

From: Sheila Morrison
To: Michael Malmquist
Date: 1/25/2005 4:46:42 PM
Subject: Re: Mine Dewatering Docs

Mr. Malmquist,

Attached are the documents as requested from your email below.

>>> "Malmquist, Michael" <MMalmquist@pblutah.com> 1/19/2005 3:40:28 PM >>>

Wayne: As a followup to our recent conversation (and a conversation I subsequently had with Steve Alder), would it be possible for me to get copies of the following documents? (1) Letter to OSM from HCID and other Emery County water users regarding their view that the Skyline Mine (and possibly other mines) were depriving them of vested water rights and that the water should be replaced pursuant to the SMCRA water replacement rule (2) Letter from OSM to UDOGM regarding same (3) UDOGM's response to OSM regarding same (4) OSM letter to UDOGM seeking clarification of UDOGM's response, (4) Letter from HCID to UDOGM requesting informal conference on Skyline's request to modify permit for new mining activities to north of existing activities (dated January 7, 2005)? I'm sorry I don't have the dates of all this correspondence, but I think you should be able to identify it from the description and in light of our conversation a few days ago. In the past, upon request the Division has emailed me copies of documents related to the Skyline Mine dewatering issue (pursuant to an understanding that the Division would keep the Carbon County water interests informed on the issue.) If that would be convenient for you, it certainly is for me. If some other means of copying would be more convenient for you, please advise and I will do what is necessary. Give me a call with any questions. Thanks
Mike

Mike Malmquist
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Ph: (801) 536-6658
Cell: (801) 550-6658
Fax: (801) 536-6111
E-mail: mmalmquist@pblutah.com

For additional information about Parsons Behle & Latimer(r), A Professional Law Corporation, including a list of attorneys, please see our website at www.parsonsbehlelaw.com <<http://www.pblutah.com/>>.

CAUTION - CONFIDENTIAL

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532-1234, and delete this original message. Thank you.

CC: Wayne Hedberg

10/28/2004 12:50 FAX 435 381 2522

@005

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File Osm/Evaluation
2005

October 13, 2004

cc: Pam
Wayne
Mark

To: Mitch Rollings, OSM

From: Huntington Cleveland Irrigation Company (HCIC)
Cottonwood Creek Consolidated Irrigation Company (CCCIC)
Muddy Irrigation Company (MIC)
Ferron Canal and Reservoir Company (FCRC)RECEIVED
OCT 26 2004
DIV. OF OIL, GAS & MINING

RE: Water Rights - Affects of mining and industrial activity

This letter is to clarify the position of the above listed irrigation companies in regards to the affects of mining on water rights in their drainages.

The water in San Rafael River and Muddy Creek drainage is fully appropriated. Any activity that affects water in these drainages directly affects the appropriated rights of that drainage.

If mining in a particular drainage diverts water from that drainage, or in any other way affects the yield of that drainage, now or in the future, that water must be replaced or a settlement mitigated so that those holding the water rights are not harmed in any way. All water in a drainage is hydrologically related. When water is removed from a mined area it will be replaced with surface water which would otherwise enter the appropriated system. It doesn't matter if that water is determined to be so-called old water or water flowing from a spring. If it is lost or removed from that drainage, it is the responsibility of the mining company to replace or satisfactorily mitigate the impact of their actions.

The regulatory agencies are responsible to safeguard the water users in this regard. It is the responsibility of DOGM to enforce the state laws and see that this replacement or mitigation occurs in a timely manner. Further, it is the responsibility of DOGM to include the cost of water replacement as part of the mine's reclamation bonding.

The Skyline Mine has, and is, pumping thousands of acre feet of water from the Huntington Creek drainage into the Price River drainage, resulting in water shortages to irrigators and industry who hold the appropriated water rights on Huntington Creek.

SUFCO Mine continues to pump water from the Muddy Creek drainage into the Quitcupah drainage, resulting in hundreds of acre feet unavailable to the users and owners of the appropriated water rights on the Muddy Creek.

