is at this time.
6. Prior to mining coal in the Muddy Creek environs or elsewhere in Utah for that matter, an operator must obtain a mining and reclamation permit from the Utah Division of Oil, Gas and Mining

Ms. Alice Carlton, Forest Supervisor  
Page 3  
April 6, 2004  
Subject: Muddy Creek

under authority delegated to Utah by the Secretary of the Interior. USDA Forest Service involvement in such permitting activity is prescribed by law, as are the actions that trigger NEPA. There are no such actions proposed for the Muddy Creek environs at this time, but should such action be proposed, the authority for NEPA action would not be USDA Forest Services'. The Forest Service lacks the authority to propose an EIS for unspecified future coal mining and reclamation permitting activity.

7. At the time of any coal reclamation permitting activity, USDA Forest Service will be involved in the permit review. That review provides the Manti La-Sal National Forest an opportunity to analyze potential impacts of such mining on non-mineral resources and to recommend action where appropriate under the law. Since there currently is no proposed coal mining for the areas in question, there is no opportunity to do more than a speculative analysis of impacts to non-mineral resources at this time. Lacking a federal mandate for NEPA at Muddy Creek a programmatically appropriate approach might be to put the energy into your Forest Management Plan, which will of course be a subject of separate NEPA action.
8. The list of agency decisions in the "Agency Decisions" section in your FR announcement includes decisions that are not the direct purview of USDA Forest Service. To request public comment on these future decisions by other agencies (specifically mining and reclamation plans that are not your direct responsibility) appears to me to be a clear abuse of discretion on the part of the Manti La Sal National Forest.

Undertaking any NEPA activity is an expensive, time consuming action for your agency, and for state and federal agencies that will be linked to the NEPA process when such is mandated. I appreciate your offer to include the Division of Oil, Gas and Mining as a cooperating agency, and we will work in this capacity should this EIS go forward. However, such activity deserves careful consideration and needs to be supported by the force of law, and I question the legal basis for your action as noted in this letter. As an aside, you have provided no analysis to support the option of an EIS over other options available to you under NEPA if and when such analysis may be justified.

Ms. Alice Carlton, Forest Supervisor  
Page 4  
April 6, 2004  
Subject: Muddy Creek

In conclusion, for reasons stated above, Manti La-Sal National Forest's decision to proceed with NEPA activity for future Muddy Creek coal activities (when there is currently no enabling federal action) needs to be seriously evaluated. I recommend this NEPA analysis be withdrawn pending a triggering federal action as anticipated under law. Thank you for the opportunity of providing these comments.

Sincerely,



Lowell P. Braxton  
Director

LPB:mep  
cc: Dale Harber  
Jack Troyer



United States  
Department of  
Agriculture

Forest  
Service

Manti-La Sal  
National Forest

Supervisor's Office  
599 West Price River Drive  
Price, UT 84501  
Phone # (435) 637-2817  
Fax # (435) 637-4940

File Code: 1560/1950-3/2820-4  
Date: April 23, 2004

Wes Curtis  
State Planning Coordinator  
State of Utah  
Office of the Governor  
State Capitol Complex  
Suite E210  
Salt Lake City, UT 84114-2210

Dear Mr. Curtis:

Thank you for your April 12, 2004 letter concerning our Federal Register Notice of Intent to prepare an Environmental Impact Statement for the Muddy Creek Coal Area. I am interested in meeting with you and other State of Utah personnel to discuss the appropriate methods for the Forest to identify terms and conditions necessary to protect non-mineral interests within the Muddy Creek Coal Area.

I have requested clarification of agency responsibilities under Council on Environmental Quality regulations from our Regional and National offices. I will arrange to meet with you and other State personnel as soon as I hear back from my Regional office.

Sincerely,

ALICE B. CARLTON  
Forest Supervisor

cc:

- ✓ Lowell Braxton, Director Utah Division of Oil Gas and Mining
- Thomas Faddies, Assistant Director Utah School and Institutional Trust Land Administration
- Kent Hoffman, Deputy State Director, BLM Utah State Office

RECEIVED

APR 26 2004

DIV. OF OIL, GAS & MINING

