



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

MINING AND MINERALS DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-5970

Jennifer A. Salisbury
CABINET SECRETARY

Douglas M. Bland
DIVISION DIRECTOR

October 22, 1999

Jim Luther
Environmental Coordinator
San Juan Mine
P.O. Box 561
Waterflow, New Mexico 87421

Re: San Juan Permit 99-01

Dear Mr. Luther:

Enclosed for your records is the Director's issuance of Permit 99-01 formalizing approval of the new underground mine, the change of mining method from surface stripping to continuous highwall mining and modifications submitted with the permit renewal in May.

Please note Permit 99-01 contains three special permit conditions. The first prohibits mining in any area where federal approval of a mining plan or lease is required. The second sets July 1, 2000 as the deadline for a plan to monitor the effect subsidence may have on archaeological properties. MMD and BLM must approve this plan. The final condition sets January 30, 2002 as the date by which final back filling and grading will be completed at the Cottonwood Pit. Please make the appropriate changes to exhibits and text.

Please acknowledge the permit by signing in the appropriate line on page 5. Retain one copy for your records and return the other to me. The copy of the Director's Finding is for your records.

We appreciate all the hard work you and your staff have put into the new permit. Please contact me if you have any questions.

Sincerely,

James O'Hara
Coal Program Manager

Cc: Charlie Beecham, BLM-Farmington
Dr. Robert Block, OSM-WRCC
Mr. Willis Gainer, OSM-AFO

BEFORE THE
OIL CONSERVATION COMMISSION
Case No. 12734
Exhibit # **A-12**
Submitted By: Richardson Oper. Co.
Hearing Date: October 28 & 30, 2002

Application of Richardson Operating
Co.
Record on Appeal, 764.

**MINING AND MINERALS DIVISION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

The Director of the Mining and Minerals Division (MMD), New Mexico Energy Minerals and Natural Resources Department, issues permit 99-01 to:

San Juan Coal Company
P.O. Box 561
Waterflow, New Mexico 87421

(Permittee) to expand their coal mining and reclamation operations to include approximately 9,600 acres for an underground mine contiguous to and immediately east of the San Juan Mine and to change the current method of mining on the surface mine to continuous highwall mining. This permit is covered by the current performance bond, payable to the State of New Mexico in the total amount of **forty-eight million dollars** (\$48,000,000.00), for Permit 99-01 (Letter of Credit LCPG-0244).

Section 1. **STATUTES AND REGULATIONS**

This Permit is issued pursuant to the New Mexico Surface Mining Act, §69-25A-1, et seq. NMSA 1978 (the Act).

This permit revision is subject to the provisions of Permit 99-01 and all applicable regulations of the Coal Surface Mining Commission (CSMC), including but not limited to 19 NMAC 8.2 and any other regulations which are now or hereafter in force, and all such regulations are made a part of this Permit by this reference.

Section 2. **MINING AREA**

The Permittee is authorized to conduct coal mining and reclamation operations only on those lands that are specifically designated and authorized by this Permit Revision Application Package (PRAP) and secured by an adequate performance bond.

The Permittee shall only conduct coal mining and reclamation operations on those lands secured by an adequate performance bond.

Section 3. **COMPLIANCE WITH THE PERMIT APPLICATION PACKAGE**

The Permittee shall conduct coal mining and reclamation operations only as described in the approved PRAP, the Director's Order of Approval with Findings of Fact, Conclusions of Law, Permit Conditions and Permit 99-01, hereby incorporated by reference, and any revisions or modifications approved by the Director. The Permittee shall comply with any and all conditions that are incorporated in this Permit Revision or Permit 99-01. (See Section 9, infra).

Section 4.