We have witnessed the drying up of natural springs on the Gentry Mountain, Bear Canyon, East Mountain (Roans Canyon), Trail Mountain, and on the Muddy Creek drainage. All

10/20/2004 12:00 FAX 435 381 2522

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of these areas are underlaid by miles of mined tunnels and subsidence due to long wall mining.

We have observed proposals by the mining industry to place the water back into its proper drainage blocked by the U.S. Forest Service because of water quality issues.

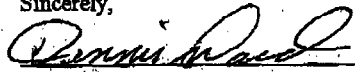
The State Engineer has avoided involvement even when vast quantities of water flow from the mine portal and/or discharge points and run into drainages which had previously contained much less water.

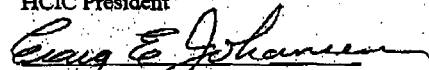
We have seen a quagmire of Federal and State regulations running in conflict, and to the detriment of the water rights on our drainages.

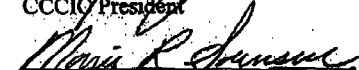
It is our position that the regulating agencies have been derelict in their responsibility to protect this important resource on which our communities and our livelihood depend.


We request that OSM investigate this ever growing problem and offer a plan of relief to the water users of Emery County. In order to prevent costly litigation, we are willing to participate in any conference that you may arrange. We request that any such meetings be held in the Emery County Court House in Castle Dale.

Sincerely,


HCIC President


CCCIC President


MIC President


FCRC President

cc: Brad Johnson
Emery County Commissioners
Emery County Public Land Committee
Kent Peterson, DOGM Board
Jerry Olds, State Engineer
Mark Page, State Engineer
Lowell Braxton, DOGM
Susan White, DOGM
Mary Ann Wright, DOGM

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IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

November 15, 2004

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Evaluation
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RECEIVED
NOV 17 2004

Dir. of the BLM

Ms. Mary Ann Wright
Acting Director,
Utah Division of Oil Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Ms. Wright:

We received a letter dated October 13, 2004, from four Utah irrigation companies regarding the affects of mining on their respective drainages. The letter was apparently in response to an outreach effort to stakeholders and the public by our oversight team, but was addressed to Mitchell Rollings of the Office of Surface Mining (OSM). The irrigation companies' letter was also copied to you and we discussed it with your staff during our meeting on November 9, 2004.

The companies allege that activities at the Skyline and SUFCO mines are impacting water resources leading to water shortages to irrigators who hold appropriated water rights. Also, they have witnessed the drying up of natural springs on the Gentry Mountain, Bear Canyon, East Mountain, Trail Mountain and on the Muddy Creek drainage. The companies believe the Utah Division of Oil, Gas and Mining (DOGM) is responsible for regulating the mine activities that have resulted in water shortages.

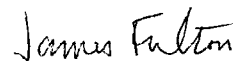
We have reviewed the relevant requirements of the Utah regulatory program. Rule 645-301-731.530, requires; "the permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by underground coal mining and reclamation activities conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in Rule 645-301-700, will be used to determine the impact of mining activities upon the water supply." Other rules require that a permit application provide information regarding the identification of water resources, and the impacts mining and reclamation activities are projected to have on them.

OSM asks that DOGM provide an explanation of the Utah regulatory program requirements with regard to impacts on water resources and appropriated water rights described in the companies' letter.



Please provide a written response by December 1, 2004, so that we can respond to the irrigation companies. Your staff indicated it would arrange for a meeting with the companies and OSM to discuss the potential impacts on water resources and appropriated water rights and the requirements of the Utah regulatory program. The meeting should follow our receipt of your response.

Sincerely,

A handwritten signature in cursive script that reads "James Fulton".

James Fulton
Chief, Denver Field Division

0042



State of Utah

Department of
Natural ResourcesROBERT L. MORGAN
*Executive Director*Division of
Oil, Gas & MiningLOWELL P. BRAXTON
*Division Director*OLENE S. WALKER
*Governor*GAYLE F. McKEACHNIE
Lieutenant Governor

December 1, 2004

James Fulton, Chief
Office of Surface Mining
Reclamation & Enforcement
Denver Field Division
P.O. Box 46667
Denver, Colorado 80201-6667Re: Response to 2004 Public Outreach Letter

Dear Mr. Fulton:

This letter is in response to your letter dated November 15, 2004. The Office of Surface Mining (OSM) has asked for the Division of Oil, Gas and Mining (OGM) to provide an explanation of Utah's regulatory program requirements regarding impacts of coal mining on water resources and appropriated water rights as described in the four irrigation companies' letter dated October 13, 2004. We hope the following discussion will provide the explanation requested.

