

C/007/005 Incoming

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AUG 04 2016
DIV. OF OIL, GAS & MINING

August 4, 2016

John R. Baza, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84116

Attention: Coal Regulatory Program

Re: Informal Conference for Flat Canyon Lease (7/8/2016) Comments from Huntington-Cleveland

Dear Mr. Baza:

Thank you for the opportunity to participate in the Informal Conference that took place on July 28, 2016 in Price, Utah. As requested by the Division of Oil, Gas and Mining (the "Division"), Huntington-Cleveland Irrigation Company ("Huntington-Cleveland") submits these comments to supplement its prior written and oral comments.

To reiterate its position, Huntington-Cleveland is supportive of the coal industry in eastern Utah and does not oppose the expansion of Skyline Mine's mining operation into the Flat Canyon Lease area ("Lease Area"). Instead, Huntington-Cleveland, as the largest holder of state-appropriated water in the Huntington Creek drainage, is only concerned with protecting its ability to provide to its shareholders the water they depend on and are legally entitled to use. As you know, this includes drinking and culinary water for most of northern Emery County.

For this purpose only, Huntington-Cleveland submitted comments to the lease application requesting the Division include specific conditions in Skyline Mine's Flat Canyon lease permit (the "Permit"). As the Division has neither granted nor denied the Permit or the requested conditions, Huntington-Cleveland again encourages the Division to include those conditions in the Permit and to consider the following when making its decision:

On August 16, 2001, a portion of Skyline Mine began flooding. Simultaneously, Electric Lake began losing water. At that time, no one was prepared to respond to the high amounts of water flooding Skyline Mine. Eventually, Canyon Fuel Company and PacifiCorp drilled three wells in James Canyon (JC-1, JC-2, and JC-3), whose sole purpose was to pump water out of the mine into Electric Lake. JC-1 began pumping on September 16, 2001 and continues pumping to this day. JC-2 was unable to pump water because it was drilled into sandstone. JC-3 pumped for a period of time beginning in May 2003, but stopped pumping because the water quality coming from the well did not comply with the UPDES permit's requirements. Although only JC-1 is still pumping today, it pumps high volumes of water from the mine to Electric Lake. For example, between October 29, 2015 and March 9, 2016, JC-1 pumped between 12,900,000 to 13,700,000 gallons per day. As of March 2016, these wells have collectively pumped 79,222 acre-feet of

water from the mine. This is 2.5 times the volume of Electric Lake, which is only 31,500 acre-feet. Further, the data shows that the amount of water JC-1 is pumping out of Skyline Mine is increasing with time.

Following the flooding that occurred in 2001, several tests were done to determine the origin of the water flooding Skyline Mine. Initially, a submersible remotely operated vehicle (“ROV”) explored the bottom of Electric Lake and the faults that exist at the bottom of the lake adjacent to the mine workings. Two findings came from that exploration: (1) methane gas bubbles were found emanating along the faults; and (2) as the ROV stirred up sediment at the bottom of the lake, the sediment was sucked downward and into the ground. These findings strongly support a connection between Electric Lake and the flooded Skyline Mine workings. This is because methane gas is a well-known feature of coal formations, and the sediment’s downward movement indicates that the water is leaving the bottom of the lake and being conducted down into the faults. Later, a dye test was conducted that concluded Electric Lake loses water into Skyline Mine. Lastly, a four and one-half year study and analysis of tritium and chlorofluorocarbons was also conducted. Based on “strong evidence” it concluded that substantial quantities of surface water in the vicinity of Electric Lake were being diverted into the mine.

Although these studies may be susceptible to counter studies, it has been fifteen years since the flooding began, the flooding still continues, and no one has definitively determined where the water flooding Skyline Mine is coming from. This is particularly troublesome because when Skyline Mine stops mining and JC-1 stops pumping, it is unclear how the hydrologic balance in the Electric Lake area will be impacted and the long-term effects on the aquifer.

More recently, a study theorized that the water is coming from a perched aquifer that is not connected to the groundwater systems. The study, however, did not account for the fact that JC-1 has been continuously pumping for fifteen years in quantities that would have filled Electric Lake 2.5 times. The study also does not address the possibility that water is entering the mine via faults that extend upwards towards the surface. Moreover, despite the existing studies, there are still no definitive answers to the questions: Where is the water that is flooding Skyline Mine coming from? Why are JC-1’s pumping rates increasing with time?

Apart from the mine waters being pumped into Electric Lake, Huntington-Cleveland is also concerned about the mine waters being discharged into Eccles Creek, which ultimately flows out of the Huntington Creek drainage into Scofield reservoir. The waters being discharged into Eccles Creek are entirely taken and diverted from the Huntington Creek drainage and, as a result, Huntington-Cleveland is deprived of these waters. As of April 2016, Skyline Mine has discharged 98,269 acre-feet of water into Eccles Creek. And between January 1, 2016 and April 30, 2016, the daily gallons being discharged into Eccles Creek from Skyline Mine have ranged between 1,630,000 and 4,615,200 with the average volume being approximately 3,000,000 gallons. Although the data indicates that the discharge rates have decreased since 2001, substantial amounts of water are still be discharged into Eccles Creek on a daily basis. As these large quantities of water are lost to Huntington-Cleveland, it is critical that the source of these waters is determined so that water rights and the hydrological balance may be sustained and protected.

