United States Department of the Interior

BUREAU OF LAND MANAGEMENT
FILLMORE FIELD OFFICE
35 East 500 North
Fillmore, UT 84631

RECEIVED
FEB 10 2003
DIV. OF OIL, GAS & MINING

In Reply Refer to:
3800
(U-010)
UTU-075879 S/23/061*
UTU-075856 S/23/062

February 7, 2003

CERTIFIED MAIL #7000 1530 0006 2417 2796
RETURN RECEIPT REQUESTED

DECISION

JOHN HOLFERT	:	
PRESIDENT	:	43 CFR 3809
UTAH MINERAL AND FOSSILS	:	SURFACE MANAGEMENT
84 E 1100 N	:	ORDER OF NONCOMPLIANCE
BOUNTIFUL UT 84100	:	

Notice for Failure to Submit Adequate Financial Guarantees

On August 23, 2002, a letter was sent to you at your address of record, informing you of the need to submit a $1000 financial guarantee for reclamation of your mining operation located in the SE¼ of Section 12, T. 13 S., R. 12 W., and serialized UTU-075856. The letter came back since you had moved and not informed us of your forwarding address. However, a courtesy copy did reach you, and you phoned this office and spoke with Larry Garahana on September 18, 2002, and requested another 30 days to submit the financial guarantee. As of the date of this decision, you have not done so.

Also, on January 27, 2003, a surface compliance inspection was conducted at the site of your other mining operation located in the NW¼ of Section 20, T. 11 S., R. 11 W., and serialized UTU-075879. The boundary of the disturbed area was mapped using Global Positioning System equipment, and the quarry and waste dumps totaled four-tenths of an acre. Due to the slope of the hill the quarry is located upon, we calculated (see enclosed spreadsheet) that, if the BLM would have to contract with a

third party to conduct the reclamation, the cost to the government would be approximately $6000. Your current bond for the site is $1200.

You are in violation of the following regulation:

> **§ 3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?**
>
> For each plan of operations approved before January 20, 2001, for which you or your predecessor in interest posted a financial guarantee under the regulations in force before that date, you must post a financial guarantee according to the requirements of this subpart no later than November 20, 2001, at the local BLM office with jurisdiction over the lands involved. You do not need to post a new financial guarantee if your existing financial guarantee satisfies this subpart. If you are conducting operations under a plan of operations approved before January 20, 2001, but you have not provided a financial guarantee, you must post a financial guarantee under § 3809.551 by September 13, 2001.

Within 30 days of receipt of this order you must:

1. Submit a financial guarantee in the amount of $1000 for case file UTU-075856, and
2. Submit an additional $4800 financial guarantee for case file UTU-075879. If you do not agree with our reclamation cost estimate of $6000 for the site, you must, within 15 days of receipt of this order, submit your own estimate. We will review the estimate, and inform you if we concur in time for you to submit the financial guarantee before the deadline. If we do not concur, you will still be required to submit the $4800, or, if the information you submit suggests that the amount should be adjusted, the revised amount we believe will satisfy the requirements of the regulations.

Failure to comply with this order may result in suspension of your operation, nullification of your Plans of Operation and/or civil action or criminal penalties.

If you do not agree with this order, you have the right to request review by the Utah State Director (SD), of the Bureau of Land Management, in accordance with 43 CFR 3809.800. If you exercise this right, your request, accompanied by a brief

written statement explaining why we should change our decision and any documents that support your written statement must be filed in writing within 30 days after your receive this decision. The envelope should be marked "State Director Review" and sent to the following address:

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
PO BOX 45155
SLC UT 84145-0155

You should include a telephone or fax number by which the SD can contact you. If the SD does not make a decision within 21 days on whether to accept your request for review, you should consider your request declined, and you may appeal this decision to the Office of Hearings and Appeals (OHA). You may also appeal to OHA if the SD's decision is adverse to you. You must file a notice of appeal to this office within 30 calendar days of the date you receive the SD's decision or decision not to review.

You may also bypass State Director review, and appeal directly to OHA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Fillmore Field Office within 30 days of receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition to regulation 43 CFR 4.21 (58 FR 4939. January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals (Board), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justifiation based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Board, and to the appropriate Office of the Solicitor (see 43 CFR 4.412) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal

shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

As stipulated in 43 CFR 3809.808, this decision will remain in effect during review and appeal unless a written request for a stay is granted.

Rex Rowley
Field Office Manager

ACTING

Enclosures
Reclamation Cost Estimate Worksheet

cc: Tom Munson, UDOGM (S/023/061)
Opie Abeyta, UT-924