

Hidden Valley Mine Co. Act 013/007, NOV. Issued 7/20/95
N-95-26-2-1

EXHIBITS TO Support NOV.

- I Pg 56 MRP Seeding Commitment - All
- II M. Rollings Stmt. 9/5/95
- III Request To Vacate 91 NOV/ - Pg 3 - All disturbed areas not in reclamation plan.
- IV. INFORMAL CONFERENCE - pg 8
- V Request For Temp Relief - requesting new areas to be seeded
- VI Board Record Hearing
pg 1237 - Joe Stavis
- VII July 21, 1994 Issue Identification
- VIII DOG, M Response To HVCC Ord Revegetation Amendment
- IX - 7/20/95 NOV #
- X 6/14/95 7/14/95 Inspections
- XI 7/5/95 -- My letter to Edmerson.

WHEN

WHAT'S



NO. N 91-26-8-2

notice of violation

To the following Permittee or Operator:

Name Cal Chat Co.

Mine Hidden Valley Surface Underground Other

County Emery State Ut Telephone _____

Mailing Address 1801 University Drive, Phoenix, Arizona 85034

State Permit No. Act/015/007

Ownership Category State Federal Fee Mixed

Date of Inspection November 20, 1991, 19__

Time of Inspection 8 a.m. p.m. to _____ a.m. p.m.

Operator Name (other than Permittee) Lee Edmonson

Mailing Address Same As Above

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/ mailing Nov. 22, 1991

Time of service/ mailing 4 a.m. p.m.

Lee Edmonson
Permittee/Operator representative

Environmental Engineer
Title

Chaled
Signature

Wm. J. Malencik
Division of Oil, Gas & Mining representative

Rec. Spec.
Title

Tom J. Chalencik
Signature
11/21/91.

26
Identification Number

SEE REVERSE SIDE

WHITE-DOG M YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

cc: Ms. Karla Knoop.



NOTICE OF VIOLATION NO. N 91-26-8-2

Violation No. 1 of 2

Nature of violation

Failure to maintain diversions to be stable
Failure to minimize erosion to the extent possible

Provisions of act, regulations or permit violated

R-614-301-742.312.1
R-614-301-742.113

Portion of operation to which notice applies

Road outslope and upslope is disturbed areas.

Remedial action required (including any interim steps)

- Submit a plan to stabilize diversions and minimize erosion.
- Coordinate with Tom Munson

Abatement time (including interim steps)

5 p.m. December 20, 1991.



NOTICE OF VIOLATION NO. N 91-26-B-2

Violation No. 2 of 2

Nature of violation

- Failure to clearly mark with perimeter markers all disturbed areas.
- Failure to seed and revegetate all disturbed areas.

Provisions of act, regulations or permit violated

- R-614-301-521.251
- R-614-301-354

Portion of operation to which notice applies

- Road and stream disturbed out-slopes
- Road up-slopes.

Remedial action required (including any interim steps)

- Seed the specified disturbed areas not previously seeded.
- Reseed the road.
- Seed and reseeding to be completed as specified in the Mining & Reclamation Plan
- Coordinate with Susan White

Abatement time (including interim steps)

5pm December 20, 1991.



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 20, 1995

TO: James W. Carter, Director

THRU: Lowell P. Braxton, Associate Director, Mining

THRU: Joseph C. Helfrich, Permit Supervisor

FROM: William J. Malencik, Reclamation Specialist *WJM*

RE: Hidden Valley Coal Mine, ACT/015/007, Folder #2, Emery County, Utah

This memorandum has reference to our meeting of June 29, 1995, regarding the issuance of a Notice of Violation ("NOV"). I was provided a 10-day window to ascertain if the necessary on-the-ground work could be accomplished without the necessity of taking formal compliance action.

Since our meeting of the 29th, I have not received any information from Mr. Edmonson. On the other hand, I have received a letter from his attorney, Denise Dragoo. From the tone of her letter, it appears that getting the environmental work done without formal compliance action will not be possible.

I telephoned Mr. Edmonson to fully understand his position. He is in Los Angeles. Talked to Carol, his secretary, and she said she would try to get Mr. Edmonson to phone me. In his absence tried to contact Mrs. Dragoo, but she is out until July 25th.

