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ACT/007/009

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April 15, 1981

Ms. Anne Stirba, Esq.
Special Assistant Attorney General
301 Empire Building
231 East 400 South
Salt Lake City, Utah 84111

RE: Request for Opinion
Concerning Affect on
Alluvial Valley Floor by
Mining Company Ownership
of Water Rights

Dear Anne:

It appears to me that the Alluvial Valley is present, per OSM determination. Further it appears that your part in this involves only the ability of Eureka Energy to divert their water away from irrigated lands for mining use.

The diversion of water (which Eureka owns) away from irrigated lands may be a point of law. Under applicable laws (UCA, 40-10-11), can the State Division of Oil, Gas and Mining deny Eureka Energy a permit if a finding of significance to farming is adverse?

Eureka Energy purchased the irrigated lands in question and the water rights that went with them on Soldier Creek. These rights are classified for agricultural use, however, it is my understanding that Eureka cannot get these rights classified for industrial use until they put the rights to beneficial use, which is after our approval.

Even though I am pursuing a determination of significance through the Emery County USU Extension Office (on loan to Carbon County) and the Soil Conservation Service pursuant to the next step (determination of significance), I want to be positive that the legal foundation for the Division to move to this step is appropriate, in that UCA, 40-10-11 applies.

Enclosed please find the package submitted by Eureka for this determination, a copy of OSM's preliminary determination, a copy of P.L. 95-87 "SMCRA," a copy of H.B. 138, (UCA, 40-10-29, UCA, 40-10-11) and a copy of our present regulations.

Ms. Anne Stirba, Esq.
April 15, 1981
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I have noted pertinent sections of the laws and regulations in each. Lyle Reising, OSM Solicitor and Clayton Parr, Eureka's legal council are available for discussion.

Lyle Reising--(303) 234-2253
Clayton Parr--532-7840

Sincerely,



LELAND C. SPENCER
RECLAMATION ENGINEER

Enclosures

LCS/btm