

0021

MOYE, GILES, O'KEEFE, VERMEIRE & GORRELL

A LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

29TH FLOOR

1225 SEVENTEENTH STREET

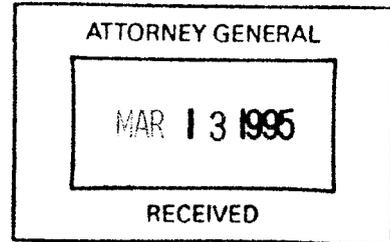
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JAMES T. BURGHARDT, P.C.

DIRECT DIAL (303) 292-7910



March 8, 1995

Clay Tucker
1805 Hilltop, Suite 201
Redding, California 96002

✓ Tom Mitchell
Assistant Attorney General
Attorney General's Office
No. 3 Triad, Suite 475
355 West North Temple
Salt Lake City, UT 84180

David Tundermann, Esq.
Parsons, Behle & Latimer
Suite 1800
201 South Main Street
Salt Lake City, UT 84111

Gary Frandsen
Southeastern Utah Title Company
175 East 100 South
P.O. Box 855
Price, Utah 84501

Ava Walker, Chief Underwriter
Van-American Insurance Company
167 E. Main Street, Suite 210
Lexington, KY 40507

Bill Balaz
Balaz & Associates
203 Sunset Circle
Palisade, CO 81526

Re: Final Order of Colorado Bankruptcy Court
Approving Sale of Sunnyside Assets to Tucker Group

Ladies and Gentlemen:

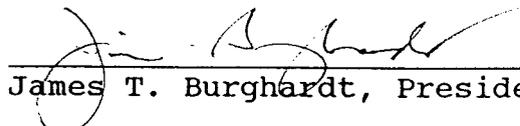
Enclosed please find a complete copy of the Findings of Fact, Conclusions of Law, and Order approving Sale of Assets Free and Clear of Liens, Claims, Encumbrances, and Interests entered by Chief Judge Matheson of the United States Bankruptcy Court for the District of Colorado on March 6, 1995, approving Sunnyside's sale of assets to the Tucker Group.

If you have any questions regarding the document, please feel free to give me a call.

Very truly yours,

MOYE, GILES, O'KEEFE,
VERMEIRE & GORRELL

By: James T. Burghardt, P.C.

By: 
James T. Burghardt, President

JTB/meh
Enclosure

RAY, QUINNEY & NEBEKER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

POST OFFICE BOX 45385

SALT LAKE CITY, UTAH 84145-0385

TELEPHONE (801) 532-1500

FEDERAL TAX ID. NO. 87-0350651

Handwritten notes:
5-13-95
5-13-95

ATTORNEY GENERAL

MAR 13 1995

RECEIVED

Client No. 22771

Office of the Attorney General
Attn: Thomas Mitchell
#3 Triad Center, Suite 475
355 No. West Temple
Salt Lake City, UT 84180-1204

March 13, 1995
Invoice No. 113887

For Legal Services Rendered From February 2, 1995 to February 6, 1995.

Matter No. 1

Sunnyside Coal Company

02/02/95	H. Saperstein	.9	Examination of documents from Tom.
02/06/95	H. Saperstein	.2	Telephone conference with Tom Mitchell.

Total Hours 1.1

Total Fee For Legal Services Rendered \$203.50

ATTORNEY SUMMARY

Attorney	Hours Worked	Billed Per Hour	Bill Amount
H. Saperstein	1.10	185.00	203.50
Total all Attorneys	1.10	185.00	203.50

Total Current Charges \$203.50

Credits and Adjustments 86.05 CR

Total Amount Due This Statement \$117.45

1 here, and, therefore, the Court would be forced to conclude
2 that the purchaser here is not a "successor" within the
3 meaning of that kind of an agreement. Are they a successor
4 within the meaning of some other kind of an agreement? Well,
5 perhaps, but I don't know what the other kind of an agreement
6 is, if there is such another kind of an agreement. Might
7 there be such an agreement? Well, I suppose in the realm of
8 this world, it's possible that parties enter into other kinds
9 of agreement with other kinds of terms which might apply, but
10 I have no evidence of that in this instance.

11 There are no other objections to the sale. The
12 creditors' committee, acting on behalf of the unsecured
13 creditors, has not objected to the sale. Therefore, the
14 Court must conclude that the debtor's motion is well taken,
15 and that an order should enter approving the sale of the
16 assets described in the notice, in accordance with the terms
17 of the letter of intent, as modified by the proposal
18 submitted to the Court today, and that an appropriate order
19 should enter.

20 Now, we ought not to have disputes about the forms
21 of orders. My experience is that when we have such disputes,
22 it's usually because somebody has a different agenda item
23 that they seek to prosecute, either by way of the form of the
24 order, or by the objection.

25 It probably is easier, from the standpoint of the

1 estate, and for this Court to be more cavalier about the
2 terms of the order than it is for Mr. Burghardt and his
3 client.

