

0067



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
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

February 17, 1994

Robert H. Hagen, Director
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Re: Status of Sunnyside Coal Company, Sunnyside Mine, ACT/007/007, Folder #3, Carbon County, Utah

Dear Bob:

I am writing to follow up on a part of our meeting last week in Denver concerning the status of the Sunnyside Coal Mine in Carbon County, Utah. As we discussed, we were notified by letter dated February 7, 1994, that Sunnyside Coal Company intended to transfer certain assets owned by it, subject to the security interest of the Utah Division of Oil, Gas and Mining (DOG M), to an entity denominated Kilter, Inc. I am attaching a copy of that letter here. The security interest of DOGM in the subject property is evidenced by a Deed of Trust and Security Agreement dated March 9, 1989, and recorded March 10th, 1989, a copy which I have also attached here.

You will note that, at paragraph 2.2 of the Deed of Trust, Sunnyside is specifically granted the right to sell or dispose of any items of personal property secured under the agreement, but must deposit proceeds of such sale into an account established pursuant to the reclamation contract. The Trust Deed is, however, silent as to whether or not real property secured by the Trust Deed may be conveyed. Based on our recent research, however, we believe that a transfer of collateral by Sunnyside would constitute a violation of the Utah coal regulatory program, and have notified them of that fact. A copy of my letter to Denise Drago is attached.

On December 11, 1989, DOGM, Sunnyside Coal Company and the Office of Surface Mining entered into a Memorandum of Understanding (MOU) which was intended to retroactively grant to OSM the rights and security interests conferred on DOGM in the Trust Deed and Security Agreement. The MOU was also intended



Page 2

Robert H. Hagen

ACT/007/007

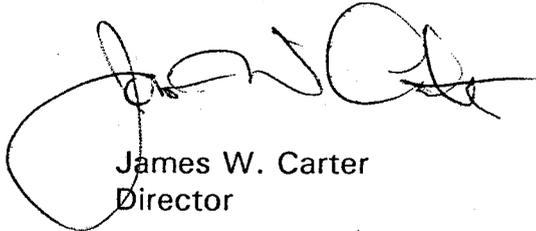
February 17, 1994

to make OSM a party to an August 28, 1989 Subordination Agreement and an Agreement and Release of Reclamation Contract of the same date. A copy of the MOU is also attached. As of April 19, 1993, that MOU did not appear to have been recorded by OSM in Carbon County.

Given these circumstances and recent events at the Sunnyside mine, I think it is imperative that we convene a meeting of your solicitors and our assistant attorneys general to determine what steps we should be taking to protect the interests of both our agencies and of the public in general. I will be out of the office the entire week of February 28th through March 4th, 1994, and would hope that we could get together, perhaps in Denver, sometime next week. I could make myself available on either the 22nd and the 24th of February for such a meeting.

I think it is important that we coordinate our efforts and begin implementation of an action plan to consolidate the gains we have made in additional reclamation security in the past few months, and to plan our strategy in the event a bankruptcy petition is filed. Please let me know what schedule would work for you.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is stylized with a large, sweeping initial "J" and a long horizontal stroke extending to the right.

James W. Carter
Director

jbe
Attachments
H:SUNNYSID.LTR

To: Mr. Carter

FABIAN & CLENDENIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

TWELFTH FLOOR
215 SOUTH STATE STREET
P.O. BOX 510210
SALT LAKE CITY, UTAH 84151
TELEPHONE (801) 531-8900
FACSIMILE (801) 596-2814

RECEIVED

FEB 7 / 1994

DIVISION OF
OIL GAS & MINING

OF COUNSEL
PETER W. BILLINGS, SR.
RALPH H. MILLER

NEVADA OFFICE
KEVIN N. ANDERSON

2835 SOUTH JONES BLVD., SUITE 5
LAS VEGAS, NEVADA 89102
TELEPHONE (702) 367-4545
FACSIMILE (702) 252-5014

GEORGE D. MELLING, JR.
WARREN PATTEN
M. BYRON FISHER
STANFORD B. OWEN
WILLIAM H. ADAMS
ANTHONY L. RAMPTON
PETER W. BILLINGS, JR.
THOMAS CHRISTENSEN, JR.
DENISE A. DRAGOO
JAY B. BELL
DANIEL W. ANDERSON
GARY E. JUBBER
ROSEMARY J. BELESS
ANNA W. DRAKE
W. CULLEN BATTLE
KEVIN N. ANDERSON

