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January 30, 2002

RECEIVED

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DIVISION OF  
OIL, GAS AND MINING

Lowell P. Braxton, Director  
Division of Oil, Gas and Mining  
Department of Natural Resources  
1594 West North Temple, Suite 1210  
P. O. Box 145801  
Salt Lake City, Utah 84114-5801

**Re: Skyline Mine Water Inflow Issue**

*c/007/005*  
*Copy Sharon*  
*Mike, [unclear]*  
*Ann, Dan*

Dear Mr. Braxton:

I thought it might be helpful to delay my reply to your letter of November 7, 2001. My letter of September 28, 2001 and your response was, in my view, leading us down a path that would not be optimal for either the Huntington Cleveland Irrigation Company or the Division. The very reason I corresponded with you when the Skyline Mine water inflow issue arose, rather than pursuing other more formal paths, was to open a productive dialogue rather than become entangled in administrative proceedings. To the extent that my original letter was responsible for a less than productive dialogue either by its tone or content, it was not so intended and I apologize.

Hopefully, the dramatic increase in water inflow at the Skyline Mine can be used as a catalyst, not to further divide water users from mine operators and the Division, but instead to create a dialogue which will lead to a consensus as to the steps to be taken which will allow more accurate prediction of hydrological consequences of mining and will protect any affected water right holders.

I suppose that my clients and I would have been less concerned about the Skyline Mine inflow situation if we had not been through something awfully similar, albeit on a smaller scale, just a few years ago. I am referring, of course, to the Genwall Mine, which began producing substantial water even though neither the PHC nor the CHIA predicted this flow. Applications to appropriate the mine water were filed by several individuals, and those applications, protested of course by Huntington-Cleveland, remain pending to this day. (Learning from history, Huntington Cleveland has filed an Application to Appropriate the flow out of the Skyline Mine.)

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As I'm sure you can understand, it is alarming to water users when mines in or adjacent to drainages upon which they rely begin producing large volumes of water totally unpredicted by the hydrologic data on file with the Division on the strength and accuracy of which the mining permit was issued and which very purpose of which is to predict the hydrological consequences of mining. When this occurs, as it has on multiple occasions, the obvious question is "Why?" I realize that, as in any human endeavor, we cannot expect 100% accuracy in predicting probable hydrological consequences. However, I do believe that such disturbing inaccuracies as we have seen at Genwall and Skyline are occurring at a troubling frequency which requires an examination of the process to determine where the problem may lie.

Rather than point out what we believe to be the failings of the regulatory process (we did that in our first letter without success), I would simply invite the Division to identify what steps, if any, it intends to take to prevent future situations where anomalous flows unpredicted in the PHC and CHIA are encountered.

Your letter suggests several potential steps including well data. I would urge that more data be required for PHC's and that Permittees be required to regularly update their PHC. It is axiomatic that the more actual hard data gathered, the better the scientific conclusions. As mining moves forward, hydrological settings will be encountered differing from those previously experienced. Obviously, past hydrologic experience in a mine will not always predict the future (no more than looking in your rear view mirror will alert you of a curve in the road ahead).

I would suspect that actual data such as the aforementioned well data could be gathered rather inexpensively, as mines typically drill ahead of mining anyway to determine the characteristics of the coal seam ahead of mining. Even if my suspicions are wrong, there is a permit requirement that probable hydrologic consequences be known. Unless there is a reasonable level of reliability in the PHC's upon which permits are granted, then PHC's become superfluous.

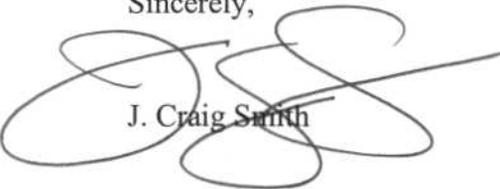
Again, I am not trying to be offensive or sarcastic. Your forthright reply as to what, if anything, the Division intends to require to prevent Permittees encountering unpredicted anomalous flows in the future is important to Huntington Cleveland and other water users in the area. Under the status quo, your Division's administration of Utah Code Ann. § 40-10-18 and R 645-301-700 are the only protections water users have from diminution or interruption of quantity or quality of water.

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Finally, for your information I have enclosed copies of several articles from national publications on impacts of coal mining on water around the country.

Please contact me if further information or a meeting would assist you in your reply.

Sincerely,



J. Craig Smith

cc: Robert L. Morgan, P.E.  
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