

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

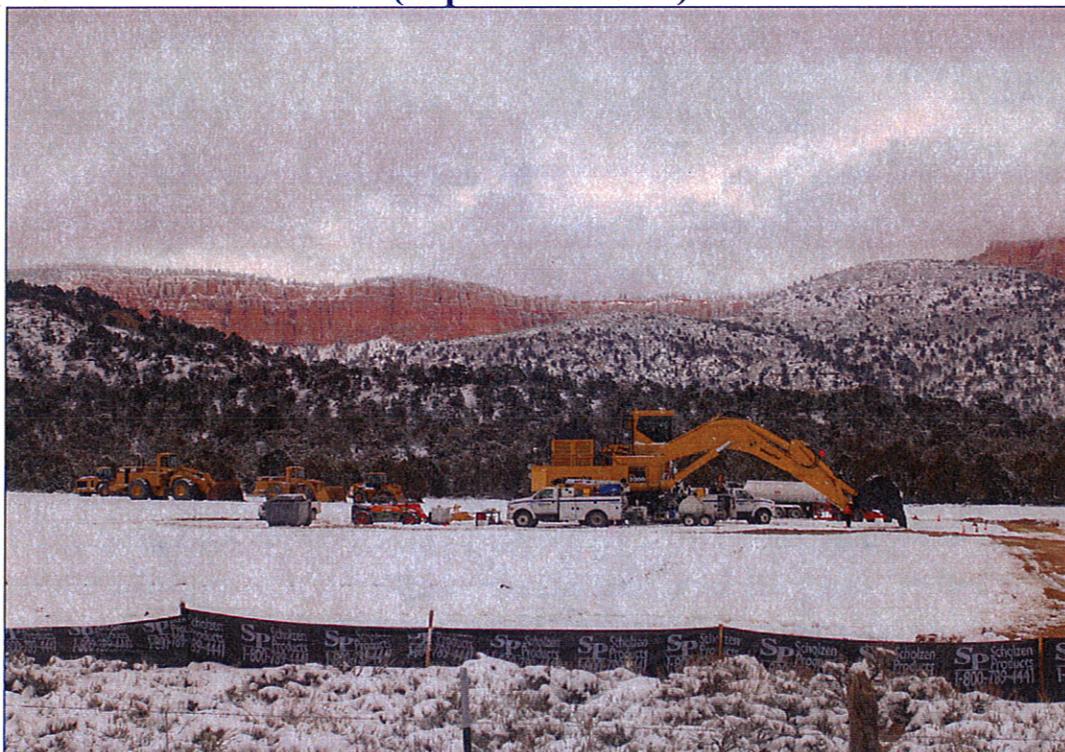
**Annual Evaluation Report
For the
Regulatory Program
Administered by the State
Of**

UTAH

**For
Evaluation Year 2011
(July 1, 2010, through June 30, 2011)**

Prepared by

**Denver Field Division
(September 2011)**



EXECUTIVE SUMMARY

Utah's Regulatory Program Evaluation Year 2011

The following summary captures the highlights of the EY 2011 Annual Evaluation Report for the Utah Regulatory Program and the Division of Oil, Gas and Mining (DOG M).

Overview of Public Participation and Outreach Efforts

The Utah coal regulatory program continued to provide for increased environmental improvement for coal field citizens during Evaluation Year 2011 (July 2010 through June 2011), and strives to effectively achieve or exceed the regulatory and reclamation goals of SMCRA. Although Utah experienced a significant staff turnover during the past couple years, DOGM is in the process of filling most positions. DOGM performed outreach to citizens and communities, operators, and stakeholders by providing opportunities to discuss issues, participating in programs that help to educate the public about mining, and coordinating with other State and Federal agencies involved in coal. Outreach letters were sent to coal mining stakeholders (State, Federal, and local governmental agencies, coal mine permittees, environmental groups, consulting firms, and coal mining trade groups), soliciting input for topics to evaluate, as well as any questions or comments on previous oversight reports or the OSM/DOG M oversight process.

Accomplishments

During EY 2011, DOGM developed a scope of work and secured a contract to complete additional reclamation at the White Oak Mine, which is a bond forfeiture site that has undergone various stages of reclamation the last being done in 2004. In addition, DOGM collaborated with the United States Fish and Wildlife Service (USFWS) to develop a guidance document which is instrumental in protecting endangered fish species in the upper Colorado River Basin, and worked closely with both the USFWS and the Utah Division of Wildlife Resources in developing Guidelines for conducting Raptor Surveys.

Off-site Impacts

The OSM oversight data for the Utah coal program indicates that DOGM is administering a regulatory program where active mining sites are, with few exceptions, in compliance with the approved program requirements. Very few off-site impacts were identified and were determined to have mostly minor adverse impacts.

General Oversight and Topic Specific Reviews

The EY 2011 National Measurement Element reviews included Bond Release Procedures (Reclamation Success), Raptor Nest Monitoring Program (Prevention of Off-site Impacts), and Public Outreach Procedures for the Significant Permit Revision Process (Customer Service). The Bond Release Procedures evaluation resulted in the development and approval of an informal guidance document that outlines specific steps and agency responsibilities for bond

release actions on Federal Lands in Utah. The Raptor Nest Monitoring Program evaluation concluded that helicopter monitoring surveys are an effective method of minimizing disturbances or threats to nesting raptors and encouraged DOGM to continue their efforts in authoring a “living” guidance document for the use of protection and enhancement methods as a best technology currently available to minimize disturbance to wildlife during mining and reclamation activities. The Public Outreach Procedures for the Significant Permit Revision Process evaluation found that DOGM is effectively implementing its program and is successfully ensuring that the public outreach procedures for the significant permit revision process are being conducted in accordance with Utah’s regulations.

OSM also conducted an independent administrative review of DOGM’s Decision Document and Application Approval for the Coal Hollow Mine Project (a new surface coal mine) located near Alton, Utah. The purpose of the evaluation was to determine compliance with State program rules and ensure that technical analysis findings required for approval of a new mining permit were made, and that documentation supporting those findings was included in the Decision Document. OSM’s review of the Decision Document determined that the administrative requirements necessary for approval of the Coal Hollow Mine permit had been met in accordance with Utah’s regulations.

Regulatory Program Problems and Issues

The most significant pending issue for the Utah Program involves the process of increasing the bond at the Crandall Canyon Mine as a result of a TDN issued by OSM in 2009. The current bond held for the Crandall Canyon mine is inadequate to cover the anticipated costs of long-term water treatment and reclamation. DOGM issued a Division Order requiring that the bond be adjusted to account for and fund ongoing and continual water treatment. It also required plans for a long-term treatment facility. The mining company appealed the Division Order to the Utah Board of Oil, Gas and Mining (BOGM), asserting that there is no authority for requiring a perpetual bond and no rules in place to govern a trust fund bonding mechanism. Legal arguments on this matter were originally heard on January 26, 2011. In May 2011, the BOGM requested that the Division and Genwal Resources work out an agreeable financial mechanism for this financial assurance in the form of a contract between DOGM and Genwal. Negotiations were unsuccessful leading the BOGM to issue a Minute Entry on September 30, 2011. The Entry requires rule making and an evidentiary hearing regarding bonding costs and the expected duration of the polluttional discharge. The hearing is expected to be held on December 7, 2011.

OSM Assistance

For the one-year grant period starting July 1, 2010, Utah was originally awarded the full amount or 100 percent of their request for administration and enforcement, but de-obligated \$50,000 in January of 2011. DOGM also received 100 percent of required OSM funding for the Utah AML program. Additionally, OSM provided DOGM with free-of-charge technical training courses as well as library reference materials upon request. Lastly, DOGM used the OSM’s downhole camera to evaluate Burrowing Owl habitat located above an active underground coal mine in Emery County, Utah.

