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DIV. OF OIL, GAS & MINING

S0270024

United States Department of the Interior

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

TAKE PRIDE IN AMERICA

In Reply Refer to:
UTU-070660
UT-010

April 25, 2007

CERTIFIED MAIL #7006 0100 0006 6382 0887
RETURN RECEIPT REQUESTED

DAVID PENNEY
PO BOX 312
BEAVER UT, 84713

-Decision-

Notice Expired - Reclamation Required

Dear Mr. Penney:

The Fillmore Field Office (FFO), Bureau of Land Management (BLM) received your proposed notice level operation located in T 24 S., R. 9 W., SLM, sec 22 and sec 27, and serialized as UTU-070660 on April 26, 1990. Under the current surface management regulations a notice is approved for two years. Following this an extension must be filed with this office. UTU-070660 was last extended on August 12th, 2004, and consequently expired on August 12th, 2006. At this time reclamation is the only permitted activity on this site.

Reclamation responsibilities extend beyond the expiration of your notice until such a time as the BLM determines that the reclamation is satisfactorily complete. Failure to begin reclamation promptly or to conduct reclamation to BLM specified standards is subject to the enforcement actions specified in 43 CFR 3809.601 to 3809.701.

Pursuant to 3809.300 (d), you may not conduct any operations under an expired notice. If you wish to continue operations you must comply with current surface management regulations and submit a new notice, for exploration activities, or a plan of operations, for mining activities. Reclamation may be postponed if you file a new notice or plan of operations with this office pursuant to 43 CFR 3809.301 within 30 days from the receipt of this decision. The new notice or plan of operations and an acceptable financial guarantee must be accepted by this office prior to commencing any operations. If the newly submitted notice or plan of operations is not accepted, or you do not timely post the appropriate financial guarantee as requested for either a notice or a plan, you must begin reclamation within 30 days of the BLM's decision finding that the new notice or plan or financial guarantee is incomplete or unacceptable.

The FFO BLM is of the preliminary opinion that the material that you are mining is "common variety" and, as such, is not open to location. The proper procedure for mining and disposal of this material is through 43 CFR 3610, mineral material sales, wherein you would relinquish your claims and sign a contract with the BLM to purchase the material at a specified price. We will gladly provide you with information regarding mineral material sales.

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701 authorizes federal agencies to charge processing costs. The IOAA also states that these charges should pay for the agency services, as much as possible. The BLM also has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA) 43 U.S.C. 1734. The IOAA and Section 304 of FLPMA authorize the BLM to charge applicants for the cost of processing documents by issuing regulations. The final cost recovery rule, which was published in the Federal Register on October 7, 2005 (70 FR 58854), provides for fixed fees as well as case-by-case fees.

If you wish to continue operations in the project area under 43 CFR 3809 regulations by submitting a notice for exploration activities or a plan of operations for mining activities the cost recovery rule will apply to validity and mineral examinations and reports performed in connection with potential common variety minerals.

If you wish to continue operations in the project area under 43 CFR 3602 regulations by pursuing a mineral materials disposal cost recovery will apply to the cost of processing the request. The BLM must receive these funds prior to continuing any case processing.

If you do not pursue operations within the project area within 30 days of the receipt of this decision, reclamation must begin on the 31st day, and be completed at the earliest feasible time, unless you contact this office and gain approval to postpone commencement.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.800, you may request that the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision regarding your request for review of this decision within 21 days of the BLM's receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the Utah BLM State Office to determine when the BLM receives the request for State Director Review. You have 30 days from the end of the 21 day period in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass a State Director review, this decision may be appealed directly to the IBLA 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 this office at 35 East 500 North, Fillmore, Utah 84631 within 30 days from the receipt of this decision. The appellant has the burden of proof showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) 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 appellants success on the merits,
3. The likelihood of immediate and irreparable harm in the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions or concerns please feel free to contact Matt Rajala, NRS Geology, at (435) 743-3124.

Field Office Manager

4/27/07
Date

Enclosures:
Form 1842-1

CC: Tom Monson, UDOGM
Richard Low