Utah's regulatory program requires all coal mining operations to implement a surface and groundwater monitoring program as a condition of mining. These monitoring programs are used by OGM staff hydrologists and the Operator to assess coal mining and reclamation activity and its effect upon the quality and quantity of surface and ground water in the permit and adjacent areas. The Mining and Reclamation Plan (MRP) must contain a map of all water sources and describe the associated water rights (R645-724.100). Quantity of water is part of the water right description.

The Probable Hydrologic Consequences (PHC) determination (R645-301-728) requires an Operator to make a finding as to whether or not underground coal mining and reclamation activities conducted after October 24, 1992 may result in contamination, diminution or interruption of State-appropriated water. The Division reviews the PHC determination to ascertain if it and any subsequent remediation plans are based on sufficient information. In a separate action, the Division makes a finding in the Cumulative Hydrologic Impact Assessment (CHIA) as to whether or not the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

Page 2
James Fulton
December 1, 2004

In the Wasatch Plateau coal mining areas of Utah (the locale of the irrigation companies), ground water is found principally in two configurations: 1) in numerous small, localized perched systems and 2) in the coal seams and adjacent rocks of the lower Blackhawk Formation and the underlying Star Point Sandstone. Most of the water intercepted during coal mining flows from the roof of the mine, this indicates that the water has been stored in perched, discontinuous channel sandstone lenses in the Blackhawk Formation. When these channels are intercepted during mining, the sandstone lenses drain water for a few weeks and eventually cease to flow. This characteristic infers water sources are limited in size. Water is also encountered in saturated fractures or faults in the Star Point Sandstone and seeps up through the floor of the mine. Both of these examples of ground water interception indicate a limited interconnectivity to surface waters.

The Division of Water Rights is the water rights authority in the state of Utah (UCA 73-3-2-1.1). Baseline hydrologic and geologic information is used to determine the impact of mining activities upon the water supply (R645-301-731.530). Staff hydrologists review the water monitoring data quarterly and provide timely written findings regarding any trends or changes and impacts of mining on the hydrologic balance. The permittee is required to replace any State-appropriated water supply that is contaminated, diminished or interrupted by underground coal mining activities.

The letter to OSM dated October 13, 2004, from the four irrigation companies, claims that the Skyline and SUFCO mines are depleting their water resources and ask for replacement or mitigation. Based on the continued water monitoring data submitted by the mines and analyzed by the Division we have been unable to detect any loss, contamination or interruption to streams, springs, or wells that cannot be explained by the ongoing five-year drought. The Division believes that until an observed change in water quantity or quality is detected by OGM, or that data is presented by the irrigation companies the mines cannot be required to replace the water.

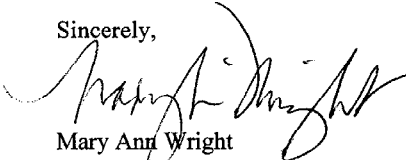
Subsequent to the letter from the irrigation companies, the Division met with the Division of Water Rights and discussed the issue of State appropriated water, interbasin diversion of mine water, and "old" and "new" water. The Division of Water Rights position is that there is no "old" or "new" water and that unless otherwise demonstrated, all groundwater is tributary to the surface waters within the watershed. As a result, the Division is re-examining its regulations to determine if the rules regarding water replacement apply even if the water monitoring data cannot detect a loss.

Page 3
James Fulton
December 1, 2004

The irrigation companies of Emery County also allege that the drying up of natural springs on the Gentry Mountain, Bear Canyon, East Mountain, Trail Mountain and the Muddy Creek drainage is directly linked to coal mining in the area. In general, the Division has not been able to detect any loss, contamination or interruption of State-appropriated water rights to streams, springs, or wells in these areas that cannot be explained by the continued drought. However, the areas of alleged impacts are large and the Division will continue to meet and work with the irrigation companies to obtain specific locations of affected springs.