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I. Introduction

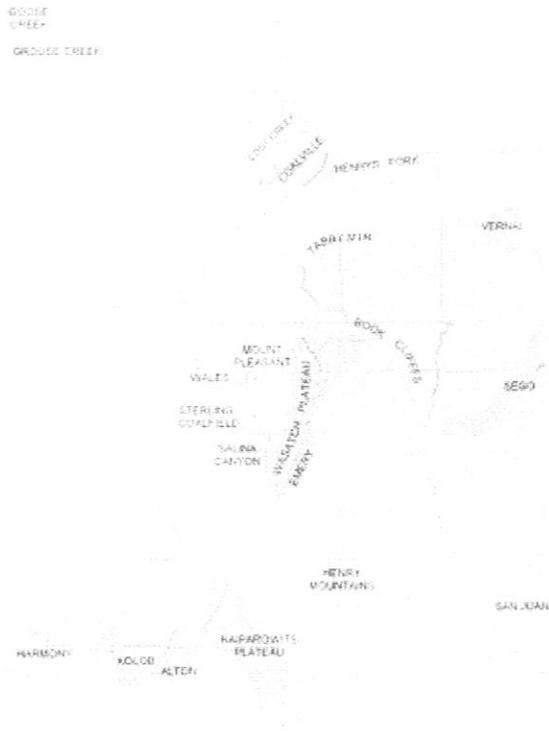
The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for the state and tribal regulatory programs that have been approved by the Secretary of the Interior as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Utah Program and the effectiveness of the Utah Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2010, through June 30, 2011. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSM's Denver Field Division, 1999 Broadway, Suite 3320, Denver Colorado, 80202. Contact Kenneth Walker, Chief, DFD, at kwalker@osmre.gov or (303) 293-5012.

The following list of acronyms is used in this report:

AML	Abandoned Mine Land
ASLM	Assistant Secretary of Land and Minerals Management
BLM	Bureau of Land Management
BOGM	Utah Board of Oil, Gas, and Mining
CFR	Code of Federal Regulations
DFD	Denver Field Division
DOGM	Division of Oil, Gas and Mining
DWRi	Utah Division of Water Rights
EY	Evaluation Year
MOU	Memorandum of Understanding
MRP	Mining and Reclamation Plan
MSHA	Mine Safety and Health Administration
NEPA	National Environmental Policy Act
NOV	Notice of Violation
NTTP	National Technical Training Program
OSM	Office of Surface Mining Reclamation and Enforcement
SITLA	State of Utah School and Institutional Trust Lands Administration
SMCRA	Surface Mining Control and Reclamation Act of 1977
SUWA	Southern Utah Wilderness Alliance
TDN	Ten-Day Notice
TMD	Technology Management Division
TIPS	Technical Innovation and Professional Services Program
UDWR	Utah Division of Wildlife Resources
UPDES	Utah Pollution Discharge Elimination System
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USFS	United States Forest Service
WR	OSM's Western Regional Office

II. Overview of the Utah Coal Mining Industry

Coal is found beneath approximately 18 percent of the state of Utah, but only 4 percent is considered mineable at this time. The demonstrated coal reserve base ranges from 5.4 to 14 billion tons. The Federal government holds most of Utah's coal resources. Utah coal fields are shown on the figure below (Utah Geological Survey web site, Coal & Coalbed Methane at <http://geology.utah.gov>, August 2006). In 2010, the Wasatch Plateau, Book Cliffs, and Emery Coal Fields were being actively mined.



Most of the coal is bituminous and is of Cretaceous age. The Btu value is high compared to most other western States. Sulfur content ranges from medium to low in the more important coal fields.

Coal production steadily increased from the early 1970's and peaked in 1996 at 28.9 million tons. Production in calendar year 2010 was approximately 19.1 million tons (Table 1). The majority of the coal production is produced by underground mining operations. In addition, Utah removed and reprocessed 441,707 tons of no value material in 2010 (OSM no value determinations for coal waste tonnage exempts permittees from the required SMCRA (abandoned mine lands) severance tax per ton of coal (waste) mined).

As of June 30, 2011, Utah had 19 active or temporarily inactive operations, 11 inactive operations, and six abandoned sites that have disturbed a total of 3,405 acres. Each of these 36 sites is an inspectable unit (Table 2). Of the 30 non-abandoned operations, 11 were underground mines that use the longwall mining method, 10 were underground mines that use the room-and-pillar mining method, one was a new private surface mining operation, two were surface mining operations that extract coal from an underground mine refuse pile, and six were coal preparation plants/loadout facilities. As of June 30, 2011, Utah had also reclaimed 470 acres of disturbance for the six abandoned sites. Utah's coal mining industry has a direct, significant impact on the local economies where mining occurs. Coal mining currently occurs in Carbon, Emery, Kane, and Sevier Counties. The Utah Department of Workforce Services reports that as of August 2010 mining companies (except oil and gas), including coal mining companies, employed on average 1,296 and 556 persons in Carbon and Emery Counties, respectively. Kane County employed five people and Sevier County employed 570 persons as of April 2011. In Carbon County, coal mining companies represented two of the five largest employers with one being the second largest employer. In Emery County, two out of the six largest employers were coal mining companies with one being the second largest employer. In Sevier County, a coal mining company was the second largest employer. In Emery County, most of the job losses occurred in the mining industry where 122

jobs disappeared. Nevertheless, Emery County has been showing employment growth and it appears as though it is positioned to continue along this trend. Employment remained relatively stable in both Carbon and Sevier Counties. Lastly, employment is expected to increase significantly in Kane County due to DOGM's recent approval of the Coal Hollow Mine permit. See <http://jobs.utah.gov/jsp/wi/utalmis/default.do> for more information on coal related employment in Utah.

The climate of the Wasatch Plateau and Book Cliffs Coal Fields is characterized by hot, dry summers, the late-summer (so-called *monsoon*) rains, and cold, relatively moist winters. Normal precipitation varies from six inches in the lower valleys to more than 40 inches on some high plateaus. The growing season ranges from five months in some valleys to only 2½ months in mountainous regions.

III. Overview of Public Participation in the Utah Program

A. Evaluation Process

OSM's WR-DFD and the Utah Department of Natural Resources' DOGM formed an Evaluation Team (the Team) to conduct annual evaluations of Utah's Coal Regulatory Program to determine how effective DOGM is in ensuring that coal mine reclamation is successful in preventing offsite impacts and providing service to its customers, and make recommendations for improving the administration, implementation, and maintenance of the Program. The Team structure is comprised of three to four core members each from the WR and DOGM. The Team cooperatively solicits public participation, conducts joint inspections, selects evaluation topics, and reports, discusses, and tracks off-site impacts. This evaluation method fosters a shared commitment to the implementation of SMCRA.

Each year, the Team solicits comments or suggestions from persons and groups who may have an interest in coal mining and, specifically, an interest in the oversight process. On May 26, 2010, the Team mailed outreach letters to coal mining stakeholders (State, Federal, and local governmental agencies, coal mine permittees, environmental groups, consulting firms, and coal mining trade groups), soliciting input for topics to evaluate, as well as any questions or comments on previous oversight reports or the OSM/DOGM oversight process. In addition, DOGM posted a notice on its web page requesting suggestions for oversight topics from the public, industry, and environmental groups. Comments regarding the capture and recovery of coal bed methane emissions associated with Utah coal mining projects were received from the Environmental Protection Agency. The USFWS also provided comments and suggested that DOGM and OSM conduct an evaluation to examine the raptor nest monitoring program to determine whether it is providing and will continue to provide consistent, reliable data over the long term and across a regional scale. The Team responded to these comments and conducted a topic evaluation of the raptor nest monitoring program in EY 2011. The results of that evaluation are discussed in detail under Section VI below.

The Team has made copies of the EY 2011 Performance Agreement and Annual Evaluation Summary Report available on both the OSM internet site at www.osmre.gov and the DOGM site at <http://www.ogm.utah.gov>. Additional data used by OSM in its evaluation of Utah's Program

is available for review in the evaluation files maintained at the WR-DFD. Contact Kenneth Walker, Chief, DFD, at kwalker@osmre.gov or (303) 293-5012.

B. Utah Program

The approved SMCRA program for the State of Utah is administered by DOGM. The BOGM is the policy making body for DOGM. The BOGM consists of seven members knowledgeable in oil, gas, mining, environmental, geology, and royalty matters. The BOGM convened eleven hearings during this evaluation year. The meetings were all held in Salt Lake City, except for one that was held in Roosevelt, Duchesne County, Utah and one that was held in Price, Carbon County, Utah.