RANDY K. JOHNSON
NORMAN J. YOUNKER
MICHELE MITCHELL
JOHN E. S. ROBSON
DOUGLAS B. CANNON
DOUGLAS J. PAYNE
ROBERT PALMER REES
DIANE H. BANKS
P. BRUCE BADGER
JOHN (JACK) D. RAY
KATHLEEN H. SWITZER
CRAIG T. JACOBSEN
BRUCE D. REEMSNYDER
BROCK R. BELNAP
DOUGLAS R. BREWER
CRAIG E. HUGHES

VIA FACSIMILE

February 7, 1994

CONFIRMATION OF TELECOPY

James M. Carter
Director
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

RE: Notice of Transfer -- Kilter, Inc.

Dear Director Carter:

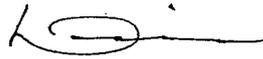
On behalf of Sunnyside Coal Company ("SCC"), Bob Burnham, Kent Huett and I appreciated the opportunity to meet with you and Lowell Braxton regarding the pending sale of SCC's undisturbed lands and water rights to Kilter, Inc. ("Kilter"). This sale would not affect the Sunnyside Mine or Permit No. ACT/007/007. As we have discussed, Kilter is proposing to purchase properties encumbered by the Utah Division of Oil, Gas & Mining's ("Division's") Deed of Trust and Security Agreement dated March 9, 1989 ("Deed of Trust").

In consideration for the proposed sale, Kilter will execute a promissory note in favor of SCC and take the real property subject to the Deed of Trust. Kilter will seek to liquidate the real property assets to fund a reclamation bond for the Sunnyside Mine and Kilter would contract to obtain SCC's performance of reclamation obligations. The reclamation obligation itself will remain with SCC. The Division will retain its first position under the Deed of Trust. Due to the fact that the Mine, the permit and the reclamation obligations all remain in SCC, it does not appear that the transfer of undisturbed property triggers an assignment, sale or transfer under Utah Admin. R. 645-303, et seq.

James M. Carter
February 7, 1994
Page 2

Enclosed is a proposed form of notice of transfer for this proposed transaction. Please review this form and contact me once you have had an opportunity to review this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:28510

Enclosure

cc: Lowell Braxton
Robert M. Burnham
Thomas A. Mitchell, Esq.
Kent Huett

NOTICE OF TRANSFER

WHEREAS, by Reclamation Contract dated as of March 3, 1989, Sunnyside Reclamation & Salvage, Inc. ("Sunnyside") and the State of Utah, Department of Natural Resources, Division of Oil Gas & Mining (the "Division"), Sunnyside agreed to perform certain reclamation obligations (the "Reclamation Obligations");

WHEREAS, by Deed of Trust and Security Agreement dated March 9, 1989 and recorded March 10, 1989, in Book 287, at Pages 96-155, in the office of the Recorder of Carbon County, Utah (the "Deed of Trust"), Sunnyside pledged certain real property (the "Property") as security for performance of the Reclamation Obligations;

WHEREAS, Sunnyside Coal Company ("SCC") is the successor in interest to Sunnyside; and

WHEREAS, SCC has agreed to sell the Property to Kilter, Inc. ("Kilter") pursuant to that certain Purchase and Sale Agreement dated February ____, 1994.

NOW, THEREFORE, SCC hereby gives notice to the Division of the transfer of the Property from SCC to Kilter, subject to the Deed of Trust.

DATED this ____ day of _____, 1994.

KILTER, INC.

BY: _____

ITS: _____

STATE OF UTAH
COUNTY OF CARBON } 88
FILED AND RECORDED FOR

*File in Trust
file
ACT/007/007*

S.E. Utah Title

MAR 10 2 10 PM '89

023282

Entry No. _____

DEED OF TRUST AND SECURITY AGREEMENT

Indexed / /

BOOK 287... RECORDS

Abstracted / /

PAGE 96-155

Recd. Fee 410.00

ANNE E. STERREN
COUNTY RECORDER

THIS DEED OF TRUST AND SECURITY AGREEMENT (hereinafter

referred to as "Instrument") is made this 9th day of

MARCH, 1989, by and among SUNNYSIDE RECLAMATION &

SALVAGE, INC., a Colorado corporation authorized to do business
in the State of Utah ("Trustor"), whose address is 2033 - 11th

Street, Boulder, Colorado 80203, SOUTH EASTERN UTAH TITLE
COMPANY, whose address is 90 West 100 North, Price, Utah 84501

("Trustee"), and the STATE OF UTAH, DEPARTMENT OF NATURAL
RESOURCES, DIVISION OF OIL, GAS & MINING, an agency of the State

of Utah, ("Beneficiary"), whose address is 355 West North Temple,
III Triad, Suite 350, Salt Lake City, Utah 84180.

