0013

Mine file

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

January 16, 1997

Hand-Delivered

Ms. Mary Ann Wright
Associate Director of Mining
Division of Oil, Gas & Mining
Department of Natural Resources
State of Utah
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, UT 84114-5801

Re: In Re Sunnyside Coal Company, a Chapter 7 Bankruptcy Proceeding Pending in the United States District Court for the District of Colorado, Bankruptcy Case No. 94-12794 CEM

Dear Ms. Wright:

As you know, I am counsel of record for the Division of Oil, Gas & Mining ("DOGM") in the above-referenced bankruptcy proceeding pertaining to the Sunnyside Coal Mine. You have asked me whether the recently received $800,000.00 check (Chemical Bank check #124 drawn 1/2/97 by Kenneth A. Rushton, Trustee of the Sunnyside Coal Company Chapter 7 Estate) payable to DOGM may lawfully be co-mingled with the expendable trust fund account called the Abandoned Mine Reclamation Fund (the "AML Fund").

The $800,000 payment in question has been made by the Trustee to DOGM pursuant to that certain "Stipulation for Use of Cash Collateral; Allowance and Distribution of Secured Claim; Relief From Stay" signed effective 11/22/96 (the "Stipulation"), which, thereafter, was duly-approved by the Bankruptcy Court in Denver. Under the terms of the Stipulation, to which the Trustee, DOGM and the U.S.

1594 WEST NORTH TEMPLE #300, BOX 140855 · SALT LAKE CITY, UTAH 84114-0855 · TEL : 801- 538-7227 · FAX : 538-7440

Office of Surface Mining ("OSM") are all signatories, the funds reflected by the attached check may only be used for reclamation activity at the Sunnyside Mine. Under the terms of the Stipulation, the Trustee will make, subject to certain conditions, future payments to DOGM of $400,000 and $650,184, bringing the total payments under the Stipulation to $1,850,184. Under the terms of the Stipulation, which are consistent with the regulations of the Utah Coal Program, unused or unneeded monies, if any, will have to be returned to the Trustee.

Fund 257

The short answer to your question is that the $800,000 received from Trustee Rushton may not be lawfully co-mingled with monies in the AML Fund. It must instead be placed in a separate, restricted account.

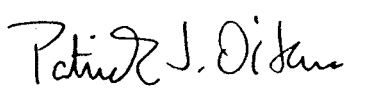
Here is the long answer: The AML Fund is a creature of statute, Utah Code Sec. 40-10-25.1, which very specifically states that the AML Fund "shall consist of the monies specified in Subsections (2) and (3)." The two referenced subsections of 40-10-25.1 make clear that only six specific sources of funds qualify for inclusion in the general AML Fund, as follows: (1) monies derived from enhanced property value liens perfected under Utah Code Sec. 40-10-28; (2) user fees collected by the AML Program under the authority of Utah Code Sec. 40-10-28; (3) fines collected for violations of the Utah Coal Program statutes, rules or orders; (4) donations to the State of Utah designated for mine reclamation; (5) interest earned on items (1) through (4) up to $19,000 per year; and (6) in a separate account, special state-set aside funds received by the State from the U.S. Department of the Interior under 30 U.S.C. Sec. 1232 et seq. The $800,000 received from the Trustee is a bond forfeiture, not a fine. The funds in question also do not fall into any of the other six categories, so that money may not be placed in the AML Fund. This result is also required by the fact that Utah Code Secs. 40-10-25.1(1)(b) and (3)(c) allow monies in the AML Fund to be spent on projects other than the Sunnyside Mine, which would be a blatant violation of the bond provisions of the Utah Coal Program, as well as the terms of the court-approved Stipulation.

Thus, it will be necessary to place the $800,000 check in a separate, designated account--perhaps it could be called the Sunnyside Mine Bond Forfeiture Fund--strictly limited to DOGM-approved Sunnyside Mine reclamation activities. In case the Trustee, OSM or any party in interest should ever ask for a complete accounting of the account, DOGM should be prepared to do that, so DOGM will need

to keep separate files of all documents pertaining to future disbursements from the fund.

You have also asked whether interest earned on the Sunnyside Mine Bond Forfeiture Fund should be applied to the account. The answer is yes. Under the OSM-approved regulations of the Utah Coal Program, and specifically Utah Administrative Code R645-301-860.243, "Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the Division [of Oil, Gas & Mining] has approved the payment of the interest to the operator." Id. In this case, given the forfeiture in the context of a bankruptcy where the bond amount might well be insufficient to reclaim the Sunnyside Mine, and where DOGM reserves the right to seek even more money from the Estate under both the regulations and the the terms of the Stipulation, DOGM certainly has not authorized that the interest be paid to the operator's successor in interest (i.e., the Trustee). Therefore, the Sunnyside funds shall be placed in an interest-bearing account where the interest will accrue for the exclusive benefit of this restricted Sunnyside Mine Bond Forfeiture Fund.

Very truly yours,



Patrick J. O'Hara
Assistant Attorney General

James W. Carter, Director of DOGM
Lowell P. Braxton, Deputy Director of DOGM

DEPOSIT TICKET

1240

STATE OF UTAH
DEPT. OF NATURAL RESOURCES
NR OIL, GAS & MINING

First Security Bank®

First Security Bank of Utah
Financial Services
15 East 100 South
Salt Lake City, Utah 84111

DATE Jan 24, 1997

	DOLLARS	CENTS
CURRENCY		
COIN		
CHECKS LIST EACH SEPARATELY.		
1	800,000	00
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TOTAL FROM OTHER SIDE OR ATTACHED LIST		
PLEASE RE-ENTER TOTAL HERE **TOTAL**	800,000	00

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

TOTAL DEPOSIT 800,000 00

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.

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THE FACE OF THIS DOCUMENT HAS THE "CHEMICAL" LOGO FADING IN THE BACKGROUND. THIS PAPER IS ALTERATION PROTECTED.

CHEMICAL BANK

VOID AFTER 90 DAYS

CHECK NUMBER 124

499

CASE ESTATE OF TID #640001

KENNETH A. RUSHTON, TRUSTEE
99 WEST MAIN STREET
P.O. BOX 212
LEHI, UTAH 84043

94-M12794 SUNNYSIDE COAL COMPANY
312686144866
PARTIAL PAYMENT OF SECURED CLAIM
PURSUANT TO STIPULATION AND ORDER.

1-12
210

MON-DAY-YEAR 01 - 02 - 97

AMOUNT ******800,000.00

Eight Hundred Thousand Dollars and 00/100

PAY TO THE ORDER OF: UTAH DIV. OF OIL, GAS & MINING

TRUSTEE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

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