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United States Department of the Interior

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JFB BR 3-14-94
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OFFICE OF THE FIELD SOLICITOR

P.O. Box 25007 - 13105
Denver, Colorado 80225-0007

(303) 231-5350

March 14, 1994

OSM.DV.Y140

MEMORANDUM

TO: Robert L. Hagen, Director
Albuquerque Field Office
Office of Surface Mining Reclamation and Enforcement

FROM: DeAnn L. Owen, Attorney *DeAnn L. Owen*
Denver Field Office

SUBJECT: Sunnyside Real Property and Water Rights Sale,
Carbon County, Utah (the Property)
Request for Partial Reconveyance and Escrow Agreement

As follow up to our telephone conversation of March 11, 1994, I have reviewed the documents which your office forwarded to me with respect to the above-referenced matter and have the following comments.

I. Escrow Agreement (Agreement)

I would call to your attention provision 5, Adverse Claims, on page 3 of the Agreement, which provides that in the event of an adverse claim to the \$600,000, the funds will remain in the custody of Zions First National Bank (Zions) until final adjudication or settlement. Since the Office of Surface Mining Reclamation and Enforcement (OSM) has been placed on notice of a dispute between two parties claiming a contractual right to purchase the Property, it is likely that the \$600,000 could be tied up until this dispute is completely resolved. This would result in the monies remaining in Zions' custody, conceivably for years, without the State or OSM being able to access the \$600,000.

Consequently, OSM needs to have written assurances that these parties have settled their dispute prior to the execution of the Deed for Partial Reconveyance and the Agreement.

With respect to provision 7, Compensation, on pages 3-4 of the Agreement, although Sunnyside Coal Company (SCC) is required to pay Zions' escrow fees if SCC fails to pay said fees, Zions shall have a first lien on the \$600,000 and may deduct its escrow fees plus any of its costs and expenses and reasonable attorney fees arising in connection with obtaining payment of the escrow fees. Similarly, Zions could also deduct from the \$600,000 any of its costs and reasonable attorney fees arising from a dispute as to either the Property or to the \$600,000.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages *2*

To <i>Jim Carter</i>	From <i>R. Hagen</i>
Dept./Agency <i>OSM</i>	Phone # <i>231-5350</i>

TOTAL P.03

2

It is my understanding that the Agreement is not identical to the approved form of the Escrow Agreement for the sale of Water Users Claim No. 91-231, as revised by the subsequently executed Addendum to the Escrow Agreement for the sale of Water Users Claim No. 91-231. Thus, the Agreement should be revised so as to delete provision 7.

Also, please forward to me a copy of the \$480,000 letter of credit resulting from the closure of the escrowed water rights sale.

II. Zions Letter of Credit (LOC)

There are two potential problems with the LOC. First, paragraph 2 on page 1 provides for an alternative expiration date at such time as the Utah Division of Oil, Gas, and Mining (DOGM) directs cancellation of the LOC and executes a release of SCC from further reclamation liability. This language should be changed to require that both OSM and DOGM must execute such a release.

Second, paragraph 4 provides for DOGM's sight draft for fund disbursement under the LOC. OEM may want to modify this to require that the sight draft be jointly executed by OSM and DOGM.

III. Partial Reconveyance

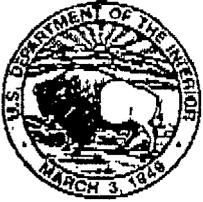
While paragraph 3 does contain certain critical language (i.e., "remaining property continued to be held . . . without affecting personal liability . . . without affecting reclamation obligation"), we need to doublecheck "Exhibit B" (I do not have a copy of this exhibit) and verify whether the Trust Deed does in fact exclude Exhibit B.

IV. Carbon County Tax Lien Issue

As you are aware, on June 1, 1993, SCC and the Utah Tax Commission entered into an Agreement for Deferral of Real and Personal Property Tax (Tax Deferral) on the Property for tax years 1990, 1991, and 1992. The Tax Deferral provides for a payment schedule through 1995. The concern is what happens if SCC defaults in making payments on the deferred taxes and/or fails to keep current on future tax payments beginning in 1993.

The Tax Deferral provides that in the event of default the Tax Deferral is terminated, and the county may declare all delinquent taxes, penalties, and interest immediately due and payable and may take any action authorized by law to collect the taxes.

Consequently, DOGM and OSM must have written assurance from the county that it waives any and all rights it may have now, or in the future, to the \$600,000 LOC.



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