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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
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Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

File

February 17, 1994

Al Kashinsky
Department of the Interior
Office of the Solicitor
Denver Field Office
P.O. Box 25007
Denver Federal Center
Denver, Colorado 80225

Dear Al:

Enclosed please find a copy of correspondence directed to Sunnyside Coal Company which I am forwarding to your office. I apologize for not directing this directly to the attorney directly responsible for Sunnyside Coal Company, however, I cannot recall the name of the attorney. I trust that you will direct this to her and have her call me with any questions concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tom Mitchell', written over a long horizontal line.

Thomas A. Mitchell
Assistant Attorney General

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enclosure
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February 17, 1994

VIA FACSIMILE

Denise A. Dragoo, Esq.
Fabian & Clendenin
P. O. Box 510210
Salt Lake City, Utah 84145

Re: Notice of Transfer, Kilter, Inc.

Dear Denise:

I am in receipt of your letter dated February 7, 1994, concerning your client, Sunnyside Coal Company's desire to sell the land and water rights subject to the Division's Deed of Trust to Kilter, Inc. I have requested that the Attorney General's office review your proposal to determine whether or not such a sale may be accomplished under the coal rules. The result of their research leads me to the firm conclusion that this sale may not take place under the present circumstances.

The coal rules, at Utah Admin. R. 641-301-860-230 provide that real property posted as a collateral bond must meet specific conditions. Specifically, the rule at 232.3 provides that the permittee "provide proof of possession and title to the real property". Your sale would contravene this requirement of the real property collateral security rules.

In addition, research of relevant case law has revealed the case of Pacific Coast Coal Company, Inc., 127 IBLA 370, decided December 9, 1992. In a review of the parallel federal rule, the IBLA held that the permittee in that case, Pacific Coast Coal, could not post collateral in the form of real property where legal title was held in the name of a related entity. In this instance, it is my understanding from discussions with you that Kilter is not only not a related entity, but that there would be no legal connection between Kilter, Inc., and Sunnyside Coal Company.

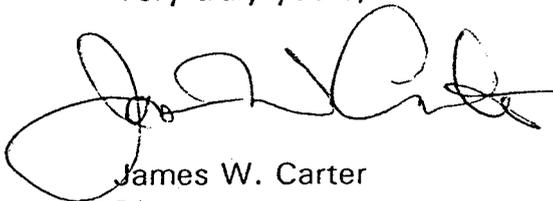


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Denise A. Dragoo
February 17, 1994

Therefore, I am putting you on notice at the earliest date possible that consummation of the proposed sale of property subject to the Deed of Trust dated March 9, 1989, would result in the Division being under-secured in the total amount of the reclamation obligation, minus the cash collateral now held by Zion's First National Bank for the reclamation obligation.

Please call me with any questions or concerns you may have regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is fluid and cursive, with a large initial "J" and "C".

James W. Carter
Director

lsj
cc: OSM, Albuquerque
Field Solicitor, Western Office
JWC94002.LTR