The mission of the Utah Coal Program at the Division of Oil, Gas, and Mining is to regulate exploration for, and development of, coal in the State of Utah which:

- Supports the existence of a viable coal mining industry to meet the nation's energy needs; and
- Implements standards that safeguard the environment and protect public health and safety, and achieves the successful reclamation of land affected by coal mining activities.

IV. Major Accomplishments and Innovations in the Utah Program

A. Accomplishments

- Reclamation of the White Oak Mine: The White Oak mine is a bond forfeiture site that has undergone various stages of reclamation the last being done in 2004. There was limited success and additional work needed to be completed in order to stabilize the site and satisfy the land owner. The Division was able to develop a scope of work and secure a contract to complete additional reclamation at the site during EY 2011. This included establishing terraces on steep slopes, backfilling sink holes, reworking and stabilizing the stream channel, placing bio-solids on much of the site and reseeding and planting vegetation. Much of this work was completed in the fall of 2010 and then after sitting over the winter additional work was performed. This work, all completed with bond forfeiture money, has greatly improved the conditions at the site as well as improved the landowner's satisfaction.
- DOGM and the USFWS have developed a guidance document which is instrumental in protecting federally listed Colorado River fish species from impacts related to coal mining operations in the upper Colorado River Basin. The USFWS and DOGM continue to collaborate on site-specific standards and procedures to protect the Colorado River fish species. The standards and procedures will provide minimum permitting and performance standards for protection and enhancement of the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), bonytail (*Gila elegans*), and razorback sucker (*Xyrauchen texanus*) and their designated critical habitat (Colorado River fish species) when coal operations occur in the Green and

Colorado River basins and are greater than 10 miles from designated critical habitat. The vast majority of coal mining occurs in headwater areas, far from designated critical habitat. Impacts to the fish species from these operations are limited to water depletions and possible water discharges.

- The Division also has worked closely with the USFWS and the Utah DWR in developing Guidelines for conducting Raptor Surveys. This is especially important since the Utah DWR discontinued their survey program and the mine operators have had to conduct their own surveys and gather their own data. It is critical that there are guidelines in place in order to provide consistency between the various surveys conducted by the different mines. In light of this, the Division sponsored a training event in April of 2011 for all Operators, Consultants, Agency Representatives and anyone interested in raptors titled Annual Raptor Survey Training.
- DOGM continued to perform outreach to the public, operators, agencies, and stakeholders by providing opportunities to discuss issues. DOGM representatives meet with Emery County water user associations, Emery County Coal Operators, DWRi, USFS, BLM, Emery County Commission and other interested parties semi-annually to discuss water issues relating to coal mining in the Emery County area. The group discusses cumulative hydrologic impacts, DOGM's water monitoring database, potential water related impacts from coal mining and general issues related to coal mining. The water users provide updates on water availability and systems. In addition to general updates, this past year there were presentations on the Crandall Canyon Mine water chemistry and treatment of the mine discharge; possible mitigation of impacts of mining at the North Water area above the SUFCO Mine; and the positions of longwall panels relative to surface water sources at the SUFCO, Skyline, and Deer Creek mines; and a status update of the Bear Canyon Mine.
- DOGM performed outreach to citizens and communities by participating in programs that help to educate the public about mining. The BOGM sponsors an Earth Day Awards Program to recognize operators or individuals for going beyond what is required by regulation to protect the environment while providing society with essential natural resources. The Board presented 2011 Earth Day Awards to three companies. Receiving the awards were Interpace Holdings, LLC for its efforts in reclaiming the Henefer Red Clay Mine, Simplot Phosphates, LLC for creating outstanding wildlife habitat, and Newfield Exploration and Production Co. for strategically placing well sites to help landowners. The Division maintains information on their web site at <http://www.ogm.utah.gov/>. Information includes: Water Quality Database, announcements of pending rules, mine information, contact information, links, technical information, amendment tracking information, and an FTP site.
- DOGM provides leadership and outreach in the coordination with other State and Federal agencies involved in coal.
 - DOGM participates in monthly interagency conference calls to coordinate permitting issues. Agencies who participate in these calls include the BLM,

SITLA, OSM, USFWS, DWRi, UDWR, USACE and the USFS. Utah's cooperative agreement is somewhat unique in that it requires the state to obtain federal agency concurrence rather than OSM performing this coordination effort as in other federal lands states.

- The DOGM and the Utah Department of Environmental Quality meet semiannually to review their MOU. The discussions include UPDES and other water related compliance issues concerning coal mines.
- DOGM maintains a database and data processing for electronic permitting. Elements of the database include permit review tracking, automated inspection reports, document indexing, and annotation of digital photographs.
 - Files and mining plans are being converted from paper to electronic PDF files. Electronic documents on DOGM's network are in an electronic filing system that makes documents electronically available to DOGM staff and the public. A secure access portal is available to view mine files for other agencies, companies, and the public (<http://ogm.utah.gov/fs/filesbypermitinfo.php>). Access is also available to the general public but is more restricted.
 - Inspections and compliance information are tracked in the database;
 - Staff permitting tasks are assigned, scheduled and tracked;
 - Mine operators can track submittals, permits, and amendments status on line; and
 - A relational database of people and companies that associates them with each other, permits, projects and other activities has been created and used for notifications, mailing lists, inspection reports, fees and other DOGM related work.
 - DOGM continues to improve its processes for electronic permitting and has worked closely with the Skyline Mine to get its Mining and Reclamation Plan completely into electronic format. Other mines are soon to follow.

B. Innovations

The Division continues to function with a reduced staff of 16 FTE's and a continued reduction in State General funds and Federal funding. New employees have been trained and are quickly able to contribute to the efforts of the coal regulatory program. The Division continues to improve their work processes and electronic information transfer in order to keep up with the steady workload. In spite of these challenges, DOGM's permitting timeliness has remained relatively unchanged or has slightly improved.

V. Success in Achieving the Purposes of SMCRA

The Team evaluates the number and extent of observed off-site impacts, the number and percentage of inspectable units free of off-site impacts, the number of acres that have been mined and reclaimed and which meet the bond release requirements and have been released for the various phases of reclamation, and the effectiveness of customer service provided by the State. Individual topic reports that provide additional details on how the following evaluations and measurements were conducted are available on the OSM internet site at www.osmre.gov and in the WR-DFD Office at 1999 Broadway, Suite 3320, Denver Colorado, 80202. Contact Kenneth Walker, Chief, DFD, at kwalker@osmre.gov or (303) 293-5012.

In order to validate the credibility of State Regulatory programs and enhance Federal oversight improvement efforts, OSM announced in November of 2009 that it would immediately increase the number of oversight inspections. OSM also began conducting independent unannounced oversight inspections. OSM scheduled and conducted these inspections at independently selected mine sites. Independent inspections provide observations and insight into the effectiveness of State regulatory programs by evaluating the current compliance status of mines in each state.

The DFD conducted three joint complete, four joint partial, and three bond release inspections of coal mining operations in Utah during EY 2011, in addition to one independent unannounced partial inspection. No enforcement actions were taken by DFD as a result of the one independent unannounced partial inspection that was conducted, and site conditions indicated that DOGM is effectively implementing and enforcing its program. During EY 2011 DOGM issued fifteen NOV's while the DFD did not issue any enforcement actions or TDN's.

A. Off-site Impacts

An "off-site impact" is anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures) outside the area authorized by the permit for conducting mining and reclamation activities.

Table 5 shows the number and type of off-site impacts that were observed and documented as having occurred during EY 2011, both for permitted sites and bond forfeiture sites.

Sites Where Reclamation Performance Bonds Have Not Been Forfeited

The Team assessed whether off-site impacts had occurred on each of the 30 non-forfeited mine sites that existed at some time during the evaluation period. The Team did so through the following 344 on-the-ground observations: one independent unannounced partial OSM inspection; 124 DOGM complete inspections, including three OSM and DOGM joint, complete inspections; 217 DOGM partial inspections, including 7 OSM and DOGM joint partial inspections. (Tables 10 and 13); and two special focus/topic evaluation observations discussed in section VI below. Based on the above, and DFD's monthly review of all DOGM inspection reports and enforcement actions, the Team finds that DOGM has met or exceeded the required inspection frequency on all inspectable units with the exception that one partial inspection was

missed at Gordon Creek #2, 7, & 8 Mine because the site was inaccessible during the month of April.