W I T N E S S E T H :

WHEREAS, Kaiser Steel Corporation ("Steel") and Kaiser
Coal Corporation, Kaiser Coal Corporation of Sunnyside and Kaiser
Coal Corporation of Utah, (collectively, "Coal"), are debtors in
possession in jointly administered bankruptcy proceedings
designated as Case No. 87 B 01552 E pending before the United
States Bankruptcy Court for the District of Colorado; and

WHEREAS, Coal is the permitted operator of the
Sunnyside Mine, Nos. 1, 2, and 3, Carbon County, Utah, under
Permanent Program Permit No. ACT/007/007 (the "Permit"). The
Permit covers the Sunnyside Mine Nos. 1, 2 and 3 (the "Mine") and
the associated gob, coal tailings and waste piles ("Tailings").
The Tailings and the real property upon which they are situated
are owned by Sunnyside Cogeneration Associates ("SCA"). By the

terms of a Purchase and Sale Agreement between Coal and SCA, closed on December 28, 1987, SCA has agreed to assume the permitting and reclamation obligations for the Tailings, but as of this date, has not assumed such obligation; and

WHEREAS, Trustor and Coal entered into an Acquisition Agreement, dated February 20, 1989 (the "Acquisition Agreement"). Under the terms of the Acquisition Agreement, Trustor will, upon the closing provided for therein, acquire from Coal the Sunnyside Mine Nos. 1, 2 and 3 and other property. Trustor will, upon closing, assume and hold Coal harmless in respect of liabilities for reclamation pursuant to the Permit; and

WHEREAS, the Trustor and the Beneficiary have entered into a Reclamation Contract dated as of March 3, 1989 (the "Reclamation Contract"), to set forth the understandings of Trustor and the Beneficiary with respect to the terms and conditions upon which the Beneficiary will release Coal from all obligations under the Permit, transfer the Permit to Trustor, and authorize Trustor to conduct mining and reclamation operations pursuant to the Permit; and

WHEREAS, pursuant to paragraph 9 of the Reclamation Contract, Trustor has agreed to secure to the Beneficiary the reclamation of the Mine and the Tailings pursuant to the terms of the Permit by delivering to Beneficiary (i) a Deed of Trust for the benefit of the State of Utah covering the water rights and undisturbed real property as described at Exhibit "A" hereto as acquired by Trustor from Coal pursuant to the Acquisition

Agreement and (ii) a Security Agreement granting the State of Utah a security interest in the equipment and other personal property described in Exhibit "B" hereto as acquired by Trustor from Coal pursuant to the Acquisition Agreement; and

WHEREAS, the parties agreed pursuant to paragraph 9(A) of the Reclamation Contract that Beneficiary shall have a lien pursuant to this Instrument to the extent of the Mine Reclamation Cost in an amount currently estimated as \$2,297,349.00 (herein "Mine Reclamation Cost") and the Tailings Reclamation Cost in an amount currently estimated as \$1,286,487.00 (herein "Tailings Reclamation Cost"), or the Mine Reclamation Cost only if the Permit insofar as it covers the Tailings has been transferred or reissued to SCA, is not covered and secured to the Beneficiary by the Account or ultimate security provided pursuant to Section 8 of the Reclamation Contract; and

WHEREAS, paragraph 9(B) of the Reclamation Contract provides that Trustor shall have the right to sell and dispose of all items of equipment and personal property covered by the Security Agreement granted to Beneficiary pursuant to 9(A) of the Reclamation Contract. The proceeds of any such sale are to be deposited by Trustor in the Account. The sale proceeds so deposited shall apply towards full funding of the Account. The proceeds so deposited shall be in addition to and shall not apply to reduce the amount (\$250,000) to be deposited each month pursuant to Section 5 of the Reclamation Contract.

