

CC Joe v.
Pam v.
Dann v.
Rardge v.
Mark

MEMORANDUM

OFFICE OF THE UTAH ATTORNEY GENERAL

To: Carl Roberts, Budget & Accounting, Division of Oil, Gas & Mining,
Department of Natural Resources, State of Utah

From: Patrick J. O'Hara, Assistant Attorney General

Date: January 13, 1997

Re: Sunnyside Coal Company--Chapter 7 Bankruptcy--Need to Create a
Special Account for Sunnyside Reclamation Funds

Attached to this memorandum in an \$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 the Utah Division of Oil, Gas & Mining (the "Division"). The payment has been made by the Trustee to the Division pursuant to that certain "Stipulation for Use of Cash Collateral; Allowance and Distribution of Secured Claim; Relief From Stay" effective 11/22/96 (the "Stipulation") (copy attached). Under the terms of the Stipulation, the funds reflected by the attached check may only be used for reclamation activity at the Sunnyside Mine, and unused or unneeded monies, if any, will have to be returned to the Trustee. Therefore, it will be necessary to place the funds in a separate, designated account strictly limited to Division-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, we should be prepared to do that, so please keep separate files of all documents pertaining to future disbursements from the fund. If it is possible, either now or in the future, to place the funds in an interest-bearing account where the interest will accrue for the benefit of this restricted reclamation fund, please do so at the earliest possible date. Also, in disbursing funds from the account, please note that the Division agreed in the Stipulation that it "shall not destroy or reclaim the existing four (4) building structures on the footprint property until after July 31, 1997."

PJO
PJO

Attachment

cc: James W. Carter (w/ copies of attachments)
Lowell P. Braxton (w/ copies of attachments)
✓ Mary Ann Wright (w/ copies of attachments)

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

¹
499
CHEMICAL BANK
CASE ESTATE OF TID #640001

VOID AFTER 90 DAYS

CHECK NUMBER
124

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

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

1-12
210

MON-DAY-YEAR

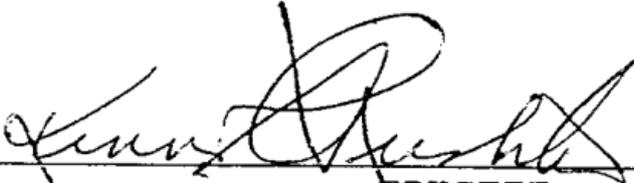
AMOUNT

01 - 02 - 97

*****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.

⑈000 1 24⑈ ⑆0 2 1000 1 28⑆ 1 3 1 2686 1 44866⑈

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**STIPULATION FOR USE OF CASH COLLATERAL; ALLOWANCE AND
DISTRIBUTION ON SECURED CLAIM; RELIEF FROM STAY**

This stipulation ("Stipulation") is entered into by and among Kenneth A. Rushton, as the duly appointed chapter 7 trustee ("Trustee") for Sunnyside Coal Company, and the Utah Division of Oil, Gas and Mining ("DOGM") and the Office of Surface Mining of the United States Department of the Interior ("OSM") (collectively the "Government").

WHEREAS On March 25, 1994 (the "Petition Date"), Sunnyside Coal Company ("Sunnyside") filed a petition seeking relief under Chapter 11 of the United States Bankruptcy Code.

WHEREAS, Sunnyside was a coal mining company incorporated under the laws of the State of Colorado.

WHEREAS, on June 23, 1995, the United States Bankruptcy Court for the District of Colorado ordered the conversion of this case to chapter 7 (the "Chapter 7 Case").

WHEREAS, on June 25, 1995, the District Court approved the appointment of Kenneth A. Rushton as the Chapter 7 Trustee for Sunnyside.

WHEREAS, the Government asserts a secured claim in the aggregate principal amount of \$2,040,000 in the Chapter 7 Case pursuant to a reclamation bond ("Bond") secured by a Trust Deed which by its terms encumbers a significant part of the property of the Sunnyside estate including the proceeds from the sale of such property (the "Collateral").

WHEREAS, pursuant to the order of the bankruptcy court allowing the sale of the major part of the estate's real property and water rights, the trustee has sold most of the real and personal property of the Sunnyside estate and the secured claim of the Government has attached to the proceeds of that sale including the cash and letters of credit issued pursuant thereto.