COMPLIANCE REQUIREMENTS

- A. The Permittee shall comply with the statutes and regulations in Section 1 and with the terms and conditions of any lease on State and Federal lands.
- B. The Permittee shall conduct his operation(s):
 - 1. in accordance with any measure specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and
 - 2. utilizing any method specified in the permit by the Director in approving alternative methods of compliance with the performance standards of the Act and these rules and regulations, in accordance with the provisions of the Act, 19 NMAC 8.2 Section 1106.M and subpart 20.
- C. The Permittee shall pay all reclamation fees required for Abandoned Mine Land Reclamation under Section 402 of Public Law 95-87 for coal produced under the permit for sale, transfer or use in the manner required by that Section.

Section 5.

AGENCY RIGHT OF ENTRY

The Permittee shall allow the authorized representatives of the Director without advance notice, or a search warrant, upon presentation of appropriate credentials, and without delay to:

- A. the right of entry provided for in 19 NMAC 8.2 Section 2900; and
- B. be accompanied by one or more citizens for the purpose of conducting an inspection in accordance with 19 NMAC 8.2 Section 2901 when the inspection is in response to an alleged violation(s) reported by one or more citizens.
- C. Representatives of the Secretary of the U.S. Department of Interior, including, but not limited to, inspectors and fee compliance officers and the Director of the Office of Surface Mining, Reclamation and Enforcement (OSMRE) have the rights of entry provided for in Section 2900; and may be accompanied by private persons for the purpose of conducting an inspection in accordance with Subpart 29, when the inspection is in response to an alleged violation(s) reported to the Director of OSMRE by the private person.

Section 6.

PERMIT COVERAGE

This Permit Revision shall be binding on any person conducting coal mining and reclamation

operations under Permit 99-01.

Section 7.

ENVIRONMENTAL COVERAGE

The Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from a noncompliance with any term or condition of the Permit, including, but not limited to:

- A. any accelerated or additional monitoring necessary to determine the nature and extent of the noncompliance and the results of the noncompliance;
- B. immediate implementation of measures necessary to comply; and
- C. warning to any person whose health and safety are in imminent danger due to the noncompliance, as soon as possible after learning of a noncompliance.

The Permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 19 NMAC 8.2 Subpart 20, the Act, and these rules and regulations, and prevent violations of any applicable State or Federal law.

The permittee shall conduct his operations in accordance with any measure specified in the PRAP as necessary to prevent significant imminent environmental harm to the health or safety of the public.

Section 8.

COMPLIANCE WITH 19 NMAC 8.2 Section 901

The Permittee shall comply with 19 NMAC 8.2 Section 901 for modification or abandonment of existing structures.

Section 9.

CONFORMANCE OF PERMIT

The Permittee has expressly undertaken in this permit revision application to comply with various performance standards and design criteria presently contained in or derived from 19 NMAC 8.2 of the New Mexico Coal Surface Mining Regulations. Such undertakings are made upon the condition and with the understanding that any amendments to 19 NMAC 8.2 shall entitle the Permittee to apply for and receive a review of the related permit provisions for the purpose of conforming the permit to the amended state regulations or making other appropriate permit amendments. The Permittee and the Mining and Minerals Division shall meet within thirty (30) days of request by the Permittee or notice by the Director for the purpose of considering such amendments to the permit as are appropriate.

Section 10.

SPECIAL CONDITIONS

The San Juan Coal Company shall comply with the following special conditions:

1. All surface coal mining and reclamation operations are prohibited on Federal lands within the permit area prior to the approval of the Resource Recovery and Protection Plan (R2P2) submitted to the Bureau of Land Management, Farmington Resource Area, and a determination by the Office of Surface Mining Reclamation and Enforcement that no mining plan modification is required or, if such action is required, until the Secretary of the Interior has approved a mining plan modification.
2. Prepare a plan to monitor the effects subsidence, resulting from the underground long wall operations, may have on historic properties. The plan shall be submitted to MMD on or before July 1, 2000 and will be submitted to the Bureau of Land Management, the Office of Surface Mining and the New Mexico Historic Preservation Division for review and approval. San Juan Coal Company will be responsible for making any changes necessary to the plan to obtain the necessary approvals.
3. Final backfilling and grading of the Cottonwood Pit will be completed no later than January 30, 2002.

Section 11.

OTHER PERMIT CONDITIONS

1. All cultural resources determined eligible to the National Register of Historic Places shall be protected consistent with an approved plan and shall not be disturbed or mined without prior written approval from the Director of MMD.
2. In the event previously unknown cultural or historic properties are encountered during mine-related activities, the Permittee shall immediately protect the properties from further mining disturbance. The Director shall be notified immediately. The Permittee shall protect the properties from any disturbance until they have been properly evaluated for eligibility to the National Register of Historic Places in accordance with 36 CFR Part 60.4 and consultations with the New Mexico Historic Preservation Officer (SHPO) have been completed pursuant to Section 106 of the National Historic Preservation Act and 36 CFR Part 800. If appropriate, the Permittee shall, in consultation with the Director and the SHPO, prepare and implement a treatment plan designed to mitigate the effects mining or reclamation operations conducted under this permit may have on properties eligible to the National Register of Historic Places. This treatment plan shall be approved by the Director prior to its implementation. If necessary, the treatment plan shall be conducted at the expense of the Permittee.
3. In the event undocumented human remains are located or exposed during mining activities in the permit area, the Permittee shall immediately notify the Director. Should

a burial be exposed during earthmoving activities, the burial shall be protected from further disturbance until disposition of the burial has been resolved. The final disposition of human burials will be carried out in accordance with all applicable guidelines, regulations and laws.

The State of New Mexico

BY: DMBL
Douglas M. Bland, Director
Mining and Minerals Division
Energy, Minerals and Natural
Resources Department

Dated: 10/22/99

I certify that I have read, understand and will comply with the requirements of the Permit and Special Conditions that are a part of it.

Authorized Representative of the Permittee

Name: _____

Title: _____

Dated: _____

BEFORE THE DIRECTOR OF THE MINING AND MINERALS DIVISION

Permit No.99-01

IN THE MATTER OF THE SAN JUAN COAL COMPANY'S APPLICATION FOR A
PERMIT REVISION TO EXPAND THE SAN JUAN SURFACE COAL MINE TO
INCLUDE AN UNDERGROUND OPERATION

THESE MATTERS having come before the Director of the Mining and Minerals Division (Director), of the Energy, Minerals and Natural Resources Department, of the State of New Mexico, upon the application of the San Juan Coal Company (SJCC), a Division of BHP Operations, Inc., to:

1. change the method of mining in the Pinion, Juniper and Cottonwood mining areas of the existing San Juan Mine (SJM) from surface stripping to continuous highwall mining; and
2. expand the SJM permit to include approximately 9,600 acres for an underground mine. The underground mining area, referred to as the Deep Lease and Deep Lease Extension, is contiguous to and immediately east of the SJM. It is located in T30N, R15W (Sections 13, 14, 23, 24, 25, 26, 35 and 36) and R14W (Sections 17, 18, 19, 20, 29, 30, 31 and 32) as identified in Exhibit 701.1 of the permit revision application package.

The Director having considered both permit revision applications (Permit 99-01), reviewed the Division's files and being otherwise fully advised in the premises, now enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Director has jurisdiction over the **San Juan Surface Coal Mine** located in San Juan County, New Mexico, and the subject matter of this permit revision.
2. The permit revision is issued pursuant to the New Mexico Surface Mining Act, §69-25A-1 et seq. NMSA (1978) (Act), the Coal Surface Mining Commission's Rules (19 NMAC 8.2), the New Mexico State-Federal Cooperative Agreement (30 CFR Part 931.30), and all laws and regulations which are now or hereafter in force. All such laws and regulations are made a part of this Order by reference.