The irrigation companies requested a meeting to discuss these issues and the Division will arrange for such a meeting in the near future. Thank you for the opportunity to explain the Division's implementation of the Utah Coal regulations.

Sincerely,



Mary Ann Wright
Acting Director

vs
cc:

Susan White
Mark Mesch
Mitch Rollings
Mark Page
Dennis Ward
Craig Johansen
Morris Sorensen
Tracy Behling

P:\GROUPS\MINES\WP\OSM\Response to 2004.DOC

Sheila Morrison - Letters

Page 1

From: "James Fulton" <jfulton@osmre.gov>
To: <MARKMESCH@utah.gov>, <PAM GRUBAUGHLITTIG@utah.gov>, <SUSANWHITE@utah.gov>
Date: 11/15/2004 10:45:21 AM
Subject: Letters

The attached letters are in the mail.

CC: "Henry Austin" <HAUSTIN@osmre.gov>, "Howard Strand" <HSTRAND@osmre.gov>, "Tonya Buckmaster" <Tbuckmas@osmre.gov>

Ms. Mary Ann Wright
Acting Director,
Utah Division of Oil Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Ms. Wright:

We received a letter dated October 13, 2004, from four Utah irrigation companies regarding the affects of mining on their respective drainages. The letter was apparently in response to an outreach effort to stakeholders and the public by our oversight team, but was addressed to Mitchell Rollings of the Office of Surface Mining (OSM). The irrigation companies' letter was also copied to you and we discussed it with your staff during our meeting on November 9, 2004.

The companies allege that activities at the Skyline and SUFCO mines are impacting water resources leading to water shortages to irrigators who hold appropriated water rights. Also, they have witnessed the drying up of natural springs on the Gentry Mountain, Bear Canyon, East Mountain, Trail Mountain and on the Muddy Creek drainage. The companies believe the Utah Division of Oil, Gas and Mining (DOGM) is responsible for regulating the mine activities that have resulted in water shortages.

We have reviewed the relevant requirements of the Utah regulatory program. Rule 645-301-731.530, requires; "the permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by underground coal mining and reclamation activities conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in Rule 645-301-700, will be used to determine the impact of mining activities upon the water supply." Other rules require that a permit application provide information regarding the identification of water resources, and the impacts mining and reclamation activities are projected to have on them.

OSM asks that DOGM provide an explanation of the Utah regulatory program requirements with regard to impacts on water resources and appropriated water rights described in the companies' letter.

Please provide a written response by December 1, 2004, so that we can respond to the irrigation companies. Your staff indicated it would arrange for a meeting with the companies and OSM to discuss the potential impacts on water resources and appropriated water rights and the requirements of the Utah regulatory program. The meeting should follow our receipt of your response.

Sincerely,

James Fulton
Chief, Denver Field Division

November 15, 2004

Mr. Dennis Ward, President
Huntington Cleveland Irrigation Company
P.O. Box 327
Huntington, UT 84528

Mr. Craig Johansen, President
Cottonwood Creek Consolidated Irrigation Company
P.O. Box 678
Orangeville, UT 84537

Mr. Morris Sorensen, President
Muddy Irrigation Company
Emery, UT 84522

Mr. Tracy Behling, President
Ferron Canal and Reservoir Company
Ferron, UT 84523

Subject: Response to 2004 Public Outreach Letter

Dear Sirs,

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM) received your letter dated October 13 via fax from the State of Utah, Division of Oil, Gas, and Mining (DOG M) on October 27. We appreciate you taking the time to outline your concerns in response to the public outreach letter you received from OSM and DOGM.

OSM has reviewed your letter and has had some initial discussions with DOGM concerning the subject of water intercepted by the underground mining operations you reference. For your information, the attached copy of a letter from OSM to DOGM requests additional information regarding the mining permit application's identification of water resources, water rights, and mining impacts of water rights with regard to the requirements of the Utah regulatory program.