For EY 2011, the Team documented one minor land stability off-site impact to a water resource, three minor hydrological off-site impacts to a water resource, and one moderate hydrological off-site impact to a water resource resulting from active coal mining operations (Table 5). Eighty-seven percent of Utah mines were free of off-site impacts. In comparison, the Team found 93, 96, 93, and 93 percent of the mines free of off-site impacts in EY's 2007, 2008, 2009, and 2010, respectively.

Sites Where Reclamation Performance Bonds Have Been Forfeited

Since 1981 when OSM approved the Utah permanent regulatory program, DOGM has forfeited reclamation performance bonds for six mines. (The White Oak Mines #1 and #2 are counted with the bond forfeiture sites because the Division issued the determination to forfeit; however, bond forfeiture monies were never received. Monies were obtained from the Loadstar Bankruptcy Trustee, Frontier Insurance, and a "General Settlement Fund" outside of the Loadstar bankruptcy estate.)

During EY 2011, DOGM conducted 8 complete and 7 partial inspections on the six forfeited mines (see Table 10). It did not observe any off-site impacts. Table 5 (bottom half) shows that 100 percent of the bond forfeiture sites were free of off-site impacts. The Team previously found that 100 percent of these mines were free of off-site impacts in EY 2007, 83 percent in EY 2008, 86 percent in EY 2009, and 100 percent in EY 2010.

B. Reclamation Success

Sites Where Reclamation Performance Bonds Have Not Been Forfeited

For operations where reclamation performance bonds have not been forfeited, the Team used as the measure of reclamation success the disturbed acreage that had received bond release. Historically, the amount of bond release acreage in Utah is very low due to the following two factors:

- Most of the permitted operations are underground mines (Table 2). Underground mining operations are long-lived and remain active during the entire life of the operation because of their continued use as surface facilities. Although the surface disturbances for Utah mines are relatively small (2,802 acres for EY 2011), there are 131,621 permitted acres (which may include the area of land over the underground mine workings) for the 30 non-forfeited mines or an average of 4,387 permitted acres per mine in Utah. While a 2007 legislative coal audit pointed out that the permit area may be defined as just the disturbed area, by rule the operator has the option to include what they would like, within reason, in their permit area. To date, only three applications have been received asking to change their permit area. DOGM expects others to follow suit.

- The bond liability period is a minimum of 10 years on those sites requiring the establishment of vegetation.

Table 6 shows the permit acreage where DOGM partially released (Phases I and II) or totally released (Phase III) bonds during the evaluation year. For the 2,340 acres of total disturbance that had not yet received final (Phase III) bond release at the beginning of the evaluation year, DOGM released Phase I bond on 32.96 acres at the Willow Creek Mine; simultaneously released Phase I, Phase II and Phase III bond on 7.48 acres at the Cottonwood/Wilberg Mine; and released Phase II and Phase III bond on 5.35 acres at the Sunnyside Refuse & Slurry site. An additional 435 acres were bonded and disturbed during the evaluation year at the Coal Hollow Mine, 2 acres at the Dugout Mine, .37 acres at the West Ridge Mine and 37.72 acres at the Skyline Mine thus increasing the total number of disturbed acres to 2,802 as of June 30, 2011.

A review of data in the EY11 Utah Reclamation Status Table (see Appendix 1) indicates that since the Utah Permanent Regulatory Program was approved in January of 1981, 30 percent (1,028 of 3,477 acres) of the total disturbed acreage on active, temporarily inactive, inactive, final bond released, and bond forfeiture sites has been backfilled, regraded, re-topsoiled and seeded. In addition, DOGM has granted Phase III bond release on a total of 370 acres. This successfully reclaimed acreage is 12 percent (370 of 3,007 acres) of the total disturbed acreage on active, temporarily inactive, and inactive operations and includes sites that have received full Phase III bond release, but does not include bond forfeiture sites.

OSM concludes that reclamation of mined land in Utah is successful based on the Team's review of the EY11 Utah Reclamation Status Table and DOGM's routine monthly inspections that include reclamation success evaluations of the reclaimed lands.

Sites Where Reclamation Performance Bonds Have Been Forfeited

As shown in Table 7, DOGM has completed initial reclamation on all six bond forfeiture sites. Reclamation may be adequate on some of the sites for DOGM to terminate its jurisdiction on them, but it has not yet developed procedures and policy to do so.

C. Customer Service

For EY 2011, DOGM and OSM jointly conducted a customer service evaluation to determine whether DOGM is effectively implementing its program by requiring that proposed significant permit revision notices are properly and timely advertised to the public in accordance with its rules. The review covered procedural aspects of DOGM's program in ensuring that public outreach has been conducted in conjunction with significant permit revisions, that agencies with an interest in the coal mining and reclamation operation received proper notice of a significant permit revision, and that the notice has been timely disseminated. For a discussion of this evaluation see section VI below. In addition, DOGM conducted their third annual survey of customer satisfaction to evaluate performance at the Division and Program level and to foster improved customer service in the future. The results of this survey are discussed under section VI below.

VI. OSM General Oversight Topic Reviews

WR-DFD conducted an independent administrative review of a recently approved surface coal mining permit to determine compliance with State program rules as a regional priority oversight evaluation topic for EY 2011. Additionally, each year OSM and DOGM evaluate topics to determine whether DOGM is effective in ensuring reclamation success, preventing off-site impacts, and ensuring effective customer service. For EY 2011, the Team conducted three general evaluation topic reviews. Results of the independent administrative permit review and the general evaluation topic reviews are available at the WR-DFD Office.

A. Independent OSM Review of Coal Hollow Mine Permit Approval Document

DFD conducted an independent administrative review of DOGM's Decision Document and Application Approval for the Coal Hollow Mine Project (a new surface coal mine) located near Alton, Utah. The purpose of the evaluation was to determine compliance with State program rules and ensure that technical analysis findings required for approval of a new mining permit were made, and that documentation supporting those findings was included in the Decision Document. The Federal regulations at 30 CFR §773.15 state that no permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates that and the regulatory authority finds, in writing, that certain requirements for administrative completeness have been met. Utah's counterpart regulations are found at R645.300.133.

In order to verify that the technical analysis findings required for approval of a new mining permit were made and that documentation supporting those findings was included in the Decision Document, OSM created a "checklist" for Federal/State regulatory comparison purposes. A preliminary review of the Decision Document resulted in the need for additional clarification and explanation from DOGM for the following two administrative permit requirements: (All other permit requirements identified on the check list were supported by DOGM's written findings).

1. The Federal regulations at 30 CFR §§773.15(d) and 778.15(b) and Utah's rules at R645-300.133.300 address severed estates (private mineral from private surface). However, the administrative review did not find where severed estates are discussed in the Coal Hollow Decision Document. As a result, OSM asked DOGM to address whether severed estates exist at the Coal Hollow Mine and confirm that they been affirmatively addressed. DOGM responded that R645-300.133.300 may not apply since the mineral and surface estates at the Coal Hollow Mine are held by family trusts and the surface owners are majority owners in the mineral estate.

Regardless, DOGM explained that severed estates had been addressed by virtue of the applicant providing surface and coal ownership information for the property to be mined in the "Identification of Interests" section of the Technical Analysis as required by R645-301-112. Specifically, the Technical Analysis clarified that the required information was displayed and described in Section 112.500 and that surface lands have been leased to the applicant, Alton Coal. The Technical Analysis also explained that Section 112.500 requires that a permit application include the name and addresses of the owners of the coal to be mined. The

“Identification of Interests” section states that all 435 acres of coal to be mined is privately held, and has been leased by Alton Coal. Consequently, while severed estates are discussed in the Decision Document, both the surface and mineral estates have been leased by the applicant and Utah’s rules at R645-300.133.300 do not apply.