Again, reviewing the pros and cons in my own mind, the following key points come to the forefront:

Cons

1. I executed an NOV on the same issue in 1991 and the Utah Court of Appeals in substance did not uphold the District Court decision, even though the District Court upheld the administrative decision.

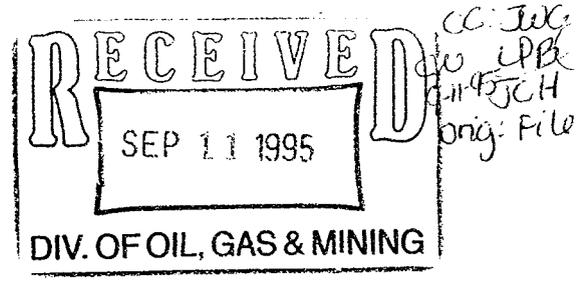
Page 2
James W. Carter
ACT/015/007
July 20, 1995

2. I do not have any new evidence. Further in my opinion, the vegetation on the area of concern is no different than in 1991.
3. Executed stipulation between DOGM and Hidden Valley Coal Company provides there shall be no further appeals as to the facts of violation concerning vegetation as related to the NOV I executed in 1991, i.e., N91-26-8-2.
4. The Division stipulated that it would not appeal the Appellate Court decision. Issuing an NOV at this time is contrary to the stipulation signed by the Assistant Attorney General for the Division.

Pros

1. Mr. Edmonson did perform the required field work on two other issues that were involved in the N91-26-8-2 violation when compliance action was discussed as a final course of action.
2. Pending permit transfer to Consolidated Coal Company.

jbe
H:\USERS\COAL\WP\HIDDVALL.MEM



BEFORE THE DIVISION OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH
3 TRIAD CENTER, SUITE 355
355 WEST NORTH TEMPLE
SALT LAKE CITY, UTAH 84108-1203

IN THE MATTER OF THE APPEAL OF)	HIDDEN VALLEY COAL
FACT OF VIOLATION NO. N95-26-2-1,)	COMPANY'S MOTION TO
HIDDEN VALLEY MINE, EMERY COUNTY,)	VACATE FACT OF VIOLATION
UTAH)	CAUSE NO. ACT/015/007

Hidden Valley Coal Company ("HVCC"), by and through its counsel of record, moves to vacate the Division of Oil, Gas & Mining's ("Division's") Notice of Violation No. N95-26-2-1 ("NOV"). The NOV was issued due to the alleged failure of the operator to reseed certain disturbed areas in accordance with HVCC's Mining & Reclamation Plan ("MRP"). HVCC hereby contests the fact of violation of the NOV.

STATEMENT OF FACTS

1. The MRP was submitted by JBR Consultants Group ("JBR") in May of 1986 and approved by the Division.
2. During the period from October 1986 through December 1986, JBR conducted reseeding activities at the Hidden Valley Mine consistent with the MRP for Permit No. ACT/015/007. Affidavit of Frank Jensen dated September 8, 1995, attached as Exhibit "A."

3. The Division issued NOV N91-26-8-2 regarding the Hidden Valley Mine on November 22, 1991. Violation No. 2 of 2 of the NOV was issued by Division Inspector William Malencik for the operator's alleged failure to seed and revegetate all disturbed areas. The remedial action required by the NOV was to seed and revegetate as specified in the MRP. A true and correct copy of NOV N91-26-8-2 is attached as Exhibit "B."

4. By Opinion dated December 1, 1993 in *Hidden Valley Coal Company v. Utah Board and Division of Oil, Gas & Mining*, the Utah Court of Appeals found that the Division had failed to establish a prime facia case as to whether or not HVCC had seeded and revegetated all disturbed areas. Therefore, the Court of Appeals and vacated NOV N91-26-8-2 as it related to reseeding and revegetation. A copy of the Decision in *Hidden Valley Coal Company v. Board and Division of Oil, Gas & Mining*, 866 P.2d 564 (Utah App. 1993) is attached as Exhibit "C."

5. On December 1, 1993, counsel for the Division and HVCC entered into a Stipulation stating *inter alia*:

3. There shall be no further appeals as to the fact of violation concerning revegetation success on the road surface as it relates to N91-26-8-2;

4. If Plaintiff-Appellants are successful in their appeal of NOV N91-26-8-2, the Division is not estopped from enforcing revegetation performance standards on the road surface not previously cited in the NOV N91-26-8-2 or otherwise argued or raised by Appellants in this proceeding.