DOGM has indicated it will arrange a meeting with you with our involvement once they have responded to our letter.

Thank you for your interest and for expressing your concerns.

Respectfully,

Mitchell S. Rollings
Regulatory Program Specialist

Attachment: OSM letter to DOGM dated 11/15/04
CC: Mark Mesch, DOGM
Susan White, DOGM

0003

SMITH | HARTVIGSEN PLLC

ATTORNEYS AT LAW

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F 801.413.1620
www.smithhartvigsen.com

J. CRAIG SMITH
josmith@smithlawonline.com

January 7, 2005

Pamela Grubaugh-Littig, Permit Supervisor
Attention Coal Regulatory Program
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P. O. Box 145801
Salt Lake City, Utah 84114-5801

Incoming
4/07/05
Copy Mary Ann, Making
Via Hand Delivery
RECEIVED *Wayne H,*
JAN 07 2005 *Dana,*
DIV. OF OIL, GAS & MINING *Vickie Sutherland*
FAX *Skylar*

Re: Canyon Fuel Company, LLC's Application to Amend the Skyline Mine Mining and Reclamation Plan C/007/005 to Allow Subsidence in the "North Lease."

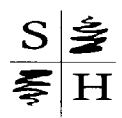
Dear Ms. Grubaugh-Littig:

The purpose of this letter is to provide the comments of Huntington-Cleveland Irrigation Company ("Huntington-Cleveland") to the above referenced Application in response to the request for such comment published in the *Sun Advocate* on December 9, 2004.

Huntington-Cleveland's concerns relate to impacts of mining on the hydrologic balance of the Huntington Creek drainage and water replacement to address any such impacts. Huntington-Cleveland is particularly concerned with the astounding loss of water from Electric Lake, a part of the Huntington Creek drainage. The participation of Huntington-Cleveland in the permit process will be most beneficial in ascertaining what water replacement requirements should be added to the permit.

As the Division is undoubtedly aware, Huntington-Cleveland is the largest holder of state-appropriated water in the Huntington Creek drainage, as such phrase is used in Utah Code Annotated section 40-10-18(15)(c). Water rights of Huntington-Cleveland provide water for beneficial use of its shareholders which include not only nearly all of the agricultural users in northern Emery County but also the municipalities of Huntington, Cleveland and Elmo and domestic use in the unincorporated county surrounding these communities. In addition and of critical importance to the present discussion, Huntington-Cleveland provides water for the use of its largest stockholder, Pacificorp/Utah Power, for the operation of the Huntington Power Plant. These demands for water have been impacted by Applicant's mining operation. As recognized in the most recent CHIA, "[t]he agricultural needs of the Huntington-Cleveland area were at a minimum or were not met during the 2003 growing season due to minimal water being delivered."

Under Utah Water Law, Huntington-Cleveland's right to state-appropriated water extends from its various approved points of diversion on Huntington Creek and springs in Huntington



Letter to Pam Grubaugh-Littig
January 7, 2005
Page 2 of 3

Canyon to the "farthest limits of the watershed." See *College Irrigation Co. v. Logan River & Black Smith Fork Irrigation Co.*, 780 P.2d 1241, 1244 (Utah 1989); *Richlands Irrigation Co. v. Westview Irrigation Co.*, 80 P.2d 458, 465 (Utah 1938). Thus all of the surface and underground water which feeds various springs, seeps in the Huntington Creek drainage, and gaining portions of Huntington Creek are part of Huntington-Cleveland's state-appropriated water. Such area of water right extends into permit areas of the Skyline Mine. Even though the proposed amendment appears to change only areas underlying the Price River Basin, there remains potential for impacts to the critical balance between river basins. In short, Huntington-Cleveland is concerned with the possibility of additional interbasin exchange—specifically, loss of Huntington Creek water into the Price River Drainage.

