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DIV. OF OIL, GAS & MINING

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

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

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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.

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 innundation. 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.

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.

cc: Board of Directors, Huntington-Cleveland
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