Stipulation , page 2. A true and correct copy of the Stipulation dated December 1, 1993 is attached as Exhibit "D."

6. By letter dated July 5, 1995 from the Division to Lee Edmonson, Cal Mat Company," the Division cited violation N91-26-8-2 and requested reseeding in accordance with the abatement plan for that NOV. A copy of the July 5, 1995 letter and the Division's Inspection Report dated June 14, 1995 are attached as Exhibit "E."

7. NOV N95-26-2-1 was issued by the Division to "Cal Mat Company" on July 20, 1995. The NOV was issued by Division Inspector William Malencik for the alleged failure to comply with the terms and conditions of the MRP due to failure to reseed certain disturbed areas. The Division requires the operator to revegetate all disturbed areas consistent with the approved MRP by no later than September 29, 1995. A true and correct copy of the NOV is attached as Exhibit "F."

8. By Memorandum dated July 20, 1995, Division Inspector William Malencik indicated:

1. I executed an NOV on the same issue in 1991 and the Utah Court of Appeals in substance did not uphold the District Court decision, even though the District court upheld the administrative decision.

2. I did not have any new evidence. Further, in my opinion, the vegetation on the area of concern is no different than in 1991.

A true and correct copy of Mr. Malencik's Memorandum of July 20, 1995 is attached as Exhibit "G."

9. By Inspection Report dated July 31, 1995, Division Inspector William Malencik indicated that the NOV was mailed to the permittee by Mr. Malencik. The Inspector indicated that:

The foundation for the NOV was alluded to in the inspection report of 6/14/95 and, moreover, concerning an outstanding matter in the MRP

relative to seeding and mulching all disturbed areas in the permit area, NOV carried No. N95-26-2-1.

Inspection Report, page 2. A true and correct copy of the inspection report of July 31, 1995 is attached as Exhibit "H."

Argument

For the reasons set forth herein, HVCC requests the Division to vacate the NOV.

1. The NOV Was Not Served On HVCC. The NOV improperly names "Cal Mat Company" as the permittee or operator of the Hidden Valley Mine. HVCC is the permittee or operator of the Hidden Valley Mine; therefore, the NOV was improperly served on the wrong corporate entity and must be dismissed.

2. The NOV is Barred by the Doctrine of *Res Judicata*. The NOV alleges that the operator failed to reseed certain disturbed areas in accordance with the MRP. By the inspector's own admission, this NOV relates to the same issue as N91-26-8-2, which was vacated by the Utah Court of Appeals in *Hidden Valley Coal Company v. Board of Oil, Gas & Mining*, 866 P.2d 564 (Utah App. 1993). In that decision, the Court of Appeals determined that the Division had failed to make a prima facie showing of the facts underlying the alleged violation. By Memorandum dated July 20, 1995, William J. Malencik, the Division Inspector who issued the NOV, admits that the Division has no new evidence upon which to base the NOV and that the area of concern is no different than that involved in the N91-26-8-2.

The issue preclusion branch of *res judicata*, sometimes referred to as collateral estoppel, bars relitigation of an issue in a subsequent action. The four requirements of *res judicata* issue preclusion are:

- (1) the issue in both cases must be identical
- (2) the judgment must be final with respect to the issue
- (3) the issue must be fully, fairly, and competently litigated in the first action
- (4) the party precluded from relitigating the issue must be a party or privy to the first action

Madsen v. Borthick, 769 P.2d 245, 250 (Utah 1988). "Although initially developed with respect to the judgments of courts, the same basic policies, including the need for finality in administrative decisions, support application of the doctrine of res judicata to administrative agency determinations." *Salt Lake Citizens v. Mountain States*, 846 P.2d 1245, 1251 (Utah 1992).

Hidden Valley fits neatly under the requirements of *res judicata*: the identical issue was fully, fairly, and competently litigated, and received a final judgement in the *Hidden Valley Coal* case. Further, the Division was a party in the *Hidden Valley Coal* case. Consistent with the Court of Appeals' ruling in *Hidden Valley Coal* and the doctrine of *res judicata*, the Division must vacate NOV N95-26-2-1.