4 For my part, I would be content to say that the
5 debtor's motion to sell in accordance with the terms of the
6 letter of intent, as modified on the record today, are
7 approved, and that the debtor's performance of the agreement
8 and the sale is free and clear of any and all liens, claims,
9 or interests of any other person, including, but not limited
10 to the Department of Oil, Gas and Mining, any taxing
11 authority, any union with claims against the debtor arising
12 under contractual, statutory, or regulatory provisions, or
13 any other creditor of the debtor.

14 (Pause.)

15 THE COURT: If the parties desire more by way of an
16 order, I will consider the same, and it may be tendered, Mr.
17 Smith. I think a copy of the order should be provided to the
18 other parties in attendance at the hearing today.

19 Do you have such an order today that you're
20 prepared to tender?

21 MR. SMITH: I don't, Your Honor.

22 THE COURT: I'm sure that there is a desire that this
23 order be entered promptly so that the parties may close.
24 When do you anticipate having an order, Mr. Smith?

25 MR. SMITH: I think by the end of the day, Monday, would

From : FRS (303)751-2777

P10

9

1 be realistic, Your Honor, if that's acceptable.

2 THE COURT: The end of the day on Monday?

3 MR. SMITH: Monday, March 6th, I believe.

4 THE COURT: Would you get my calendar?

5 (Pause.)

6 THE COURT: Let me say as well, while we have all the
7 parties here, that I am appreciative, most appreciative of
8 the willingness of the Tucker Group to come forward in this
9 proceeding and submit a bid, in the first instance, to be the
10 stalking horse. The Court is always appreciative, Mr. Wood,
11 of other parties who will come in and express interest and a
12 willingness to bid, and I'm appreciative, therefore, of the
13 bid that your clients have submitted.

14 Mr. Burghardt, my calendar indicates that you're to
15 be in front of me next Tuesday afternoon on a matter.

16 MR. BURGHARDT: Your Honor, that's correct. Actually, I
17 believe Mr. Keyes, from my office, probably will be appearing
18 at that time, rather than me, but I can certainly be here,
19 Your Honor. He's done the preparation for the hearing, but
20 if the Court would like to combine these on the Court's
21 calendar, seriatim, we'd be happy to appear at that time.

22 MR. WEISS: Your Honor, if the Court's looking for some
23 time on Monday, the Court also has before it the Castle
24 matter involving some Section 110 issues. I've had some
25 extensive discussions with counsel for Mr. Alvarado. I

10

1 believe that we probably will end up putting an agreement on
2 the record, subject to the Court's approval, and that may buy
3 the Court ten or fifteen minutes.

4 THE COURT: Yeah, well, that's not the problem because
5 Mr. Smith's indicating that the order, form of order may not
6 be ready until sometime late Monday.

7 MR. SMITH: Well, Your Honor, let me throw my hat in the
8 ring here in terms of conflicts and availability. I
9 anticipate being out of town next Tuesday for several days.
10 Perhaps--does the Court wish to set a conference for
11 appearing on the form of order?

12 THE COURT: Well, what I just thought I'd do is, I'm not
13 going to get myself caught up in this problem of your
14 submitting an order and having everybody file their
15 objections, and--because usually all I do at that point is
16 throw all that in the waste paper basket and write my own
17 order, and so I simply would propose to set a time, and I
18 could do it Monday afternoon, two o'clock, and set that time
19 for the Court to consider the entry of the--consider the form
20 of order which should enter in this matter.

21 MR. SMITH: That would be fine, Your Honor. I would
22 suggest that we tender to the Court, say, before noon on
23 Monday, the proposed form of order, to give the Court an
24 opportunity to review it, and then if the Court wishes to
25 schedule us Monday afternoon, I believe we're available.

11

1 THE COURT: Well, it isn't just me, obviously. It's the
2 interests of some others, and that they have the opportunity
3 to look at that.

4 UNIDENTIFIED SPEAKER: I have depositions Monday
5 afternoon, but I think I can postpone them until around four,
6 if it's--if the Court wants to have a hearing at two.

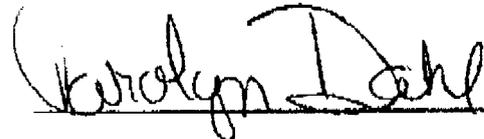
7 THE COURT: All right. That'll enable us to address
8 this and get it done, so let's do that. We'll convene at two
9 o'clock on Monday for the purpose of considering the form of
10 order to be entered, authorizing the transaction that is
11 before the Court, at which time you all are welcome to
12 attend, and advise the Court as to your views of the form of
13 order, and we can resolve it at that time.

14 All right. Thank you, counsel. We'll be in
15 recess.

16 (Whereupon, the requested portion of the
17 proceedings was concluded.)

18 I certify that the foregoing is a correct partial
19 transcript from the electronic sound recording of the above-
20 entitled matter.