2. Both the Federal regulations at 30 CFR §816.99(a) and Utah’s rules at R645-301-516 require that an undisturbed natural barrier be retained in place to prevent slides and erosion. The administrative review was unable to find where this requirement was discussed in the Coal Hollow Decision Document. While the Decision Document addressed “Slides and Other Damage” and emergency notification procedures in accordance with 30 CFR §816.99(b), 30 CFR §817.99, and R645-301-515.100, it did not discuss the “natural barrier” requirement found at 30 CFR §816.99(a) and R645-301-516. As a result, OSM asked DOGM whether the “natural barrier” requirement had been affirmatively addressed.

Subsequent discussions with OSM-WR’s Civil Engineer revealed that 30 CFR §816.99(a) mainly applies to contour mining where the coal outcrop is at the surface (on the side of the hill), requires removal of the material (spoil) above that coal seam, and then must be placed back into the mined-out area. 30 CFR §816.99(a) ensures that a natural barrier is left so that it will act as a buttress for the spoil that is placed back into the mined-out area. Conversely, if the mine is a typical area (strip or open-pit) mine, the coal seam is located below grade and therefore a box-cut pit must be excavated to reach the coal. In this situation §816.99(a) is not applicable since material is placed in a pit. In the case of area mines, the Federal regulations at 30 CFR §816.102 and Utah’s rules at R645-301-553 address slope stability and the “Backfilling and Grading” section of the Coal Hollow Mine permit findings include those requirements. The OSM-WR Civil Engineer’s comments were conveyed to DOGM who confirmed that the Coal Hollow Mine is indeed a typical area (strip or open-pit) mine and that 30 CFR §816.99(a) and Utah’s rules at R645-301-516 do not apply.

Lastly, OSM informed DOGM that the permit findings document consistently refers to the Federal rules for underground mining activities at 30 CFR §817 whereas it should refer to the §816 series for surface mine activities at the Coal Hollow Mine. DOGM acknowledged this editorial mistake and agreed to bring it to the attention of DOGM’s mine permitting staff.

Based on DOGM’s responses to the follow-up questions and additional clarifying information, OSM’s review of the Decision Document determined that the administrative requirements necessary for approval of the Coal Hollow Mine permit had been met in accordance with Utah’s regulations.

B. Reclamation Success – Bond Release Procedures

This evaluation was based on OSM Directive REG-8 for determining whether the DOGM is effective in ensuring reclamation success.

As a measure of reclamation success, the Team evaluated bond release procedures and requirements as they have been and currently are being conducted by the DOGM. The review focused on procedural steps necessary for timely processing bond releases with an emphasis on

interagency coordination and cooperation (DOGM, OSM, BLM, USFS, etc.). This was done to determine if any problem areas currently exist in the bond release process and, if possible, work to resolve any potential difficulties.

Findings and Results

Utah's coal mining industry is heavily dominated by underground operations. Surface disturbances related to underground mining tend to be long-term facilities and reclamation does not progress throughout the life of the mine as it would at a surface mine. Because bonds are held pending the successful reclamation of surface disturbances, Utah does not regularly experience a high volume of bond releases. However, it is important that those bond release actions Utah does process meet all applicable requirements of the regulatory program.

A sample set of five files for bond release actions occurring within the past four years were reviewed for adequacy and found to contain all required application, inspection and concurrence requirements. All phased bond release criteria were consistent with Utah's program and coordination with other interested agencies was documented. One instance where OSM was mistakenly not notified of a bond release inspection was found. This omission was not detrimental to the integrity of the bond release action. OSM is not required to participate in or conduct a bond release inspection because DOGM has primary authority over SMCRA issues and the BLM/FS are responsible for identifying any inadequacies for their lease stipulations (these would constitute non-SMCRA issues identified in the mining plan). The BLM and FS were notified of and participated in that inspection. OSM concurrence was issued based on documentation provided by DOGM, the bond release application, and BLM concurrence.

Detailed documentation of how State and Federal agencies coordinate each bond release action is not maintained. Therefore, it is exceedingly difficult to evaluate how efficiently or effectively DOGM works with the required agencies to process bond release actions. Because performance bonds for Federal mines are payable to both the state of Utah and the United States, DOGM must obtain OSM concurrence before bonds may be revised or released. Currently all but one active operation in Utah is a Federal mine.

OSM's primary responsibility in bond release actions is to ensure all Federal non-SMCRA issues identified in a Federal mining plan are resolved before the bond is released. This involves Federal agency stipulations, most frequently those of the BLM and FS. DOGM has primary authority for the coal regulatory program and assumes the lead in coordinating bond release actions with all interested parties. However, OSM must ensure BLM and FS stipulations are met prior to concurring with a DOGM decision to release bond. This redundancy provides some assurance that all interested parties will be actively involved with every bond release action. It also creates some confusion as to specific agency responsibilities throughout the bond release process.

Conclusions

Reviewed documentation of bond release actions indicates DOGM is effectively implementing its program by meeting all requirements of R645-301-880 and Article IX of the State-Federal

Cooperative Agreement. This includes bond release application, inspection and concurrence requirements as well as phased bond release criteria and coordination with interested agencies.

No deficiencies in DOGM's bond release processes were identified through this evaluation; however, our review revealed that OSM and DOGM responsibilities are frequently confused. To reduce confusion and increase efficiency, the Team developed and approved an informal guidance document for bond release actions on Federal Lands in Utah. This document outlines specific steps and agency responsibilities throughout the bond release process. This document does not replace or supplement the regulations at R645-301-880 or 30 CFR §800.40, but rather documents our agreement and provides clarity of roles and responsibilities. This will help ensure effective coordination on all future bond release actions.

C. Prevention of Off-site Impacts – Raptor Nest Monitoring Program

This evaluation was based on OSM Directive REG-8 for determining whether the DOGM is effective in preventing off-site impacts by requiring that mine operators use the protocol specified in the *Raptor Survey Guidelines* document to ensure that raptors are adequately protected from mining operations. The protocol enables mine operators to avoid active raptor nests during critical periods so that they prevent disturbance and comply with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

The Federal Rules at 30 CFR §817.97(c) and (d) and Utah Rules at R645-301-358 require that:

“No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.”

The Utah Coal Program, in coordination with the UDWR, the BLM, and the FWS, developed the *Raptor Survey Guidelines* document in order to aid mine operators in the inventory and protection of raptors near mining facilities. The use of this document as a best technology currently available to prevent offsite impacts is of particular interest for this topic evaluation. However, it is often difficult for an operator to avoid certain areas when conducting mining activities.

Annual raptor monitoring programs ensure that raptor nests are properly identified and protected during critical life periods specific to each raptor species including important mating, reproduction, and nesting periods. The Division, upon report of active raptor nests, will coordinate with UDWR, the land owner, and the USFWS to develop an adequate protection plan to avoid disturbance and/or offsite impacts. Depending on the disturbance and raptor species, the protection plan can include seasonal or spatial avoidance of the nest or a mitigation plan. Spatial and seasonal buffers differ between species because some species are more sensitive to disturbance than others. The *Raptor Survey Guidelines* document is used by the Coal Regulatory

Program as the official document containing recommended protocols for raptor inventory and protection.

Findings and Results

A. Mine Number 1 – Bear Canyon Mine

In 2007, C.W. Mining developed, and DOGM approved, a raptor mitigation plan for the Bear Canyon Mine that addresses mitigation for potential impacts resulting from a change of mining sequence and/or disturbance or threats to nesting raptors as a result of subsidence from underground mining operations.

In 2008, Rhino Castle Valley Mining (Rhino) acquired the Bear Canyon from C.W. Mining, who employed long wall mining techniques. Conversely, Rhino conducts a room and pillar mining method. The current permit requires that raptor surveys be conducted. In 2010, Norwest Corp. of Emery County, Utah, conducted a helicopter raptor survey for the mine and created a map that displayed their flight path, the survey area, and all inactive, tended, and active nests that were located in the designated survey area. The 2010 survey identified one active nest and two tended nests. In May of 2011, another helicopter survey was performed wherein a previously tended nest was identified as an active nest. As a result of this finding, the company was required to conduct an on-the-ground follow-up survey. The survey was conducted on July 8, 2011, and confirmed the presence of one immature bird approximately 10-14 days old. At that stage of development it is likely that the bird will survive. One of DOGM's biologists will meet with a representative from Castle Valley Mining to determine if future mitigation is required.

