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June 12, 1981

Mr. Paul B. Anderson
Manager, Administrative
and Regulatory Services
Eureka Energy Company
77 Beale Street,
San Francisco, California, 94106

RE: Applicability of Section 510(b)(5)
Mine Permit Application
Eureka Energy Company
ACT/007/009

Dear Mr. Anderson,

The Division of Oil, Gas and Mining, herein the Division, has requested Eureka Energy Company, herein the applicant, to demonstrate that the withdrawl of water from irrigation for industrial use is not significant to farming contained in the alluvial valley floor (AVF) identified in the permit application. The Division passed this requirement through as part of the Apparent Completeness Review from the Office of Surface Mining. The Division is compelled to agree with arguments concerning the applicability of Section 510(b)(5), PL 95-87 as presented in your recent letter of June 9, 1981. Therefore the Division withdraws the requirement for a finding of significance contained in the Apparent Completeness Review under the heading of UMC 785.19.

The Division finds that the applicability of Section 510(b)(5) should not be interpreted to jeopardize your right to enforce or protect, under applicable law, your interest in water resources. Further, as pointed out in your letter of June 9, 1981, the original intent of the AVF language in Section 510(b)(5), as adopted in UCA 40-10-11(e), was intended to protect AVF's from physical disturbances in the context of surface mining. The notion of the Act not prohibiting or curtailing prudent water resource management is exemplified by the inclusion in the Act of Section 717, PL 95-87 (UCA 40-10-29).

The Division, by accepting the present Office of Surface Mining interpretation, would be supporting an obstruction of mine development, a prohibition of the use of valuable water rights, and usurpation of the authority of the Utah State Engineer.

Since the applicant purchased the cultivated land to obtain the water right, the owners, who sold the land and water, have chosen to allow the applicant to interrupt or discontinue cultivation of the 60 acres of concern. Because the applicant will not degrade the land by surface mining and the Division will require revegetation and stabilization measures to preserve the land while withdrawn from cultivation. the future cultivation of the 60 acres is not precluded.

The Division is confident that the Director of the Office of Surface Mining, Region V will reconsider his present interpretation with regard to the applicability of section 510(b)(5), in light of your letter of June 9, 1981. Otherwise, the Division will be compelled to refer the matter to a higher State and Federal authority for resolution.

Sincerely,

James W. Smith, Jr.
Coordinator of Mined Land Development

JWS/LCS/ls