3. **The NOV Violates the Division's Stipulation with HVCC.** The Division and HVCC entered into a Stipulation dated December 1, 1993, which provides that there shall be no further appeals regarding the fact of violation concerning revegetation performance standards on the road surface as raised by NOV N91-26-8-2. The NOV is inconsistent with the Division's stipulation and, therefore, must be vacated.

4. **HVCC Has Performed Seeding in Accordance with the MRP.** Contrary to the allegations of the NOV, the previous operator seeded all disturbed areas within Permit No. ACT/015/007 consistent with the MRP. In 1986, JBR seeded and

mulched all disturbed areas, including the road outlopes, stream buffer zone and Ivie Creek outslope. Affidavit of Frank Jensen. Therefore, the NOV must be vacated.

For the above-stated reasons, HVCC respectfully requests that the Division vacate the fact of violation.

RESPECTFULLY submitted this 11th day of September, 1995.


Denise A. Dragoo
VAN COTT, BAGLEY, CORNWALL &
McCARTHY
50 South Main, Suite 1600
Salt Lake City, Utah 84144-0402
Telephone: (801) 532-3333
Attorneys for Hidden Valley Coal
Company

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 1995, I caused to be hand delivered a true and correct copy of the foregoing Motion to Vacate to:

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



EXHIBIT A

3. I personally supervised the seeding and mulching of all disturbed areas as described in the MRP, including road outslope, stream buffer zone and Ivie Creek outslope.

4. I personally reseeded the road consistent with the MRP.

5. I supervised Nielsen Construction, Emery County, Utah, in reseeding and mulching all disturbed areas in accordance with the MRP.

DATED this 8th day of September, 1995.

Frank Jensen
Frank Jensen

STATE OF UTAH)
COUNTY OF Iron) : ss.

The foregoing instrument was acknowledged before me this 8 day of September, 1995, by Frank Jensen.

Cathy Brian
NOTARY PUBLIC

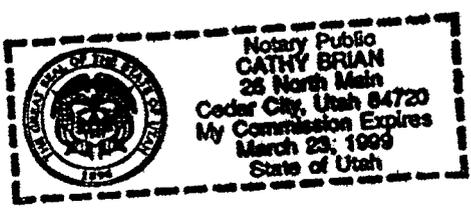


EXHIBIT B

EXHIBIT "A"		2000
Co. <u>Tab</u>	82	
Dept. <u>12th Floor</u>	Phone # <u>472 8770</u>	
Fax # <u>596 2314</u>	Fax # <u>472 8770</u>	

NO. N 41-26-8-2

notice of violation

To the following Permittee or Operator:

Name Col Mat Co.

Mine Hidden Valley Surface Underground Other

County Emery State Ut Telephone _____

Mailing Address 1801 University Drive, Phoenix, Arizona 85034

State Permit No. AC-1015/007

Ownership Category State Federal Fee Mixed

Date of inspection November 20, 1991

Time of inspection 8 a.m. p.m. to _____ a.m. p.m.

Operator Name (other than Permittee) Lee Edmondson

Mailing Address Same As Above

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above acre and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/mailling Nov 22, 1991 Time of service/mailling 4 a.m. p.m.

Lee Edmondson
Permittee/Operator representative

Environmental Engineer
Title

[Signature]
Signature

Wm. J. Malencik
Division of Oil Gas & Mining representative

Rec. Spec.
Title

[Signature]
Signature
11/21/91

#26
Identification Number

SEE REVERSE SIDE

WHITE-COGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENRCCO-NOV FILE

OCGM/NOV-1

an equal opportunity employer

11/

cc: Ms. Karla Knapp.

h

NOTICE OF VIOLATION NO. N 91-24-8-2

Violation No. 1 of 2

Nature of violation

Failure to maintain ditches to be stable
Failure to minimize erosion to the extent possible

Provisions of act, regulations or permit violated

P-614-301-747.312.1

P-614-301-742.113

Portion of operation to which notice applies

Road outlope and uplope i.e. disturbed areas.

Remedial action required (including any interim steps)

- Submit a plan to stabilize ditches and minimize erosion.
- Coordinate with Tom Blumore

Abatement time (including interim steps)

Spri December 20, 1991

WHITE-COGM YELLOW-CSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

DOCMINOV?

an equal opportunity employer

11/25

NOTICE OF VIOLATION NO. N 91-26-8-2

Violation No. 2 of 2

Nature of violation

- Failure to clearly mark with perimeter markers all disturbed areas.
- Failure to seed and revegetate all disturbed areas.