WHEREAS, the bankruptcy estate retains the ownership of approximately 110 acres of land commonly referred to as the "footprint property" upon which the Debtor conducted the major part of its above-ground mining operation and upon which the major part of Debtor's reclamation must be performed.

WHEREAS, the Trustee has determined that he cannot perform or cause to be performed the reclamation duties of the Debtor and the estate for less than \$1,850,184.

WHEREAS, the Sunnyside estate consists of, in part, \$1,780,000 (**estimated**) in cash ("Cash Collateral"), \$680,000 in irrevocable letters of credit issued by Farm Credit Services of Minnesota, ACA , and \$600,000 in a contract right receivable from the pending sale of Water Right 9-231 to Sunnyside Cogeneration Associates (the cash, letters of credit and contract rights are hereafter referred to as the "Aggregate Collateral"); all of the foregoing being subject to the Government's secured claim against the Sunnyside estate.

NOW THEREFORE, Debtor and the Government stipulate and agree as follows:

1. Allowability and Amount of Government's Secured Claim.

The Government's secured claim is allowed in the amount of \$1,850,184 (the "Allowed Secured Claim"), which represents the full amount of the Government's secured claim based on the amount of the bond posted by the Debtor prepetition for reclamation duties on its property. The Government may not assert any further secured claim in this case and the Trustee may not object or seek the disallowance of such secured claim or the reduction of the amount. All other amounts asserted in the Government's proof of claim are unsecured and are subject to further objection by the Trustee or other parties in interest as permitted by the bankruptcy code. However, nothing herein prohibits the Government from making any claim to proceeds in the estate under Section 503 of the bankruptcy code or other legal or equitable principle except that the Government's secured claim is set for all purposes by this Agreement.

2. Payment on Account of Government's Secured Claim.

Subject to the provisions of paragraphs 3 and 4 herein, the Trustee shall make distribution on the Government's Allowed Secured Claim as follows:

a. \$800,000 to be distributed within 10 days of the approval of this agreement.

b. \$400,000 to be distributed within 30 days of the closing of the sale of certain water rights to Sunnyside Cogeneration, Inc.

c. \$650,184 to be distributed on or before July 31, 1997.

3. Sale of the Property; Release of Liens. The parties hereto agree that the Trustee is attempting to sell the footprint property and, in the process of such sale, he may choose to obligate a purchasing party to perform some or all of the necessary reclamation to be performed on the footprint property. The Government releases any and all claims or liens, either legal or equitable, it may have against the footprint property for any reason including existing liens or claims or for future reclamation work performed by the Government or its agents on the footprint property or other portions of the Debtor's permit area. Nothing herein shall be deemed, however, to waive the Government's police power and statutory rights, by itself or by its agents, contractors or employees, to access the footprint property or other portions of the Debtor's Permit Area to perform any reclamation work.

4. Return of Distributed Amounts.

The Trustee may sell the footprint property for cash or other consideration before or after any reclamation work is performed or caused to be performed by the Government; any proceeds from the sale shall be property of Debtor's estate. To the extent a purchaser of the footprint property completes reclamation work on the footprint property to the satisfaction of the Government which causes the Government to expend less than

\$1,850,184 in costs in reclaiming property subject to reclamation under the Debtor's bond, then the Government shall return to the Trustee any part of the amounts distributed hereunder which are not or shall not be expended in such reclamation activity. The determination of whether reclamation has been completed on such property will be governed by otherwise applicable state and federal reclamation law.

5. Use by the Government of the Distributed Amounts. In order to allow for the possibility of a purchaser proposing a post-mining land use with respect to some or all of the existing structures on the footprint property, the Government shall not destroy or reclaim the existing four (4) building structures on the footprint property until after July 31, 1997.

6. Bond Forfeiture. The order approving this stipulation shall be deemed to be a bond forfeiture of the bond posted by the Debtor in the amount of \$1,850,184 and no further proceeding shall be necessary to effect such forfeiture. However, such forfeiture and the effects of such forfeiture may not alter or amend the provisions of this Agreement or cause any deviation from the nature, timing, or return of payments set forth herein. Neither may the bond forfeiture be deemed to fix or allow the Government's claim in any manner inconsistent with this Agreement.