Huntington-Cleveland does not oppose continued mining by Applicant in the North Lease, so long as such mining as well as mining and reclamation within the remaining permit area can be accomplished without affecting the hydrologic balance and causing any unaddressed contamination, diminution or interruption of State Appropriated water for which Huntington-Cleveland holds the right. See Utah Code Ann. § 40-10-18(15)(c). Huntington-Cleveland believes that, given the studies showing mining-related losses to Electric Lake, it is necessary to update and revise the current PHC and CHIA to acknowledge the hydrologic impact of mining in the Skyline Mine permit area and to provide suitable water replacement provisions. The current versions of the PHC and the CHIA seek to explain away any connection between the large mine-water inflows starting in 1999 (and intensifying in 2001 and 2002) and the drastic loss of water from Electric Lake. However, the position that there is no connection is unreasonable given the substantial evidence to the contrary.

Although this comment letter is not intended to give an exhaustive history or analysis of the water issues surrounding Skyline Mine,¹ Huntington-Cleveland would like to briefly set forth the evidence which it believes mandates amendment of the current PHC and CHIA. As a preliminary matter, the loss of water from Electric Lake may only be a perceptible manifestation of water loss from other sources. Applicant and DOGM have apparently discounted the possibility of a connection between the increased inflows and the loss of water from Electric Lake for two reasons: first, PacifiCorp, the owner of Electric Lake, did not measure the in-flows of Electric Lake directly until 2002; and second, age dating and other tracking methods have not shown a *direct* connection between the water in the mine and surface water. Huntington-Cleveland has no reason to doubt either of these underlying facts. However, these facts are insufficient to outweigh the numerous facts that support the opposite conclusion—that there is in fact a connection.

First, the CHIA states that "it is hard to have *complete* confidence in the [PacifiCorp Report] because the majority of inflow are a 'back-calculation' of data." CHIA, 21 (emphasis added). As an initial matter, the threshold of "complete confidence" is not appropriate. Indeed, it would be difficult to have "complete confidence" in any study, but that does not justify disregarding a study completely. Furthermore, as noted in the *Hydrologic Framework of the Skyline Mines Area*, by Kravits Geological Services, LLC ("Kravits Report"), most of the

¹ A more exhaustive analysis is set forth in *Hydrologic Framework of the Skyline Mines Area*, by Kravits Geological Services, LLC. DOGM received a copy of this report on March 19, 2004.

*Letter to Pam Grubaugh-Littig
January 7, 2005
Page 3 of 5*

analyses showing adverse impacts on Electric Lake are not based on the back-calculated inflow values. Kravits Report, 12-13. Another analysis compares calculated inflow values to the measured inflow numbers to show the trend of increased error as it relates to pumping and reduced outflow numbers. Thus, there is plenty of evidence of a connection without relying on back-calculated inflow numbers.

Second, both the PHC and the CHIA rely heavily on age dating and other source-tracking analyses to substantiate the conclusion that there is no connection between the mine inflows and surface or near-surface sources. While the conclusion that "no direct conduit exists between the mine and the lake" may be justified based on the data, PHC A-13, the conclusion that there is no connection at all between the mine water and surface water is not justified. By all reports, the source-aquifer is enormous. That being the case, it is entirely reasonable, indeed probable based on the evidence, that a conduit exists to recharge the aquifer at some remote point as aquifer water enters the mine. The correlation between the amount of water pumped from JC1 and JC3 and the increased losses of water from the Lake is strong proof of such a conduit because there would be no such correlation if the aquifer was truly "isolated." See Kravits Report, 7. Due to the size of the aquifer, it may take a long time for dyes or other indicators of surface or near-surface water to show up in the mine. Furthermore, although the PHC implies that the significant losses in Electric Lake are due to the drought (PHC A-9), the Kravits Report shows that the Lake responses are totally unlike the effects to the Lake during past droughts. Kravits Report, 10. The spurious Lake responses started in 1999, the same time that Skyline Mine was unexpectedly inundated by water—an inundation which underscored the deficiencies of the PHC and CHIA in place at the time which forecasted no such inundation. Though circumstantial, the fact that these events happened at roughly the same time makes a connection more likely than not. Finally, to Huntington-Cleveland's knowledge, neither the mine nor the DOGM has set forth any other potential cause of the radical change in Electric Lake behavior. Thus, the PHC and CHIA conclusion that there is no connection is against the weight of the evidence. There is a connection between surface and near-surface water sources and the mine, and the PHC and CHIA should be amended to recognize that connection.