NOW, THEREFORE, to secure the payment of the above-described Mine Reclamation Cost, Tailings Reclamation Cost, performance of the covenants and obligations of the Reclamation Contract, and those covenants and obligations herein contained, and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by the Beneficiary to the Trustor, the receipt and sufficiency of which is hereby acknowledged;

Trustor hereby irrevocably GRANTS, TRANSFERS and CONVEYS, UNTO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the conditions hereinafter set forth, and the conditions set forth in the Reclamation Contract, the following described property:

1. The undisturbed real property and water rights located in Carbon and Emery Counties, State of Utah, described in Exhibit "A" attached hereto and made a part hereof, together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof (the "Real Property");

2. All right, title and interest of Trustor in and to all tangible equipment and personal property (the "Personal Property") owned by Trustor and now or at any time hereinafter located in or at the Real Property and used in

connection therewith, as further described in Exhibit "B" hereto and made a part hereof.

The entire estate, property and interest hereby conveyed to Trustee may hereinafter be referred to as the "Trust Estate".

FOR THE PURPOSES OF SECURING:

a. Payment of the above-described reclamation liability in an amount currently estimated as \$2,297,349 for the Mine Reclamation Cost and \$1,286,487 for the Tailings Reclamation Cost, or \$2,297,349 for the Mine Reclamation Cost only if the Permit insofar as it covers the Tailings, has been transferred or reissued to SCA, to the extent that the Mine Reclamation Cost and the Tailings Reclamation Cost or the Mine Reclamation Cost only are not covered and secured to the Beneficiary by the Account or ultimate security provided pursuant to Section 8 of the Reclamation Contract.

b. Performance of all obligations of Trustor under the Reclamation Contract.

c. Performance of all obligations of the Trustor contained in this Instrument.

TO PROTECT THE SECURITY OF THIS INSTRUMENT, TRUSTOR
HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor hereby covenants and agrees:

1.1 Payment of Secured Obligations. To pay when due the Mine Reclamation Cost and the Tailings Reclamation Cost or the Mine Reclamation Cost only as provided herein or in accordance with the terms of the Reclamation Contract.

1.2 Payment of Taxes and Assessments. To pay all taxes and assessments on the Trust Estate and to pay all charges and assessments on water and water stock used on or with said Trust Estate unless otherwise abated or discharged by the Bankruptcy Court.

1.3 Maintenance. Not to commit waste.

1.4 Insurance. To maintain adequate fire insurance on improvements on the Real Property and to maintain such other policies of insurance as required by the Permit and the Beneficiary's underground coal mining and reclamation regulations.

1.5 Costs of Collection and Fees of Trustee. To pay all costs of collection, including Trustee's and attorney's fees, in the event of default in payment of the indebtedness secured hereby and to pay reasonable Trustee's fees for any of the services performed by Trustee hereunder, including a reconveyance hereof.

1.6 Appointment of Successor Trustee. The Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the office of the County Recorder of Carbon County and by otherwise complying with the provisions of the applicable law of the State of Utah substitute a successor or successor to the Trustee named herein or acting hereunder.

1.7 Trustee's Powers. At any time, or from time to time, without liability therefor, upon written request of Beneficiary and presentation of this Instrument for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Instrument upon the remainder of the Trust Estate, Trustee may (i) reconvey any part of the said Trust Estate; (ii) consent in writing to the making of any map or plat thereof; (iii) join in granting any easement or creating any restriction affecting this Instrument or any agreement subordinating the lien or charge hereof.

1.8 Beneficiary's Power. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned and without affecting the lien or charge of this Instrument, Beneficiary may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey or cause to be released or reconveyed at any time at Beneficiary's option

any parcel, portion or all of the Trust Estate, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

ARTICLE II

SECURITY AGREEMENT

2.1 Creation of Security Interest. Trustor hereby grants to Beneficiary a security interest in the Personal Property described at Exhibit "B". To the extent that any property covered by this Instrument consists of personal property subject to the Uniform Commercial Code, this Instrument constitutes a security agreement and is intended to create a security interest in such property in favor of the Beneficiary, subject to all existing security interests in the Trust Estate and subject to the terms of the Reclamation Contract. This Instrument shall be self-operative with respect to such property, but Trustor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any such Personal Property.

2.2 Sale and Disposition of Personal Property.

Trustor shall have the right to sell and dispose of any items of Personal Property constituting the Trust Estate covered by this Instrument. The proceeds of any such sale shall be deposited by Trustor in the Account established pursuant to paragraph 4 of the Reclamation Contract. The sale proceeds so deposited shall apply

towards full funding of the Account. The proceeds so deposited shall be in addition to and shall not apply to reduce monthly deposits to the Account made pursuant to Section 5 of the Reclamation Contract.

