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*Sunnyside Mine file  
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LFB*

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HAND DELIVERED

March 10, 1993

**RECEIVED**

MAR 10 1993

DIVISION OF  
OIL GAS & MINING

Mr. Lowell Braxton, Acting Director  
Department of Natural Resources  
Division of Oil, Gas & Mining  
355 West North Temple, Suite 350  
3 Triad Center  
Salt Lake City, Utah 84180-1203

RE: Response to the Division of Oil, Gas & Mining's ("Division's") Letter of February 18, 1993 and Ten Day Notice, No. 93-02-250-001, Issued by Office of Surface Mining, Reclamation & Enforcement ("OSM") on February 26, 1993 for Inadequate Bond, Permit No. ACT/007/007

Dear Director Braxton:

At the request of Sunnyside Coal Company ("SCC"), we have been requested to respond to the Division's letter of February 18, 1993 and to OSM's Ten-Day Notice No. 93-02-250-001 ("TDN") regarding alleged inadequacies in SCC's reclamation bond for Permit No. ACT/007/007 (the "Permit"). SCC disputes these allegations on both substantive and procedural grounds. First, contrary to the allegations of the Division and OSM, the reclamation liability for the Permit is adequately secured by SCC's collateral bond. Second, contrary to characterization of this matter as a bonding inadequacy, the Division's letter of February 18, 1993 proposes a new bond amount which constitutes a bond readjustment subject to informal conference.

**I. SCC'S COLLATERAL BOND ADEQUATELY SECURES THE RECLAMATION LIABILITY.**

The Division's letter of February 18, 1993 inaccurately states that the recent appraisals by George Fujii and Jeffery Anderson cover all water rights and the bulk of the assets pledged as collateral. SCC seeks to clarify that these appraisals only address the mountain property and associated water rights. They do not include all water rights, lands or equipment owned by SCC and currently pledged to the Division as collateral securing reclamation liability for the Permit.

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Table "A" attached hereto shows SCC's total estimated value of all collateral pledged to the Division as of January 1, 1993 to be \$14,034,768.60. This amount far exceeds the \$2,639,088.00 reclamation liability for the Permit.

The Division's letter of February 18, 1993 omits some 2,000 acres of SCC property which secures the collateral bond, including the land upon which Sunnyside Cogeneration Associates ("SCA") has built a co-generation facility. The value of this 137.47 acre parcel was appraised at \$90,500 by Brockbank and Associates in 1991 prior to construction of the facility. The Brockbank appraisal was used as the basis for determining the \$1,472,595 appraised value of the 2,000 acre tract and is included in Table "A" under "Other Land Value."

A previous appraisal prepared by George Fujii valued the total surface property at \$1,900,000 excluding water rights. This value was reduced by \$96,000 due to the sale of certain properties within the City of Sunnyside. Sale of this property was approved by the Division and reduced the potential liabilities of the City property to SCC and the State. The sale also reduced outstanding property taxes by \$14,524.12. Some properties were withheld from the collateral due to SCC's intent to donate those properties to the City of Sunnyside.

As stated above, all the water rights pledged to the State were not valued in the appraisals referenced in the Division's letter of February 18, 1993. The total value for all SCC water rights have ranged from a low of \$3,857,453 to a high of \$6,791,538 set by the Division in 1988. SCC has retained Steve Clyde, Esq., a water attorney, and Jeffery Anderson, an MAI appraiser, to conduct an independent valuation of the water rights which secure the collateral bond. A preliminary appraisal will be provided by Mr. Clyde and Mr. Anderson on April 1, 1993. SCC estimates that an additional 2,900 acre-feet of water rights with an approximate value of \$250 per acre-foot was omitted from the appraisal referenced in the Division's letter. A total value of \$725,000 for these rights is set forth in Table "A" as "Other Water Rights."

In addition, the Division fails to recognize a \$75,000 Certificate of Deposit with Zions First National Bank which SCC has pledged to secure the reclamation liability. This collateral is listed on Table "A" with other assets included in the collateral bond.

Perhaps most notably, the Division has omitted valuable equipment which secures the collateral bond. SCC's equipment is pledged to the State as collateral through a Subordination Agreement with Zions First National Bank. The estimated value of the

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equipment is \$12,560,237.10 as appraised by Mountain States Machinery in early 1992. The equipment values on Table "A" have been adjusted to 1993 values.

Finally, the Division fails to consider the fact that Environmental Power Corporation's permit approval has reduced the Permit area and that SCC's reclamation liability will be reduced by approximately \$900,000.00.

In sum, SCC has secured the reclamation liability for the Permit with more than adequate collateral. SCC requests an opportunity to review this matter with the Division as soon as possible to clarify any misunderstanding concerning the value of collateral pledged to the State.

## II. PROPOSED BOND READJUSTMENT.

The reclamation liability of \$3,180,810.30 stated in the February 18, 1993 letter exceeds SCC's \$2,639,088.00 current liability for the Permit. If the Division intends to impose this new reclamation liability, it must follow procedures for the readjustment of the bond. Pursuant to Utah Code Ann. § 40-10-12(3) and R645-301-830.422, the Division is required to provide SCC with an informal conference and written findings prior to bond readjustment. No such procedures have been followed by the Division. OSM and the Division's initiation of proceedings for bond inadequacy under either R645-301-812.700 or R645-301-840-520 are untimely until bond readjustment requirements are met. Therefore, the Division's letter of February 18, 1993 must be rescinded and OSM's TDN must be vacated.

We would appreciate an opportunity to review this matter with the Division prior to your response to OSM regarding the TDN.

Very truly yours,



Denise A. Drago  
Attorney for Sunnyside Coal Company

DAD:jmc:7388

Enclosure

cc: Joe Fielder  
Gary Gray  
Kenneth R. Oldham, Esq.  
Thomas A. Mitchell, Esq.

TABLE "A"

|                                                                 |                          |
|-----------------------------------------------------------------|--------------------------|
| Average of Fujii and Anderson<br>Appraised Value                | \$ 747,500.00            |
| Certificate of Deposit                                          | 75,000.00                |
| Equipment Value<br>(Mountain Sates Machinery Appraisal)         | 12,108,172.84            |
| Other Land Value<br>(Brockbank Appraisal)                       | 1,472,595.00             |
| Other Water Rights Value<br>(Estimated Pending Clyde Appraisal) | 725,000.00               |
|                                                                 | <hr/>                    |
| Total                                                           | \$15,128,267.84          |
| * Less Carbon County Taxes<br>and Zions Bank Loan               | 576,636.69<br>516,862.55 |
|                                                                 | <hr/>                    |
| TOTAL COLLATERAL VALUE                                          | \$14,034,768.60          |

\* SCC has paid \$486,919.08 in back taxes due from Kaiser Coal Corporation.