In regards to the waters being pumped to Electric Lake and discharged into Eccles Creek, it is unclear precisely what water is being pumped/discharged where and how. Thus, Huntington-Cleveland asks for clarification regarding the following: Where is the water located in Skyline Mine that is being pumped into Electric Lake? What is JC-1's interaction with that water? Where is the water located in Skyline Mine that is being discharged into Eccles Creek? How is Skyline Mine discharging that water, e.g., via wells, pipelines, etc.?

Although Huntington-Cleveland is still concerned about the long term future of Electric Lake particularly due to the long term discharge of water out of the Huntington-Creek Drainage into Eccles Creek coupled with the uncertainty of the continuation of the water being pumped into Electric Lake that replaces the lost water, its current focuses are to prevent another rushed and unprepared response if large volumes of water are encountered and groundwater flows are interrupted by mining in the new Lease Area. Also, to assure mining in the Lease Area does not affect Huntington-Cleveland's ability to access its water, by redirecting water elsewhere. History has shown mining around Electric Lake can result in encountering large and continual volumes of water. Further, in the Division's internal memorandum dated March 10, 2003, it noted that "the potentiometric surface increases to the west in the Flat Canyon Tract and water inflows may be greater than those already encountered." It continues, "[i]t's possible that in this particular location, over a long period of time, coal mining may not be possible without causing material damage to the Hydrologic Balance The Division is concerned about the impacts of continued mining in the Flat Canyon area." Huntington-Cleveland shares these concerns and requests the Permit include specific conditions to counter the effects of flooding, if it occurs, on Huntington-Cleveland's legal rights to access its water.

Apart from its concerns about possible flooding, Huntington-Cleveland is also aware that there are subsidence areas within the Lease Area that could impact surface flows tributary to Huntington Creek. This is because streams tributary to Huntington Creek that first pass over subsidence areas within the Lease Area, which may cause flow diminution. The following streams are particularly at risk of flow diminution due to subsidence: Little Swens Canyon, Swens Canyon, Flat Canyon, and Boulger Canyon. All of these streams are western tributaries of Huntington Creek above Electric Lake. Boulger Canyon is more at risk than the other tributaries since a substantial percentage of its length is shown as being under the estimated subsidence. As a result, there is concern that the streams flowing above the subsidence areas will run down into the mine workings and cause a diminution of stream flow, which would ultimately reduce the amount of water Huntington-Cleveland can access. Again, Huntington-Cleveland's requested conditions address these particular concerns in a way that will protect its water rights and allow mining to go forward in the Lease Area.

At the Informal Conference, there was some discussion about data being gathered specifically to provide a baseline for these kinds of subsidence concerns. It was unclear, however, where that data can be accessed. Nevertheless, Huntington-Cleveland requests that data be collected to establish a historical baseline showing the flow quantities of potentially affected tributaries prior to the beginning of the mining of the Lease Area. This data can be relatively simple to gather and will allow for a clear determination regarding whether the streams' waters are being lost into the mine workings. To gather the data, two Parschall Flumes can be installed in

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each stream. One Parschall Flume would be installed upstream, outside the anticipated subsidence and likely the Permit Area, whereas the other Parschall Flume can be installed downstream either at the entrance to Electric Lake in the case of Huntington Creek or at the entrance to Electric Lake or Huntington Creek for the Western Tributaries. Bi-weekly or monthly readings can be used to establish a baseline for selected streams before mining begins. Continual monitoring of the streams and comparing the data before, during, and after mining can provide clear evidence showing whether subsidence has occurred and whether mitigation is necessary to assure that mining does not cause Huntington-Cleveland to lose any of its state appropriated water.

In closing, Huntington-Cleveland desires to work collaboratively with the Division, the mine and other interested parties to protect the hydrologic balance surrounding Electric Lake and the water rights involved as well as the economic interests that exists in allowing coal mining in the Lease Area. Huntington-Cleveland once again requests that the State Engineer and Division of Water Rights be involved so their expertise may be utilized. Huntington-Cleveland also understands that it must depend on the Division to protect the water rights involved pursuant to the legal requirements of Utah Code §§ 40-10-18(15)(c) and 29, and thus encourages the Division to implement the requested conditions in the Permit and require a concrete plan to replace state appropriated water that may be contaminated, diminished or interrupted as required by law.

I appreciate your attention in this important matter and your consideration in the foregoing comments. Please feel free to contact me with any questions.

Yours truly,

SMITH HARTVIGSEN, PLLC



J. Craig Smith

Attorney for Huntington-Cleveland Irrigation Co.

cc: Huntington-Cleveland Irrigation Company
North Emery Water Users Association
Emery County Commission
Huntington City
Cleveland City
Elmo Town
Emery Water Conservancy District
Kent Jones, P.E., State Engineer
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