21 March 2, 1995



22 Federal Reporting Service, Inc.
23 17454 East Asbury Place
24 Aurora, Colorado 80013
25 (303) 751-2777

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

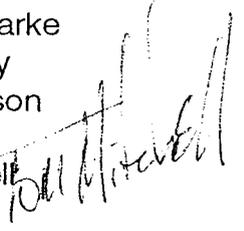
CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of Staff

March 3, 1995

TO: Jim Carter
Dave Lauriski
Kathleen Clarke
Mike Quealy
Carol Clawson

FROM: Tom Mitchell 

RE: Sunnyside Bankruptcy

On Thursday, March 2, 1995, the Honorable Charles Matheson of the United States Bankruptcy Court for the District of Colorado entered a verbal Order, to be followed by a written Order on Monday, March 6, confirming the section 363 sale of the debtor's assets to the Tucker group. This Order substitutes Tucker for the debtor with regard to ownership and occupancy of the land in Sunnyside, Utah, and also with regard to the reclamation liability under the Utah Mined Land Reclamation Act. Closing on this transaction is scheduled for thirty-five (35) days after the entry of a final, unappealable Order. At the time of closing, a bond for \$8.5 million in hard surety will be entered in favor of the State of Utah and the final reclamation contract, as agreed to between the Tuckers, DOGM, and OSM will be executed.

In addition, the cities of Sunnyside and East Carbon have made their peace with the Tuckers by settling a number of contingent claims for water rights, resulting in the municipalities obtaining clear title to the municipal reservoir and sufficient water to meet their municipal needs. Their agreement also provides for the annexation by the city of certain portions of the mine site upon final reclamation, and (contingent upon DPGM approval) a post-mining land use for a light industrial, commercial development within the mine area.

The fees paid to outside counsel for the purposes of being admitted to the Colorado Bar, and the consulting services of Herschel Saperstein are finalized.

March 3, 1995
Sunnyside Settlement Memo
Page 2

Although our use of the consultant was not as heavy as feared, the support and backup services provided by counsel was very helpful on a number of points.

This should conclude this chapter of the Sunnyside saga. I believe the state can be very pleased with the final result in this matter. Please contact me with any questions or concerns regarding this matter.

Isj
TAM95019.MEM

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of Staff

March 3, 1995

Charles Sandburg
Office of Surface Mining
Western Support Center
1999 Broadway, Suite 3320
Denver, Colorado 80202

Robert D. Clark
Assistant U.S. Attorney
Department of Justice
1961 Stout Street, Suite 1100
Denver Colorado 80294

Deanne Owen
Solicitors Office
U.S. Department of Interior
P.O. Box 25007 (D-105)
Denver, Colorado 80225-0007

Re: Sunnyside Bonding and Reclamation Agreement

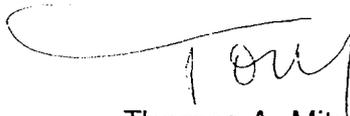
Dear Colleagues:

This letter is to express my profound appreciation for your professionalism, goodwill and highly-focused efforts. The Sunnyside matter has gone from the status of a complete disaster for all concerned, with substantial liabilities for the regulatory agencies and the tax payor, to a status of which, I believe, we can all be proud.

March 3, 1995
Sunnyside letter
Page 2

I am personally appreciative of your assistance, your good humor, and what I hope may be called your friendship.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tom", with a long horizontal flourish extending to the left.

Thomas A. Mitchell
Assistant Attorney General

lsj
cc: Robert Urum
Dave Lauriski
Jim Carter

TAM95020.LTR

MOYE, GILES, O'KEEFE, VERMEIRE & GORRELL

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INCLUDING PROFESSIONAL CORPORATIONS

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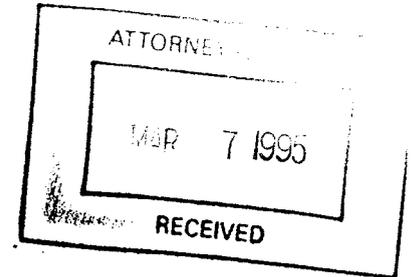
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JAMES T. BURGHARDT, P.C.

DIRECT DIAL (303) 292-7910



March 3, 1995

Tom Mitchell
Assistant Attorney General
Attorney General's Office
No. 3 Triad, Suite 475
355 West North Temple
Salt Lake City, UT 84180-1204

Re: Sunnyside/Tucker

Dear Tom:

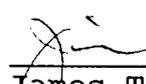
I want to express my personal appreciation and respect to you for the highly professional and supremely helpful way you have handled things on behalf of DOGM during the past several months of negotiations on the Sunnyside project. I have absolutely no doubt that, but for your involvement, the deal never would have come together.

I hope we have the opportunity to continue working with each other on this and other matters in the future, and hope you will give me the opportunity to be your host in Denver whenever you find yourself in town.

Very truly yours,

MOYE, GILES, O'KEEFE,
VERMEIRE & GORRELL

By: James T. Burghardt, P.C.

By: 
James T. Burghardt, President

JTB/meh

\\TUCKER-C\LTMITCHEL.JTB

RAY, QUINNEY & NEBEKER

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SALT LAKE CITY, UTAH 84145-0385

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FEDERAL TAX ID. NO. 87-0350651

S T A T E M E N T

Statement Date: March 13, 1995

Client Number: 22771-1

Invoice Number: 113887

Office of the Attorney General

Total Amount Due This Statement	\$203.50
Payments and Adjustments	\$86.05 CR

Grand Total Due	\$117.45
	=====

Amount Remitted

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT