

Reclamation Board commenced rulemaking to replace this rule. Upon the completion of these actions, Colorado believes that it will have fully implemented counterparts to the subsidence material damage provisions of the Federal regulations at 30 CFR 817.121(c)(2).

Colorado stated that C.R.S. 34-33-111(1)(m) and Rule 2.05.6(3), which address protection of the hydrologic balance, give it the necessary authority to require replacement of drinking, domestic, or residential water supplies in a manner no less effective than 30 CFR 817.41(j) (Administrative Record No. CO-664). However, Colorado has not yet received an opinion from the Colorado Assistant Attorney General as to whether related Rule 4.05.15 limits the replacement of water supplies to those with "vested water rights."

Colorado received no additional complaints. The investigation of the water supply complaint is ongoing. With respect to the structural damage complaint that Colorado initially determined was without basis, Colorado and OSM are reviewing information supplied by the complainant with the intent of resolving the complainant's concerns.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado (Administrative Record No. CO-662). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold a public hearing. OSM received comments from two parties in response to its notice.

One party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. CO-666). The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742-16745) and also responds to these comments below in the "Comments" subsection of following Utah section E. These concerns about direct Federal enforcement are moot

issues for Colorado because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another party commented on the national Federal regulations (Administrative Record No. CO-665) after OSM published them as a final rule on March 31, 1995 (60 FR 16722). These comments are not germane to OSM's April 6, 1995, **Federal Register** request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Colorado, the Albuquerque Field Office on May 4 and 31, 1995, consulted with Colorado in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. CO-668). Because the number of mines in Colorado that are subject to section 720(a) of SMCRA is low, Colorado has made significant progress in promulgating the necessary statutory and rule provisions, and Colorado has shown a commitment to investigating citizen complaints regarding subsidence and water supply impacts, the Field Office and Colorado agreed that Colorado should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Only, if a situation arises in which Colorado's enforcement role as primary enforcer does not appear to fully meet the requirements of section 720(a) of SMCRA, would OSM through Federal oversight issue ten-day notices.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Colorado will occur through State enforcement.

If circumstances within Colorado change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in New Mexico

New Mexico Program Activity, Requirements, and Enforcement

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, to implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM-725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM-726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that it intended to revise its subsidence information and control plan provisions at Coal Surface Mining Commission (CSMC) Rule 80-1-20-124 to be no less stringent than section 720 of SMCRA.

New Mexico did not indicate whether it had authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico had not received any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

On May 13, 1995, New Mexico proposed an amendment to OSM for its permit application requirements at CSMC Rule 80-1-9-39 (Administrative Record No. NM-739). Specifically, New Mexico proposed to revise its subsidence information and control plan requirements at this rule with the intent of making it consistent with section 720 of SMCRA. OSM is currently reviewing the effectiveness of this proposed rule.

On May 3 and June 5, 1995, OSM confirmed with New Mexico that two underground coal mines were active after October 24, 1992 (Administrative Record No. NM-746). New Mexico stated that it had received no subsidence material damage or water supply complaints for these operations, and that neither operation has noncommercial buildings or occupied dwellings and related structures, or developed water sources, within the