Provisions of act, regulations or permit violated

- R-614-301-521.251
- R-614-301-554

Portion of operation to which notice applies

- Road and stream disturbed out-slopes
- Road up-slopes

Remedial action required (Including any interim steps)

- Seed the specified disturbed areas not previously seeded.
- Re-seed the road.
- Seed and revegetate to be completed as specified in the Mining & Reclamation Plan.
- Coordinate with Susan White.

Abatement time (Including interim steps)

5pm December 27, 1991

EXHIBIT C

CONCLUSION

The trial court has not set forth factual findings in sufficient detail for this court to conduct a meaningful review of the validity of the warrantless bodily search and seizure of defendant. We therefore remand for factual findings concerning whether Garcia cut off defendant's air or blood supply or merely prevented him from swallowing. If the trial court concludes that defendant was impermissibly choked, he is entitled to a new trial at which the evidence must be suppressed. Defendant's second claim of unreasonable search and seizure, based upon the use of a gun in an attempt to obtain evidence, fails given the factual circumstances of this case.

BILLINGS and GARFF, JJ., concur.



HIDDEN VALLEY COAL COMPANY,
Plaintiff and Appellant,

v.

UTAH BOARD OF OIL, GAS & MINING
and the Utah Division of Oil, Gas &
Mining, Defendants and Appellees.

No. 930073-CA.

Court of Appeals of Utah.

Dec. 1, 1993.

Mining company sought review of notice of violation issued by the Board of Oil, Gas and Mining. The Third District Court, Salt Lake County, Glenn K. Iwasaki, J., upheld the Board, and mining company appealed. The Court of Appeals, Bench, J., held that: (1) Board had burden of establishing prima facie showing of violation under the Utah Coal Mining Reclamation Act (UCMRA), and (2) where Division of Oil, Gas and Mining had certified that mining company was in full compliance with reclamation plan on November 1, Division was required to establish that some intervening event or condition occurred

between November 1 and November 19 in order to establish prima facie showing that company was not in full compliance on November 19.

Reversed and vacated.

1. Mines and Minerals \S 92.21

Court of Appeals reviews actions of the Board of Oil, Gas and Mining, not the action of the district court on administrative appeal. U.C.A.1953, 40-10-30.

2. Mines and Minerals \S 92.10, 92.21

Appeal from order of the Board of Oil, Gas and Mining was not rendered moot even though mining company complied with notice of violation by submitting an abatement plan where the underlying purpose of the notice of violation was physical abatement of the violations, not merely the filing of an abatement plan.

3. Mines and Minerals \S 92.10

Provisions of Utah Coal Mining and Reclamation Act (UCMRA) relating to agency adjudicative proceedings before the Utah Division of Oil, Gas and Mining or the Board supersede procedures and requirements of the Utah Administrative Procedure Act (UAPA). U.C.A.1953, 40-10-30, 63-10b-0.5 et seq.

4. Mines and Minerals \S 92.21

Under pre-Administrative Procedure Act law, which governs review of actions of the Utah Board of Oil, Gas and Mining, findings of fact are granted considerable deference and will not be disturbed on appeal if supported by substantial evidence. U.C.A. 1953, 40-10-30.

5. Mines and Minerals \S 92.11

Division of Oil, Gas and Mining bears burden of establishing prima facie showing of violation under the Utah Coal Mining Reclamation Act (UCMRA). U.C.A.1953, 40-10-1 to 40-10-31.

6. Mines and Minerals \S 92.11

Where Division of Oil, Gas and Mining certified that mining company was in full compliance with reclamation plan on November

(Cite as 866 P.2d 564 (Utah App. 1993))

1, Division was required to establish that some intervening event or condition occurred between November 1 and November 19 inspections in order to establish prima facie showing that it was not in full compliance on November 19.

7. Mines and Minerals \S 92.21

In reviewing action of the Board of Oil, Gas and Mining, court may not assume that undisclosed finding was in fact made.

8. Administrative Law and Procedure \S 750

Party defending agency's action bears burden of showing that undisclosed finding was actually made.

Denise A. Drago (Argued), Fabian & Jendenin, Peter Stürba (Argued), Benson L. Hathaway, Jr., Margaret H. Olson, Stürba & Hathaway, Salt Lake City, for plaintiff and appellant.