7. Zions Bank Certificate of Deposit. In a pre-petition administrative matter before DOGM styled as In the Matter of Bond

Inadequacy, Sunnyside Coal Company, Sunnyside Mine, Carbon

County, Utah, Cause ACT/007/007, on May 24, 1993 DOGM issued

"Corrected Findings in Re Sunnyside Coal Company, Sunnyside Mine, Carbon County, Utah ACT/007/07" (the "5/24/93 Findings").

Paragraphs 20-22 of the 5/24/93 Findings describe that certain "Agreement and Release of Reclamation Contract" dated August 28, 1989 (the "8/28/89 Agreement"), pursuant to which the Debtor provided certain assurances and certain additional security to the Government for the reclamation of the Sunnyside Mine. The additional security under the 8/28/89 Agreement was in the form of a certain \$75,000 Zions Bank certificate of deposit (the "CD"). The CD was issued by Zions Bank on or about 8/30/89 for the benefit of the Government, but with the interest to be paid to the Debtor. Because interest on the CD accumulated in favor of the Debtor and not in favor of the Government, the Trustee and the Government hereby agree that the value to the Government of said CD collateral is and has been \$75,000 (not \$78,051.37 as indicated in the typographical error in paragraph 22 of the 5/24/93 Findings, and not \$98,051.37 as indicated by the typographical error in paragraph 25(b) of the 5/24/93 Findings). Based on the terms of this Stipulation, whereby the Government shall receive from the Trustee the full secured reclamation liability amount of \$1,850,184 as established by the pre-petition 5/24/93 Findings, the Government hereby authorizes Zions Bank immediately to release the \$75,000 certificate of deposit, with

accumulated interest, if any, to the Trustee, the Debtor's lawful representative. Except as expressly provided herein with regard to the treatment of the CD, the Government and the Trustee agree that nothing in this Stipulation shall be construed to change, alter, release, waive or otherwise amend the provisions of the 5/24/93 Findings or the 8/28/89 Agreement. The Government and the Trustee further agree that nothing in this Stipulation shall prevent the Government from pursuing an unsecured claim against the Debtor for reclamation costs which exceed \$1,850,184.

8. Use of Cash Collateral. To the extent the Trustee complies with the provisions of this Agreement, the Trustee is authorized to use cash in the estate, including cash collateral, in any manner allowed by and consistent with the Bankruptcy Code.

9. Adequate Protection Liens. The Government agrees that the distribution proposed by this Agreement provides adequate protection, treatment, satisfaction and distribution on its valid liens and secured claims asserted in this case. The Government's lien is also adequately protected by the Aggregate Collateral which the Trustee will not permit to fall below the amount of remaining distribution to be made on the Government's secured claim as set forth above.

10. Compliance with Stipulation. Failure of the adequate protection provided hereunder shall, besides any remedy which might otherwise be available to the Government, cause the

imposition of the superpriority lien provided for under Section 507(b) of the Bankruptcy Code.

11. Termination of Stipulation. This Stipulation shall continue in force until terminated. This Stipulation shall terminate only upon order of the court or upon mutual agreement of the parties hereto.

12. Subject to Court Order. This Stipulation is subject to, and shall be effective only upon, entry of an Order of the Bankruptcy Court which incorporates all of the terms of this Stipulation and which may also include such additional recitals, provisions and protection as are necessary and appropriate.

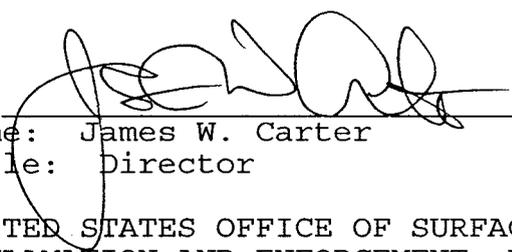
DATED this 22nd day of November, 1996.

KENNETH A. RUSHTON



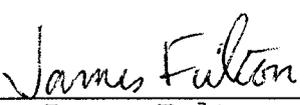
Chapter 7 Trustee of Sunnyside
Coal Company

UTAH DIVISION OF OIL, GAS & MINING

By: 

Name: James W. Carter
Title: Director

UNITED STATES OFFICE OF SURFACE MINING,
RECLAMATION AND ENFORCEMENT, DEPARTMENT
OF INTERIOR

By: 

Name: James Fulton
Title: Chief, Denver Field Division
Western Regional Coordinating Center