3. Permit 99-01, submitted to the Mining and Minerals Division (MMD) on March 15, 1999 (underground revision) and May 28, 1999 (method of mining plan revision), is complete, accurate and complies with the requirements of the Act and 19 NMAC 8.2.
4. The Applicant has demonstrated that coal mining and reclamation operations, as required by the Act and 19 NMAC 8.2, can be accomplished under the mining and reclamation plan contained in Permit 99-01, incorporated in this Order by reference.
5. The Director has assessed the cumulative hydrological consequences of all anticipated coal mining in the cumulative impact area, and determined that the operations as described in Permit 99-01 have been designed to prevent damage to the hydrologic balance outside the proposed permit area.
6. The Director finds, on the basis of the information provided in Permit 99-01, that the proposed permit area:
 - A. is **not** included within an area designated unsuitable for coal mining operation under 19 NMAC 8.2 Subpart 4; and,
 - B. is **not** within an area under study for designation as unsuitable for coal mining operations in an administrative proceeding begun under 19 NMAC 8.2 Subpart 4; and,
 - C. is **not** on any lands subject to the prohibitions or limitations of 19 NMAC 8.2 Section 201; and,
 - D. is **not** within 100 feet of the outside right-of-way line of any public road except as provided for in 19 NMAC 8.2 Section 202(c); and,
 - E. is **not** within 300 feet from any occupied dwelling, except as provided for in 19 NMAC 8.2 Sections 201(c) and 202(d).
7. The proposed operations will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, except as provided for in 19 NMAC 8.2 Section 201(a).
8. The applicant has demonstrated to the Director that it has a right of entry to private lands where the mineral estate to be mined has been severed from the surface estate.
9. On October 22, 1999, the Director confirmed, through a check of the Office of Surface

Mining's (OSM) Applicant Violator System (AVS), that the applicant is current on the payment of all reclamation fees required for Abandoned Mine Land Reclamation under Section 402 of Public Law 95-87.

10. The Applicant has demonstrated that it has not controlled and does not control a mining operation with a pattern of willful violations of such nature, duration and with such irreparable damage to the environment as to show a noncompliance with the Act and with 19 NMAC 8.2 Section 1 105.C. On October 22, 1999, the Director accessed OSM's AVS to check for outstanding violations, failure to abate cessation orders, violations of other applicable federal or state laws or rules pertaining to air and water environmental protection and to determine if any persons who owns or controls the Applicant are in good standing with OSM. A recommendation of "Issue" was received from AVS.
11. The coal mining and reclamation operations performed under this permit revision are consistent with other such operations that currently exist under the permit.
12. The Applicant has a performance bond approved by the Director currently in the amount of **forty-eight million dollars** that will continue in full force and effect until otherwise determined by the Director consistent with provisions of 19 NMAC 8.2 Subpart 14. This revision represent an increase to the current bond calculation of one million dollars (\$1,000,000.00) to cover reclamation associated with the underground mine determined appropriate by the Director pursuant to 19 NMAC 8.2 Section 1404. The current bond includes a 4 million-dollars (\$4,000,000.00) contingency, part of which will be used to cover the increase in bond for the underground operations.
13. The Director has determined, based on information provided in the Permit 99-01, that the permit will not affect prime farmland or alluvial valley floors.
14. The Director has approved the proposed postmining land use of the permit revision area in accordance with the requirements of 19 NMAC 8.2 Section 2073.
15. The Director has made all specific approvals required under 19 NMAC 8.2 Subpart 20.
16. The Director has found mining and reclamation activities will not affect the continued existence of endangered or threatened species, indigenous to the State, or any other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to State or Federal law.
17. The Director has determined, in consultation with the New Mexico Game and Fish Department that the Fish and Wildlife Plan is adequate to meet the requirements of 19

18. The Director has taken into account the effect of the proposed permitting action on properties listed on, or eligible for listing on, the National Register of Historic Places. On April 26, 1999, consultation with the New Mexico Historic Preservation Division, required pursuant to Section 106 of the National Historic Preservation Act, was completed with concurrence of a determination of No Adverse Effect, conditioned on the implementation of the approved data recovery plan.
19. Any additional revised or updated information required by the Director has, or will be, provided by the applicant.