During the evaluation, a discrepancy between the permit on file at DOGM Offices in Salt Lake City and the version that Rhino maintains at their mine office was identified. Specifically, the DOGM copy is a red line/strikeout version dated January 1, 2007, that requires raptor surveys be conducted every year. Conversely, Rhino's version of the permit still requires that raptor survey be conducted every five years or when warranted due to new disturbance or proposed disturbance. Because of this discrepancy, DOGM and Rhino agreed to jointly conduct a side-by-side comparison of the permit section regarding raptor survey frequency and amend the permit based upon the new room and pillar mining operations. The annual raptor survey requirement was likely based on previous longwall mining operations that the previous owner employed. Since Rhino is utilizing a room and pillar method for coal extraction which results in less subsidence, raptor nest monitoring frequency requirements may be reduced.

Due to inclement weather conditions no tended or active nests were observed during the field evaluation.

B. Mine Number 2 – Lila Canyon Mine

The Team and a mine representative discussed the results of a recent helicopter raptor survey that was conducted in accordance with the requirements of their approved mining permit. Current and past mitigation initiatives were discussed, including ceasing or decreasing construction activities during the nesting season, and prey habitat enhancement projects.

An Environmental Assessment conducted by the BLM in 2000 determined that all nests within a half-mile radius of the surface facilities had a high probability of being abandoned by indirect disturbance associated with mining activities. Raptor surveys were initiated in 1998 and have continued annually with the exception of 2004. An active golden eagle nest was identified during a spring 1999 raptor survey. The 2010 survey identified two tended Golden eagle nests and one active Raven nest. In May of 2011, another helicopter survey was performed which identified two tended Golden Eagle nests and one active Raven nest.

While there seems to be enough nest sites in the area to accommodate the population base, the limiting factor appears to be available prey base. For this reason, the operator has committed to enhancing 93 acres of habitat, which will mitigate impacts caused by surface disturbance activities. This effort will be managed by the BLM. The operator has also agreed to participate in a Utah Partners in Conservation Development project sponsored by UDWR that will provide for an additional 1,500 acres of eagle prey base.

The difficulty with this site is that it is nearly impossible to conduct mining operations and avoid disturbing golden eagle habitat. For this reason, a *take permit* may be required if there is the potential for impacting a nest. The operator has committed to coordinating with the USFWS, UDWR, and DOGM to avoid the “take” of golden eagles. The mine will continue to conduct helicopter raptor surveys each spring and the operator will contact the USFWS and DOGM immediately if raptors are observed nesting or tending to nests.

During the evaluation, the Team spotted an inactive golden eagle nest on the cliff edge. This nest was previously identified and calculated to be 1500 feet away from the facilities area. The viewing of this nest was impeded due to inclement weather.

Conclusions and Recommendations

The Team concluded that helicopter monitoring surveys are an effective method of minimizing disturbances or threats to nesting raptors. The Team also recommended that DOGM and Rhino Mining Company jointly agree on a consistent raptor monitoring survey frequency and amend the permit accordingly.

Additionally, the Team encouraged DOGM to continue their efforts in authoring a “living” guidance document for the use of protection and enhancement methods as a best technology currently available to minimize disturbance to wildlife during mining and reclamation activities. DOGM has encouraged interested parties to comment on the document, which will improve consistency and provide guidance to minimize impacts to wildlife for every mine.

D. Customer Service – Public Outreach Procedures for the Significant Permit Revision Process

This evaluation was based on OSM Directive REG-8 for determining DOGM’s effectiveness in serving its customers by requiring that proposed significant permit revision notices are properly and timely advertised to the public in accordance with Utah

Rule R645.300.121. The review consisted of a file evaluation of the most recent significant permit revisions for three mining and reclamation operations.

Findings and Results

The significant permit revisions selected for this evaluation included the Star Point Mine's Phase III Bond release application, Skyline mine's application for the Winters Quarters Facility Permit Amendment, and SUFCO's application for the West Coal Lease Modification Area. Each application, once deemed complete by DOGM, went through the public notice process as outlined above. The public notice process has three required parts: (1) a newspaper publication containing information required under subsections R645.300.121.110-160 (name and business address of applicant, a map or legal description of the revision area, the location of the application for public to view and copy, and the name and address of the Division) and is published at least once a week for four consecutive weeks; (2) copies were made available for inspection and copying; and (3) DOGM has notified any local, state or federal agency which has an interest in the aforementioned mining and reclamation operation.

Each of the significant permit revisions selected published the required information in a newspaper of general circulation in the locality of the mining and reclamation operation on a weekly basis for four consecutive weeks. The significant permit revisions were made available to the public for inspection and copying at DOGM's offices in Salt Lake City, Utah, as well as the appropriate county courthouse. DOGM appropriately notified all local, state and federal agencies that had an interest in the mining and reclamation operations of the selected significant permit revisions.

Conclusions

The Team concluded that the DOGM is effectively implementing its program and is successfully ensuring that the public outreach procedures for the significant permit revision process are being conducted as required under Utah Rule R645.300.121.

Third Annual Division-wide Stakeholder Satisfaction Survey (Utah self-evaluation)

DOGM also conducted their third annual survey of customer satisfaction during EY 2011 to evaluate performance at the Division and Program level and to foster improved customer service in the future. The survey included the period of July 1 through August 31, 2010. The results of the survey for the Coal Program, on a 1 to 5 scale with 5 being the highest, were as follows:

Timeliness of Services: 3.67
 Accuracy of Information: 4.00
 Helpfulness of Employees: 3.86
 Expertise of Employees: 3.60
 Availability of Information: 3.71
 Composite Rating: 3.77

VII. Regulatory Program Problems and Issues

The following is a description of significant regulatory issues DOGM has addressed on mining operations during EY 2011. Some issues are ongoing and DOGM continues to monitor them.

A. Crandall Canyon Ten-Day Notice

On August 6, 2007 a mine bump/collapse occurred at the Crandall Canyon Mine, which took the lives of six miners. Three rescue workers were killed during a rescue attempt. On August 7, 2007, in an emergency attempt to rescue the men, borehole drilling began from the surface of East Mountain down to the underground workings. Due to the nature of this rescue operation all drill pads and access roads were constructed under emergency provisions. On August 30th, MSHA officially called off the rescue effort. Permitting and reclamation of the seven drill pads and access roads began shortly thereafter. DOGM, along with other state and federal agencies, continues to work with the mine to coordinate reclamation activities. The emergency drill holes, pads, and access roads have now all been reclaimed with the exception of the main ridge line access road across Forest Service and SITLA Property. After considerable negotiation the parties have now reached agreement on the need to reclaim this road and it will be reclaimed during the fall of 2011.

Because the Crandall Canyon Mine was shut down in such an unexpected manner, the provisions for mine water discharge had not been adequately addressed. Water began discharging from the mine portals shortly after they were sealed. A Division Order (C/015/032-DO 08A) was issued on April 22, 2008, requiring Genwal to make requisite permit changes and update the MRP to include a plan for the discharge of post-reclamation mine water in accordance with R645-301-551, R645-301-731.521, and R645-301-751. The level of iron in the water started to exceed the UPDES discharge parameters and soon began to stain Crandall Creek, the receiving stream. On August 11, 2009, the Division issued a violation to the mine for failure to minimize the disturbance to the hydrologic balance. The mine was required to stop discharging water that exceeded the UPDES permit so a treatment facility was built that would treat the water before it was discharged into Crandall Creek.

On November 9, 2009, after having conducted an inspection at the site, OSM issued two Ten Day Notices (TDN's) for 1) failure to conduct operations only in accordance with the approved permit, (which pertained to the water treatment facility); and for 2) failure to maintain adequate bond coverage at all times (which pertained to not having bond for perpetual treatment of the mine water discharge).

By letter to the Office of Surface Mining dated November 23, 2009, DOGM explained the emergency informal approval of the permit amendment allowing construction of a water treatment facility at the Crandall Canyon mine. Also on November 23, 2009, the DOGM issued Division Order C/015/0032-DO09A requiring Genwal Resources to increase the bond held for the site.

