



THE ATTORNEY GENERAL  
STATE OF UTAH  
DAVID L. WILKINSON  
ATTORNEY GENERAL

*Smith*  
Copy to: Joe H  
Jim  
cc: Sue  
Return  
orig.  
as approp  
Jan  
5/20

PAUL M. TINKER  
DEPUTY ATTORNEY GENERAL  
  
DALLIN W. JENSEN  
Solicitor General  
  
FRANKLYN B. MATHESON  
Senior Assistant Attorney General  
  
ROBERT R. WALLACE  
Chief Trial Counsel

WILLIAM T. EVANS, CHIEF  
Human Resources Division  
DONALD S. COLEMAN, CHIEF  
Physical Resources Division  
STEPHEN G. SCHWENDIMAN, CHIEF  
Tax & Business Regulation Division  
EARL F. DORIUS, CHIEF  
Governmental Affairs Division  
PAUL M. WARNER, CHIEF  
Litigation Division

May 14, 1984

Del Draper  
Kruse, Landa & Maycock  
Attorneys at Law  
Sixth Floor, Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101

RECEIVED

MAY 22 1984

DIVISION OF OIL  
GAS & MINING

Dear Del:

I apologize for having allowed this matter to lie dormant for so long. I have, however, reached a point whereupon I can convey to you the information that you requested and also suggest possible terms for settlement.

Apparently, although Sandy Pruitt, inspector for the Division, was on site three weeks prior to the issuance of the notice of violation (NOV), she had not spoken with anyone with regard to the reclamation of the road at issue. Ms. Pruitt, being familiar with the terms of the exploration permit and the letter from Sanders stating that reclamation would begin in the Spring of 1983, conducted the inspection with the goal of enforcing the immediate reclamation terms of the permit.

When Ms. Pruitt conducted the inspection three weeks prior to the issuance of the NOV, she found the condition of the road too wet for Sanders to perform the required reclamation. Upon her return three weeks subsequent, the road had dried to the point where reclamation work was feasible but no work as yet had begun. As this was now August of 1983, Ms. Pruitt determined that the terms of the permit for "immediate reclamation" had been violated and she thusly issued an NOV to Sanders.

Del Draper  
May 14, 1984  
Page Two

Subsequent to the issuance of the NOV, Sanders contacted Ms. Pruitt and informed her that the landowner requested that the road be left in its present state and not be reclaimed. Upon receiving such documentation, Ms. Pruitt felt that the inspection and enforcement section of the Division could do no more, but as to whether or not to allow the road to remain in its disturbed condition was a question for the permitting section within the Division. Ms. Pruitt terminated the NOV upon receiving the information regarding the landowner's request due to its nature in explaining why the road had not, as yet, been reclaimed. Her decision to terminate the NOV in no way diminished the Division's mandate nor its authority to "prevent degradation of environmental quality during and following the conduct of coal exploration." (Emphasis added) (UMC 815.2) (b)

The Division has promulgated regulations pursuant to the direction found in Section 40-10-8(1)(b), Utah Code Annotated (1953, as amended). Those regulations are found in the Surface Mining Code (SMC) and the Underground Mining Code (UMC). The regulations for coal exploration can be found in UMC part 776 and UMC part 815.

More particularly, UMC 815.15(c)(4) specifies that:

(4) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either,

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To the condition required for permanent roads under UMC 817.150-817.166, as appropriate.

The remaining requirements in UMC part 815 are also pertinent to this matter and must be addressed.

With regard to a possible settlement on this matter, the Division will agree to waive the penalty for this violation if the money is used to begin the reclamation and stabilization required for the disturbed area. The points assigned will remain as assessed but no fine will be required.

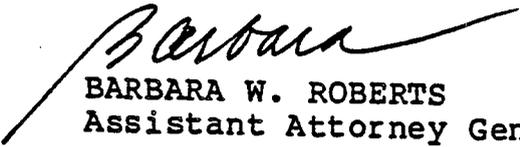
Del Draper  
May 14, 1984  
Page Three

If such an agreement meets with your client's approval, the Division will draw up a plan for accomplishing the reclamation and stabilization.

Please contact me by May 23rd with your decision and any questions you may have.

I appreciate your cooperation on this matter and, again, I apologize for my delay in answering your correspondence.

Sincerely,



BARBARA W. ROBERTS  
Assistant Attorney General

BWR/dp

KRUSE, LANDA & MAYCOCK

ATTORNEYS AT LAW

SIXTH FLOOR, KEARNS BUILDING

136 SOUTH MAIN STREET

SALT LAKE CITY, UTAH 84101

JAMES R. KRUSE, P. C.  
HOWARD S. LANDA, P. C.  
ELLEN MAYCOCK  
DAVID R. KING  
JAMES C. LEWIS  
DELBERT M. DRAPER  
MARK E. LEHMAN  
CHARLES A. CARLSON

May 21, 1984

TELEPHONE  
(801) 531-7090

Of Counsel  
DAVID N. PIERCE  
GREGORY M. HANSEN, P. C.

1101.20

Barbara W. Roberts, Esq.  
Assistant Attorney General  
124 State Capital  
Salt Lake City, Utah 84111

Re: Cause No. ACT/007/027 ? 21 Blazon

Dear Barbara:

Thank you for your letter of May 14, 1984. The letter helps dispel the confusion in this matter by clarifying that the termination of the notice of violation is distinct from the act of abating the violation. My client has been under the impression that their need to reclaim the road terminated when Sandy Pruitt accepted the surface owner's request that the road not be reclaimed and terminated the notice of violation. They were specifically relying on her statement in the letter dated August 3, 1983, that "written notification of the (surface owner's) request (that the road not be reclaimed), will abate this NOV".

If I correctly understand the terminology used in the regulations and your letter, "abatement" of the violation can only occur by the reclamation of the road or by a modification of the permit deleting the reclamation requirement. Abatement of the violation did not occur when Ms. Pruitt terminated the notice of violation, notwithstanding her statements to the contrary.

So that there will be no question regarding the obligation of my client to reclaim the road despite notice from the surface owner that he does not want the road reclaimed, and in light of Ms. Pruitt's letter, I have advised my client to file a petition for modification of the permit requesting that the reclamation requirement be eliminated from the permit. If that petition for modification is denied, Sanders Exploration will be in a position to reclaim the road over the objections of the surface owner. If the petition for modification is accepted, Sanders Exploration will no longer be obligated to reclaim the road. I understand that modification of the permit eliminating the reclamation requirement will not alter the current review of the NOV and the penalty assessed for the violation.

KRUSE, LANDA & MAYCOCK

Barbara W. Roberts, Esq.  
Assistant Attorney General  
May 21, 1984  
Page Two

I appreciate receiving your settlement offer and, if the permitting division confirms that reclamation is necessary, anticipate that my client will accept it.

Best regards,

KRUSE, LANDA & MAYCOCK

A handwritten signature in black ink, appearing to be 'DL' or 'Del Draper', written in a cursive style.

Del Draper

DD:pjc

cc: Bill Green