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LPB

orig: Mine File
11/14/95 BJ

LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
A PROFESSIONAL CORPORATION
SUITE 1600
50 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84144
TELEPHONE (801) 532-3333
FACSIMILE (801) 534-0058
TELEX 453149

DENISE A. DRAGOO

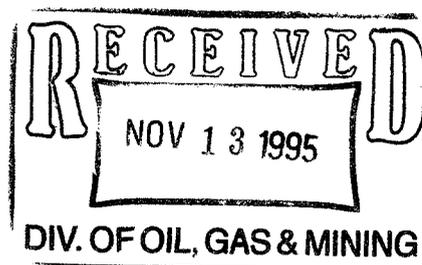
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November 13, 1995

Mr. James Carter
Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203



RE: *Blazon Mine, ACT/007/0212*

Dear Jim:

I have been asked to respond to your request for landowner consent to conduct reclamation activities at the Blazon Mine on behalf of White Oak Mining & Construction Co., Inc. ("White Oak"), Jack Otani, Sei Otani and Steven K. Tanner. As you are aware, the Otanis and Mr. Tanner are surface owners of record and White Oak owns access to the Blazon Mine from the county road in the NW1/4NW1/4 of Section 4, Township 14 South, Range 7 East, Salt Lake Base & Meridian. There appears to be considerable confusion on the part of the Utah Division of Oil, Gas & Mining ("Division") regarding its right to enter the subject property. On September 5, 1995, the Division crossed White Oak's property without right of entry and entered the fenced area around the Blazon Mine without obtaining the surface owner's permission. This activity essentially constituted trespass and was further exacerbated by the fact that the Division left the property unsecured after the encroachment. This was particularly of concern to the surface landowners who had sent a letter dated July 7, 1995, declining access until the surface landowners had reviewed the work proposed and until the terms of access were negotiated.

In the past, the Division has negotiated a right of entry agreement with surface owners prior to entry and commencement of reclamation operations. I would propose that such an agreement be entered into as between the Division, the landowners and White Oak. In this regard, the agreement should define the purpose of entry and scope of work. A legal description of the area to be reclaimed should be defined. The terms of indemnification should be provided consistent with Utah Code Ann. § 40-10-25.2. If a contractor has been hired by the State to perform the reclamation activities, the landowners and White Oak would

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like proof of insurance and would like to be named as co-insureds. Further, we would like to confirm that the costs incurred for reclamation are at the sole cost of the State and will not be charged as a lien against the property.

In addition, the surface owners are concerned that they have not received the rights afforded other surface owners under the Utah Coal Program. Consistent with R645-303-880.920, the Division has collected the forfeited amount of \$38,000 from the operator. However, consistent with 880.931, in the event that the forfeited amount is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The surface owners want to confirm that the operator and not the landowners is responsible for these costs. The Division is to complete the reclamation and then recover from the operator all costs of reclamation in excess of the amount forfeited. The Division has essentially stepped into the shoes of the operator and must comply with the requirements of the Utah Coal Program. In this regard, the Otanis and Mr. Tanner are seeking to exercise the rights of any other surface owner with respect to approval of reclamation.

Prior to proceeding, pursuant to Utah Code Ann. § 40-10-27, the surface owners and White Oak respectfully request an opportunity to meet with the Division to review this matter.

Very truly yours,



Denise A. Drago

DAD:jmc:91406

cc: Mark Wayment
Steve Tanner
Jack Otani
Sei Otani
Mary Ann Wright