The water treatment facility was informally allowed to be constructed before Genwal Resources had submitted a complete permit revision application package. Water was not to enter the

facility until DOGM received the requisite engineering details and approved the plan. DOGM was concerned that any further corrective action, or notice of violation, would only delay efforts to treat the water and abate the underlying problem.

Division Order C/015/0032-DO09A required the bond to be increased within 60 days of receipt. Utah American Energy Inc. asked to meet with the Division and contested the requirement to post bond for perpetual treatment of the water citing the lack of regulatory basis for doing so. Utah American Energy Inc. has not yet posted additional bond necessary to cover the costs of long-term treatment or reclamation of the treatment facility. Annual operation and maintenance costs are very high and the bond held is currently inadequate to cover such costs over any period of time.

By letter dated December 3, 2009, OSM accepted DOGM's response to the TDN's. However, Genwal Resources has failed to meet the conditions of Division Order C/015/0032-DO09A. The bond held for the Crandall Canyon mine remains inadequate to cover the anticipated costs of long-term water treatment and reclamation. While the current treatment facility has been permitted, the requirements of Division Order C/015/032-DO08A have not been completely satisfied, as plans for the long term treatment of mine water discharge are still pending. The Division issued a Division Order combining the requirements of the previous two Division Orders (08A and 09A) and clarifying requirements necessary for Genwal Resources to achieve compliance.

In an attempt to clarify the needed actions, DOGM issued a revised Division Order (DO10A) on August 16, 2010, which required a "Perpetual Trust Fund" or other financial security to be established. It also required the plans for a long-term treatment facility. Genwal initially appealed the Division Order to the BOGM, indicating its belief that there was no authority for requiring a perpetual bond and no rules in place to govern a trust fund bonding mechanism. Legal arguments on this matter were originally heard on January 26, 2011. In May 2011, the BOGM requested that the Division and Genwal work out an agreeable financial mechanism for this financial assurance in the form of a contract between DOGM and Genwal. As part of a good faith effort during negotiations, DOGM revised DO10A on June 20, 2011, to require a bond or trust fund that will yield a yearly payment sufficient to cover the costs of water treatment in perpetuity with interim steps and timeframes. Subsequent to unsuccessful negotiations between the Division and Genwal, the BOGM issued a Minute Entry on September 30, 2011, which requires rule making and an evidentiary hearing regarding bonding costs and the expected duration of the pollutional discharge.

OSM is in the process of developing Action Plan #UT-2012-001 to monitor DOGM's progress in resolving this inadequate bond. This Plan outlines the steps called for in DO10A and alternatives in the event DO10A is not upheld by the BOGM or is unsuccessful in attaining an adequate bond. We hope that the BOGM will uphold DO10A and Genwal will be required to post the increased financial security. In the event DO10A is unsuccessful, OSM will take Federal enforcement action to bring the bond into compliance, requiring Genwal to post a full cost bond within one year. OSM will implement Action Plan #UT-2012-001 in the first quarter of 2012.

B. Horse Canyon Mine – Lila Canyon Extension

An application for this permit extension was received by DOGM in September of 1998. After six rounds of deficiencies, a permit was issued in May of 2001 and the Assistant Secretary of Land and Minerals Management (ASLM) approved the Mining Plan on November 5, 2001. SUWA filed an objection to the permit, and a subsequent hearing before the Utah BOGM on December 14, 2001 resulted in issuance of an order that reversed the Division's decision and remanded the permit back to DOGM, DOGM issued the permit again on May 18, 2007. On June 1, 2007, SUWA appealed the issuance of the permit to the BOGM. On December 10, 2007, the BOGM issued an Order of Dismissal of SUWA's appeal with prejudice. In a May 16, 2007 letter to the BLM and OSM-WR, SUWA asserted that the permit approved by DOGM is an entirely new document that postdates and replaces earlier versions of the permit, and that WR needs to thoroughly review and analyze the new permit before making any recommendations regarding the mining plan. OSM-WR's review of the revised permit determined that only certain parts of the original 1998 permit were revised to incorporate additional information for hydrological, geological and environmental resources, and proposed mining and reclamation operations have not changed from the 1998 permit. By letter dated June 26, 2007, OSM-WR informed SUWA of the above determination, and stated that the permit issued by DOGM on May 18, 2007, does not meet any of the criteria of 30 CFR §746.18(d) for a mining plan modification. OSM-WR further stated that the November 5, 2001, mining plan approval is still in effect since it has not been modified, cancelled or withdrawn as provided under 30 CFR §746.17(b).

On September 11, 2007, SUWA filed with the U.S. District Court, District of Utah, Central Division a Complaint against the OSM and the BLM alleging that OSM-WR should have prepared a new mining plan for the mine and that BLM violated NEPA. The complaint also requested a Preliminary Injunction to stop the operator from conducting surface disturbances associated with the permit. On December 5, 2007, the Federal District Court issued an Order Denying SUWA's Motion for a Preliminary Injunction to stop the operator from conducting surface disturbances associated with the permit. Oral arguments were heard on August 19, 2008, in Salt Lake City, Utah. On November 13, 2008, the Federal District Court found that OSM-WR did not violate the Mineral Leasing Act by declining to prepare a new recommendation to the ASLM regarding whether the proposed mining plan should be approved. As a result, the court concluded that OSM-WR's actions were not arbitrary, capricious, an abuse of discretion, or contrary to the law. SUWA subsequently appealed the decision to the Federal District Court of Appeals, and the court has yet to render a decision.

UtahAmerican Energy, Inc. initiated construction activities in November 2008. Construction activities included the development of the main and secondary sediment controls, development of the mine office pad and leach field, coal storage pad, shop pad and rock tunnels. In May of 2009 the rock tunnels were developed to the point where they encountered coal and the first coal was brought to the surface and dumped on the coal pad. Surface design changes were approved on June 9, 2010 and the mine continues to build infrastructure in preparation for full scale production. Coal is being hauled from the site on an irregular basis. It is anticipated that production will move from the West Ridge Mine to this mine as the reserves become depleted at West Ridge.

C. Coal Hollow Mine (Alton Coal Development, LLC)

A new permit application for fee surface/fee coal (636 acres) was submitted to the Division on June 14, 2007. This proposed surface mine is located in the Alton Coal Field which currently has no coal mining activity. After receiving supplemental information in January 2008, the application was determined to be administratively complete on March 14, 2008. An informal conference was conducted June 16, 2008 after receiving 43 individual comments and four from interested organizations; in addition to three requests for an informal conference. The focus of the informal conference was to allow the public to comment on the public road relocation. Most commenters did not comment on the road relocation, but commented on the affect of mining on the environment and economy.

The permittee provided a revised application on December 2008 and the Division responded with deficiencies on April 20, 2009. The applicant responded on June 16, 2009 with an initial response to the Division's findings and on August 27, 2009 the Division received Alton Coal's complete response to the Technical Analysis. Supplemental information was also provided to the Division on October 8, 2009. Finally on October 15, 2009, the Division approved the application. Shortly after the decision was rendered, on November 18, 2009 an appeal was filed to the Board of Oil, Gas & Mining by a consortium of environmental groups (Sierra Club, Southern Utah Wilderness Alliance, National Parks Conservation Association and Natural Resources Defense Council). Several hearings have been held before the board over the last few months where the petitioners were allowed to provide their arguments as to why the permit should not be issued and the Division provided a defense of its position. On August 3, 2010, the Board ruled in favor of the Division and Alton Coal Development on all counts. The company posted the required bond and on November 8, 2010 the permit was issued. In the mean time, the applicant Alton Coal Development has applied for coal leases on adjacent federal lands. The BLM's Draft Environmental Impact Statement for adjacent federal leases will be released for public comment soon. The mine continues to operate and is producing coal which is being shipped to the IPA Power Plant in Delta, Utah.

D. Kinney #2 Mine

A new permit application for the Kinney #2 Mine, Carbon Resources, LLC, was received February 29, 2008. The application is for an underground coal mine on 38 acres of fee surface and 453 acres of fee coal. The application was determined administratively complete on June 25, 2008. As requested an informal conference was held September 30, 2008. The Center for Water Advocacy filed two petitions to have the Kinney #2 Mine area designated as lands unsuitable for coal mining, but the petitions were incomplete and never resubmitted.