Ironically, although the CHIA recognizes that "changes in the potentiometric surface [from draining the aquifer] may influence recharge and movement of ground water through the overlying unsaturated zone," the CHIA totally discounts the potential consequences of just such an "influence" by simply concluding that "the potentiometric surface is expected to recover to approximate pre-mining conditions after mining ceases." See CHIA, 58. As noted in the Kravits Report, the post-mining potentiometric surface will likely be more than 400 feet deeper than pre-mining surface at some locations, so the CHIA's ultimate conclusion is severely suspect. See Kravits Report, 19. Furthermore, even if the potentiometric surface were to return to pre-mining levels, there is ample evidence that, currently and over the past 5 years, the mine dewatering has had a significant influence on the movement of surface and underground water. As water is taken from the aquifer, the conclusion is inescapable that water from the Huntington Creek drainage, has been lost to compensate for the lost underground water. Thus, DOGM should act now to ensure replacement of Huntington-Cleveland's water that has been diminished as a result of the Applicant's mining activity.

*Letter to Pam Grubaugh-Littig
January 7, 2005
Page 4 of 5*

Ultimately, Huntington-Cleveland is looking to the Division, pursuant to the Division's obligations under Utah law, to require the Applicant and Permit Holder to replace water from the Huntington Creek drainage that is contaminated, interrupted, or diminished due to underground Coal Mining. It is our understanding that the Administrative Rules which put into effect Utah Code Ann. §40-10-18(15)(c) require that a determination be made if underground mining activities may result in contamination, diminution or interruption of State-Appropriated Water (Rule R645-301-728.350). If there has been contamination, diminution or interruption of State-Appropriated Water, then the Rules require a prompt replacement of such contaminated, diminished or interrupted water supply (Rule R645-301-731.530). As a hydrologic connection between the water encountered in the Skyline Mine and Electric Lake (along with other water sources which feed the Huntington Creek drainage) is evident, Huntington-Cleveland expects the Division to put in place a mechanism to require the Permit Holder to promptly replace the water lost from the Huntington Creek drainage as required by Utah law and Division Rule, including an appropriate adjustment to the bond amount to guarantee such prompt replacement (R645-301-525.550).

Much of this comment letter has been directed to the loss of water from Huntington Creek, the aquifer, and Electric Lake. Huntington-Cleveland recognizes that the amendment at issue is apparently remote from Electric Lake. However, this does not mean that the application will not have any effect on the Huntington Creek drainage. First, as you know, subsidence results from removing coal and allowing the overlying material to fall in the missing coal's place. In the process, the overlying material becomes fractured. Groundwater can move more easily, at least initially, through the fractured material. Thus, there is a risk that water from the Huntington Creek drainage will migrate into the newly fractured material and be lost into the Price River Basin. Furthermore, the post-mining potentiometric surface could be further lowered by water flowing to the additional fractured material which was previously virtually impermeable. Thus, there is even more danger of "continued and permanent hydrologic effect upon the local and regional aquifer system." Kravits Report, 19. The potential, additional dangers caused by continued subsidence makes it more critical than ever that the Division provide for protection of the hydrologic balance and water replacement to affected water right holders where appropriate.

Finally, Huntington-Cleveland hereby requests a hearing to resolve these issues and work towards necessary revisions to the PHC/CHIA. Huntington-Cleveland also reserves its rights of appeal of the Permit to the Board of Oil, Gas & Mining.

I appreciate your attention in this important matter. Please feel free to contact me with any questions.

Yours truly,

SMITH HARTVIGSEN, PLLC


J. Craig Smith
Attorney for Huntington-Cleveland Irrigation Co.

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January 7, 2005
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cc: Board of Directors, Huntington-Cleveland
Dennis Ward, President
Sherrel Ward, Vice President
Kay Jensen, Secretary
Jerry D. Olds, P.E., State Engineer
Mark Page, Regional Engineer

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