GENERAL OBLIGATIONS AND CONDITIONS

The San Juan Underground Mining Area is subject to the following General Obligations and Conditions:

1. The Applicant shall conduct reclamation operations only on those lands that are specifically designated in Permit 99-01 on the maps submitted with the revision application and authorized for the term of the permit, and secured by an adequate performance bond.
2. The Applicant shall conduct all reclamation operations only as described in Permit 99-01 and the revision application, except to the extent that the Director otherwise directs.
3. The Applicant shall comply with the terms, obligations and conditions of Permit 99-01 and revision application, incorporated by reference into this document, any Special Conditions set forth in this document by the Director, and all applicable performance standards of 19 NMAC 8.2 and other requirements of the regulatory program.
4. Establish to the Director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has corrected or is in the process of correcting a violation or has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under 19 NMAC 8.2 paragraph 1105.C(1)(i).
5. All cultural resources determined eligible to the National Register of Historic Places shall be protected consistent with an approved plan and shall not be disturbed or mined without

prior written approval from the Director of MMD.

6. In the event previously unknown cultural or historic properties are encountered during mine-related activities, the Applicant shall immediately protect the properties from further mining disturbance. The Director shall be notified immediately. The Applicant shall protect the properties from any disturbance until they have been properly evaluated for eligibility to the National Register of Historic Places in accordance with 36 CFR Part 60.4 and consultations with the New Mexico Historic Preservation Officer (SHPO) have been completed pursuant to Section 106 of the National Historic Preservation Act and 36 CFR Part 800. If appropriate, the Applicant shall, in consultation with the Director and the SHPO, prepare and implement a treatment plan designed to mitigate the effects mining or reclamation operations conducted under this permit may have on properties eligible to the National Register of Historic Places. This treatment plan shall be approved by the Director prior to its implementation. If necessary, the treatment plan shall be conducted at the expense of the Applicant.
7. In the event undocumented human remains are located or exposed during mining activities in the permit area, the Applicant shall immediately notify the Director. Should a burial be exposed during earthmoving activities, the burial shall be protected from further disturbance until disposition of the burial has been resolved. The final disposition of human burials will be carried out in accordance with all applicable guidelines, regulations and laws.

SPECIAL CONDITIONS

1. All coal mining operations are prohibited on Federal lands within the permit area prior to the approval of the Resource Recovery and Protection Plan (R2P2) submitted to the Bureau of Land Management, Farmington Resource Area, and a determination by the Office of Surface Mining Reclamation and Enforcement that no mining plan modification is required or, if such action is required, until the Secretary of the Interior has approved a mining plan modification.
2. SJCC will prepare a plan to monitor the affects subsidence, resulting from the underground long wall operations, may have on historic properties. The plan shall be submitted to MMD on or before July 1, 2000 and will be submitted to the Bureau of Land Management, the Office of Surface Mining and the New Mexico Historic Preservation Division for review and approval. SJCC will be responsible for making any changes necessary to the plan to obtain the necessary approvals.

3. Final backfilling and grading of the Cottonwood Pit will be completed no later than January 30, 2002.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over the applicant and the subject matter of this proceeding.
2. The Applicant is entitled to conduct coal mining and reclamation operations at the San Juan Surface Coal Mine in San Juan County, New Mexico, upon the conditions that the Applicant complies with the requirements of the Order, the Act, 19 NMAC 8.2, Permit No.99-01, all Permit Conditions and any Special Conditions imposed by this Order, the posting of the bond specified herein, and upon the submission of such annual reports and fees as may be required under 19 NMAC 8.2.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that Permit 99-01, submitted by the Applicant to conduct underground coal mining and to change the current method of mining on the surface mine to continuous highwall mining, is approved. The revision shall be subject to all conditions set out in this Director's Order of Approval with Findings of Fact Conclusions of Law and Permit Conditions, and obligations and conditions of Permit 99-01.

By Order of the Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, of the State of New Mexico.

Dated this 22 day of October, 1999

DMBL

Douglas M. Bland
Director
Mining and Minerals Division
Energy, Minerals and Natural Resources Department