On September 24, 2008, the Division sent a notice of deficiencies to Carbon Resources informing them that they must address the deficiencies in order for the Division to further process the application. Due to the lack of response from the applicant, processing of the application was suspended for a period of time and finally on January 7, 2010, the Division returned the proposed mine application to Carbon Resources. After some time, Carbon Resources chose to pursue the application again and republished the notice of complete

application again on June 10, 17, 24, and July 1, 2010. They also resubmitted a revised and reformatted (prompted by DOGM) application on October 4, 2010.

The review process consisted of the Division identifying deficiencies in the application and the applicant (Carbon Resources, LLC) providing responses. Finally, on June 28, 2011, the last clean copy submittal was made which incorporated all of the updates made throughout the review process and the application was considered to be complete and accurate. Carbon Resources, LLC was notified that their application was approved on June 30, 2011. The Division is currently waiting for them to post the reclamation bond prior to issuing the permit.

E. Bear Canyon Mine

In June of 2008, CW Mining, permittee and operator of the Bear Canyon Mine, sold their interests and operating agreements associated with the mine to Hiawatha Coal Company. Hiawatha Coal Company approached the Division of Oil, Gas, and Mining in July of 2008 for a permit transfer. The transfer was complicated by an involuntary bankruptcy petition filed by a creditor of CW Mining, and reluctance by the surety company to transfer the bond coverage.

Because of an August, 2008 ruling by Judge Judith A. Boulden of U.S. Bankruptcy Court for the District of Utah that seemed to affirm the sale of the Bear Canyon Mine to Hiawatha Coal Company, the Division proceeded with the permit transfer process. Hiawatha Coal Company did not produce a bond for the Bear Canyon Mine and the Division, after working with them in hopes of a successful resolution, issued a Cessation Order to the then operators, Hiawatha Coal Company, on February 5, 2009. Because the BLM was concerned with a loss of resource, and the company holding the bond in the name of CW Mining assured it would retain liability for reclamation until court proceedings were finalized, the order required the cessation of any additional surface disturbance and underground development mining but allowed for the continuation of underground mining in the current longwall mining panel until that activity was completed.

In April of 2009, the Bankruptcy Court declared that the sale of the mine and assets to Hiawatha Coal Company was not valid and the Trustee retains rights to the mine and all assets of CW Mining. Subsequently, the Division denied the permit transfer to Hiawatha Coal Company.

The Trustee continued to try to sell the property to a viable mining company. A sales agreement was signed by Rhino Energy and on October 12, 2010, an application was submitted for permit transfer under the name of Castle Valley Resources, LLC. The transfer was approved and a permit issued to Castle Valley Resources on December 16, 2010, upon their posting the required replacement bond. Mining has resumed using continuous miners.

F. State Program Amendments

Valid Existing Rights: Subsequent to OSM's request in February 2008 for rule amendments pertaining to Valid Existing Rights, the BOGM on September 24, 2008, supported the commencement of an informal rulemaking process. DOGM and OSM worked cooperatively during EY 2009 and EY 2010 to draft and edit proposed rule amendments on Valid Existing

Rights. DOGM presented the proposed rules in EY2010 to the BOGM and they were adopted by the Board on July 28, 2010, after a public rulemaking process. A formal program amendment was submitted to OSM on August 10, 2010. OSM published the proposed changes in the Federal Register on September 30, 2010 (75 FR 60375). No comments were received on the proposed amendments. The final rule notice approving these changes has been drafted and is currently under Solicitor review.

Ownership and Control: OSM requested extensive state rule amendments in October 2009 pertaining to Ownership and Control. The BOGM on January 27, 2010, supported the commencement of an informal rulemaking process. DOGM informally submitted proposed rule changes to OSM on August 13, 2010. OSM responded with comments on December 23, 2010. DOGM revised and resubmitted the proposed amendments on March 16, 2011, and requested additional informal review. OSM provided additional comments on June 23, 2011. DOGM will complete the state rulemaking process in EY 2012 and submit a formal program amendment.

VIII. OSM Assistance

A. Grants

For the one-year grant period starting July 1, 2010, DOGM requested \$2,089,743 in assistance. Utah was originally awarded the full amount or 100 percent of their request for administration and enforcement (Table 9). However, \$50,000 was de-obligated in January of 2011 resulting in Utah receiving \$2,039,397. Through a Federal lands cooperative agreement, OSM reimburses DOGM for permitting, inspection and other activities that it performs for coal mines on Federal lands (Table 8). Because most of the mines in Utah occur on Federal lands, Utah uses the option under the Federal Assistance Manual for Area-Weighted Average Option, which would call for OSM to provide funding at an 88 percent level of DOGM's total program costs. As described above the Federal appropriation allowed for full funding. OSM also provided the Utah program with \$4,826,061 in abandoned mine land reclamation funding. This amount represents 100 percent of required OSM funding for the Utah AML program (Table 9).

B. Education/Outreach

Through NTTP and TIPS, OSM offers free-of-charge technical training courses to State and Tribal employees. During EY 2011, three DOGM employees (students) participated in three NTTP training opportunities, and one employee participated in one TIPS instructor-led training opportunity. DOGM, in kind, provided one NTTP instructor.

OSM's Technical Librarian filled 4 reference requests, and provided 26 article reprints to Utah Staff. OSM's Technical Library web site can be accessed at <http://www.techtransfer.osmre.gov/NTTMainSite/osmlibrary.shtm>.

DOGM used the OSM Technology Management Division (TMD), TIPS and Technology Transfer Services downhole camera (MARKS GeoVision Camera) www.geovision.org throughout EY 2011. A DOGM Biologist and a TMD Physical Scientist were awarded the *2011 TIPS Outstanding Contributor Award* for using the downhole camera to evaluate

Burrowing Owl habitat located above an active underground coal mine in Emery County, Utah. Consolidation Coal Company and Mt. Nebo Scientific were recognized for their participation in this wildlife habitat analysis. See the DOGM and TIPS Success Story using this camera at: http://www.tips.osmre.gov/newsroom/success_stories/2011/2011jun_AwardWinners.shtml

EY 2011 UTAH EVALUATION TEAM MEMBERS

Daron Haddock, Steve Schneider and Jim Smith, DOGM

Christine Belka, Christy Hulsman, Elizabeth Shaeffer and Howard Strand, DFD

Dana Dean DOGM, and Kenneth Walker, DFD, Team coaches

Cover Page Photo: Coal Hollow Mine

Utah Annual Evaluation Report Evaluation Year 2011

APPENDIX 1

Summary of Core Data to Characterize the Utah Program

The following tables present summary data pertinent to mining operations and regulatory activities under the Utah regulatory program. Unless otherwise specified, the reporting period for the data contained in the tables is the Evaluation Year. Other data and information used by OSM in its evaluation of Utah's performance is available for review in the evaluation files maintained by the Denver Field Division.

Because of the enormous variations from state to state and tribe to tribe in the number, size, and type of coal mining operations and the differences between state and tribal programs, the summary data should not be used to compare one state or tribe to another.

Many of the tables were revised for Evaluation Year 2011. Please note that several complications were encountered with the automated data entries that resulted in inaccurate data. Specific problems are noted below for Table 7.

List of Tables

Table 1	Coal Produced for Sale, Transfer, or Use
Table 2	Permanent Program Permits, Initial Program Sites, Inspectable Units, and Exploration
Table 3	Permits Allowing Special Categories of Mining
Table 4	Permitting Activity
Table 5	Off-site Impacts
Table 6	Surface Coal Mining and Reclamation Activity
Table 7	Bond Forfeiture Activity

Utah has bond forfeiture sites which have been completely reclaimed, but jurisdiction has not been terminated. Table 7 does not account for this situation. Because Table 7 automatically populates data into other tables, all bond forfeiture sites must be reported here. The data in Table 7 has been footnoted to indicate that all bond forfeiture sites in Utah have been reclaimed.

Table 8	Regulatory and AML Programs Staffing
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Table 9	Funds Granted to Utah by OSM
Table 10	Utah Inspection Activity
Table 11	Utah Enforcement Activity
Table 12	Lands Unsuitable Activity
Table 13	OSM Oversight Activity
Table 14	Status of Action Plans
EY 2011	Utah Reclamation Status Table