

**State of Utah****Department of
Natural Resources**

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**Division of
Oil, Gas & Mining**

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October 18, 2006

Warren Peterson
Waddingham & Peterson
362 West Main Street
Delta, Utah 84624

Subject: Material Damage Finding, North Water Spring (Pines 105), Canyon Fuel Company, LLC, SUFCO Mine, C/041/0002

Dear Mr. Peterson:

Concerning your letter dated August 18, 2006 on behalf of the Emery Water Conservancy District (the District) regarding the above referenced matter, the Division of Water Rights (DWRi) and the Division of Oil, Gas and Mining (DOG M) offer the following response. For clarity, we will address each concern in order as presented in your letter.

The first and second concerns are related to DWRi's finding that the North Water Spring is not a State-appropriated water right and the subsequent consequences to the protection of source waters to downstream appropriated rights. DWRi has reevaluated the North Water Spring and has determined that the spring is appropriated water and goes to satisfy existing downstream water rights. Since the Muddy Creek drainage above Emery is fully appropriated during most times of the year, all springs, streams and other sources of water, which go to supply the existing water rights, are considered to be appropriated water.

Utah Coal Rules are designed to protect State-appropriated water rights (R645-301-731.800, -731.530, UCA 40-10-29). This should include all sources of water that are naturally tributary to an appropriated water right. We agree that North Water Spring is considered source water tributary to Muddy Creek and other tributary streams. All of the sources of water in the Muddy Creek Drainage are considered to be fully appropriated during most periods of time under the existing water rights of record.

Third, the rule that was referenced in DOGM's technical memo dated May 19, 2006, should have read "R645-301-731. 530, State-Appropriated Water Supply, because it deals with underground coal mining and reclamation activities.

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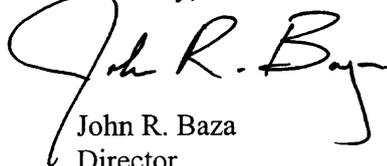
Fourth, the letter expresses the District's concern that procedures in the Memorandum of Understanding (MOU) between DWRi and DOGM were not followed. In this case, DOGM was not requesting a response from DWRi on the impacts to a water right because it was initially determined that the North Water Spring was not a "state appropriated water right".

Fifth, the letter expresses the District's concern that water from the North Water Spring is intercepted by surface cracking and is discharged by the mine to another drainage basin. This concern is addressed in the Quitchupah/Muddy Creek Cumulative Hydrologic Impact Assessment (CHIA). Based on our current information and understanding of the hydrogeology of the SUFCO Mine region, transbasinal diversion of surface waters is not occurring. The hydrogeologic conditions of the area are such that the source water for the North Water Spring should remain in the East Fork of Box Canyon watershed. We look forward to the results of the ongoing water monitoring and hydrogeologic investigation to provide a better understanding of the area. We will share the information with all parties when the investigation is complete.

Sixth, and finally, the letter states that no time limitations for implementing the temporary or permanent mitigation plans were imposed by DOGM. The temporary mitigation plan was approved and implemented by the Permittee within one month of the material damage finding. Data is currently being gathered for the preparation of a permanent mitigation plan and timeline.

We hope that this response has adequately addressed the issues raised in your letter. If you have further questions or concerns, please contact us at (801) 538-5334 or (801) 538-7371.

Sincerely,



John R. Baza
Director
Division of Oil, Gas & Mining



Jerry D. Olds
Director
Division of Water Rights

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cc: Mike Styler, DNR
Jay Mark Humphrey, Emery Water Conservancy District
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