ARTICLE III

RELEASE AND TERMINATION

3.1 Alternative Security. Trustor may submit to Beneficiary at any time during the term of this Instrument and the Reclamation Contract a corporate surety bond, irrevocable letter of credit or other similar securities to secure its obligation to the Beneficiary to reclaim pursuant to the Permit. Beneficiary shall accept such alternate security provided it meets generally applicable statutory and regulatory requirements. Provided, however, that Beneficiary shall not be required to accept a self bond from Trustor. Upon acceptance of such alternative security by the Beneficiary, Trustor shall be entitled to a release from this Instrument and shall be entitled to a distribution of all funds then being held in the Account pursuant to the terms of the Reclamation Contract unless such funds secure the reclamation obligation.

3.2 Reclamation. Upon successful completion of part or all of the reclamation obligation secured hereby, as determined by the Beneficiary and as set forth in the Reclamation Contract, the Beneficiary shall release Trustor from part or all of its obligations under the Reclamation Contract and this Instrument.

3.3 Reconveyance. If the reclamation obligation which this Instrument secures is met, this Instrument shall become null and void and all of the Trustor's interest in the Trust Estate shall revert to Trustor, the entire right, title and interest of Beneficiary shall terminate and Beneficiary shall, promptly after the request of Trustor, execute, acknowledge and deliver to Trustor a reconveyance of this Instrument and a UCC-3 termination statement releasing the security agreement and financing statement created herein. The reconveyance of this Instrument will be recorded in the counties in which this Instrument is recorded. The UCC-3 termination statement will be filed with the State of Utah, Department of Business Regulations, Division of Corporations and Uniform Commercial Code.

ARTICLE IV

Default

4.1 Reclamation. Trustor shall be in default under this Instrument in the event that Trustor fails to execute its reclamation obligation with respect to the Mine and the Tailings as provided herein and by terms of the Reclamation Contract.

4.2 Foreclosure or Sale. In the event of default, Beneficiary may, after thirty days' written notice to Trustor, declare the Mine Reclamation Cost and the Tailings Reclamation Cost or the Mine Reclamation Cost only, as provided by the Reclamation Contract, immediately due and payable and may foreclose this Instrument as a mortgage or a deed of trust as provided by Utah law. In the event of a sale in accordance with

Utah Rules of Civil Procedure ("URCP") Rule 69(e), Trustor hereby waives authority to direct the order of sale as provided by URCP Rule 69(e)(3).

ARTICLE V

MISCELLANEOUS

5.1 Notice. Written notice hereunder shall be deemed to have been made if actually delivered or if mailed by registered or certified mail, postage prepaid, addressed as follows:

IF TO TRUSTOR:

SUNNYSIDE RECLAMATION & SALVAGE, INC.
2033 - 11th Street
Boulder, Colorado 80302
Attention: Kenneth L. Ball

IF TO TRUSTEE:

SOUTH EASTERN UTAH TITLE COMPANY
90 West 100 North
Price, Utah 84501
Attention: Jerry Frandsen

IF TO BENEFICIARY:

STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF OIL, GAS & MINING
III TRIAD, Suite 350
355 West North Temple
Salt Lake City, Utah 84140
Attention: Dianne R. Nielson
Director

Any party may, by written notice so delivered to the others, change the address to which delivery shall thereafter be made.

5.2 Successors. This Instrument shall bind and inure to the benefit of the respective successors and assigns of Trustor and of Beneficiary.

5.3 Governing Law. This Instrument shall be governed by the laws of the State of Utah.

EXECUTED as of the date first above written.

TRUSTOR:

SUNNYSIDE RECLAMATION & SALVAGE, INC.

BY David B. Gorman
ITS VICE PRESIDENT

STATE OF Colorado)
City: Denver ; ss.
COUNTY OF Denver)

On this 9th day of March, 1989, personally appeared before me T. David E. Coman, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the vice president of SUNNYSIDE RECLAMATION & SALVAGE, INC., and that said document was signed by him/her in behalf of said corporation by authority of its bylaws, and said vice president acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
My Commission Expires:
My Commission Expires Oct 12, 1991

Stacy L. Ellis
Notary Public
Residing at Denver, Colorado

DAD:030689a



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
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

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.

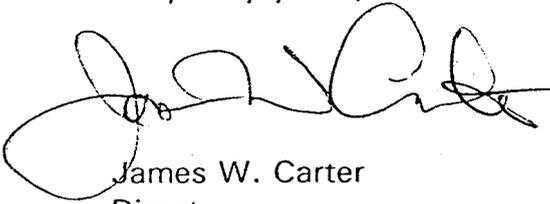


Page 2
Denise A. Dragoo
February 17, 1994

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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this 11th day of December, 1989, by and between the Utah Division of Oil, Gas, and Mining (DOGM), Sunnyside Reclamation and Salvage (SRS), a Colorado corporation, and the United States Department of the Interior, by and through the Office of Surface Mining Reclamation and Enforcement (OSM).

RECITALS

A. On or about the 3rd day of March, 1989, DOGM and SRS entered into a reclamation contract (the Contract).

B. The Contract set forth the agreement of SRS and DOGM concerning, inter alia, the reclamation of Sunnyside Mine Nos. 1, 2 and 3, Carbon County, Utah, together with the associated gob, coal tailings, and waste piles (the Mine and the Tailings).

C. Pursuant to paragraph 9 of the Contract, on or about March 9, 1989, SRS, DOGM and South Eastern Title Company entered into a Deed of Trust and Security Agreement (the Instrument), which document was recorded in Emery County, Utah, on or about March 10, 1989 in Book 176 at Pages 580-639, and in Carbon County, Utah, or about March 10, 1989 in Book 287 at Pages 96-155.

D. In the Instrument, SRS conveyed to DOGM a first lien and security interest in and to certain undisturbed real property, water rights, fixtures, buildings, tangible equipment and personal property.

E. On or about the 28th day of August, 1989, SRS and DOGM executed an Agreement and Release of Reclamation Contract (the Agreement and Release), which instrument terminated the Contract, released SRS from certain financial obligations, and granted to DOGM certain other rights.

F. On or about the 28th day of August, 1989, SRS and DOGM also executed a Subordination Agreement (the Subordination Agreement), which agreement, inter alia, subordinated to Zions First National Bank (Zions), DOGM's first lien and security interest in and to certain tangible equipment and personal property, which lien and security interest was conveyed by SRS to DOGM in the Instrument.

G. In the Agreement and Release, and notwithstanding the fact that OSM was not a party thereto, a recital was made that OSM and DOGM had determined that the Instrument, as modified by the Subordination Agreement, provided adequate security for ensuring SRS's reclamation of the Mine and the Tailings.

H. The Cooperative Agreement between the Governor of the State of Utah and the Secretary of the United States Department of the Interior (the Cooperative Agreement), 30 C.F.R. § 944.30, in Article IX states that DOGM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1201 et seq., and the State program.

I. The Mine and the Tailings are operations involving Federal lands, and the Instrument, as modified by the Agreement and Release and the Subordination Agreement, comprises a collateral security bond which, under the terms of the Cooperative Agreement, should accrue jointly to the benefit of DOGM and OSM.

J. The purposes of this Memorandum of Understanding are, without limitation, to (1) set forth the express intent, acknowledgment, understanding and agreement of the parties with respect to the terms of the Instrument, the Agreement and Release, and the Subordination Agreement; (2) include OSM as a co-beneficiary to the first lien and security interest conveyed by SRS to DOGM in the Instrument; and (3) include OSM as a co-beneficiary to any and all other rights accruing to DOGM in the Agreement and Release.

AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Irrespective of the date on which this Memorandum of Understanding is executed by the parties, it shall retroactively be effective, nunc pro tunc, as of the effective date of the Instrument.

2. It is the express intent and understanding of the parties that this Memorandum of Understanding shall, and hereby does, constitute the agreement of the parties concerning the Instrument, the Agreement and Release, and the Subordination

Agreement, the express agreement of the parties being that all rights conferred upon DOGM by SRS in the Instrument and the Agreement and Release shall and hereby do accrue jointly to DOGM and OSM as if OSM had originally been a party to said documents, it being the express intent and understanding of the parties that by execution of this Memorandum of Understanding, privity of contract as to said documents shall be and hereby is established among DOGM, SRS and OSM.

3. The parties expressly understand and hereby acknowledge that by executing this Memorandum of Understanding OSM does not release, waive or otherwise discharge, either expressly or impliedly, Kaiser Coal Corporation, Kaiser Coal Corporation of Sunnyside, or Kaiser Coal Corporation of Utah, or said entities' officers or directors, from any reclamation liability enforceable by OSM under SMCRA.

4. By execution of this Memorandum of Understanding, OSM claims no interest in the personal property and tangible equipment described in the Subordination Agreement.

UTAH DIVISION OF OIL, GAS, AND MINING

By: Dennis R. Nelson

SUNNYSIDE RECLAMATION AND SALVAGE

By: James T. Cooper

OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT

By: Raymond J. Fournier