Jan Graham, State Atty. Gen., William R. Richards, and Thomas A. Mitchell (Argued), Asst. Atty. Gen., Div. of Oil, Gas & Min., Salt Lake City, for defendants and appellees:

Before BENCH, JACKSON and ORME, JJ.

OPINION

BENCH, Judge:

Hidden Valley Coal Company (Hidden Valley) appeals from the decision of the district court upholding in part the decision of the Utah Board of Oil, Gas & Mining (Board), holding Hidden Valley in violation of certain reclamation standards and imposing civil penalties. We reverse.

FACTS

In 1978, Hidden Valley's affiliate, Soldier Creek Coal Company (Soldier Creek), purchased a mine site located in Emery County, Utah. In late 1978, Soldier Creek approached the Utah Division of Oil, Gas &

Mining (Division) to obtain a permit to mine coal from the mine site. In September 1979, Soldier Creek submitted a mining and reclamation plan detailing its proposal for development and operation of the mine site. In April 1980, the Division approved the mining and reclamation plan, and shortly thereafter, Soldier Creek began mining operations.

Over the next few months, Soldier Creek cut two large pad areas, exposed a coal seam, established drainage ditches, constructed culverts that altered natural runoff and stream flows, installed sediment ponds, and constructed more than three miles of access roads. However, by August 1980, Soldier Creek determined that commercial development of the mine site was not economically feasible and ceased development.

In October 1985, Hidden Valley notified the Division that it had sold its Soldier Creek affiliate and had assumed control of the mine site. Shortly after assuming control, Hidden Valley notified the Division that it planned to reclaim the mine site. In May 1986, Hidden Valley submitted a reclamation plan for Division review. Hidden Valley's reclamation plan required that the mine site be regraded, scarified, and reseeded. In December 1986, the Division approved Hidden Valley's reclamation plan.

After the Division approved the reclamation plan, Hidden Valley began reclamation activities. Between the commencement of reclamation activities and late 1991, the Division inspected the mine site at least fifty-nine times. The Division noted after each inspection that Hidden Valley was in full compliance with all its reclamation permits and standards. In June 1988, the Division approved a Phase I bond release for the mine site, indicating that as a result of its latest inspection "the backfilling, grading, topsoil placement and drainage controls were determined complete."¹

On November 1, 1991, Division inspector Jess W. Kelley conducted a five and one-half hour inspection of the mine site. Mr. Kelley

if it complied with the permit and other reclamation requirements, was allowed to reduce the bond amount.

1. Hidden Valley was required to provide a bond for the reclamation work at the mine site. The reclamation was divided into separate phases. At the completion of each phase, Hidden Valley,

found Hidden Valley to be in compliance with all permits and performance standards. Mr. Kelley noted that the diversions and revegetation efforts, as well as the placement of markers and signs, were in full compliance. Specifically, Mr. Kelley stated that "[t]he large rip-rap diversions between the 'A' and 'B' seam fill areas is [sic] in good condition and free from obstruction" and "[o]ther Sediment Control Measures—Silt fences at the base of the 'A' seam fill and parallel to the large main diversion are in good repair and have not captured runoff since they were last maintained." Mr. Kelley also found Hidden Valley's drainage controls on the roads to be in good condition and in compliance with all permits and performance standards. Mr. Kelley also noted, "[w]ater bars and diversions on the main reclaimed road are functioning well and are in good condition."²

On November 19, eighteen days after the previous inspection, inspector Bill Malencik conducted an inspection of the mine site. Mr. Malencik found Hidden Valley to be in violation of several permit and performance standards. Shortly thereafter, the Division issued a Notice of Violation (NOV) stating that Hidden Valley had failed to: (1) "maintain diversions to be stable" and "minimize erosion to the extent possible" on the road outslope and upslope; and (2) "clearly mark with perimeter markers all disturbed areas" and "seed and revegetate all disturbed areas" on the road and stream outcrops and the road upslopes. Hidden Valley was required to abate all violations found in the NOV. In December, the Division issued a proposed penalty assessment for the NOV totaling \$1,220.

After the Division issued the NOV, Hidden Valley petitioned the Division for an informal hearing. On December 20, the Division director held an informal hearing to review

2. Mr. Kelley also conducted a partial inspection on October 8, 1991, finding Hidden Valley to be in compliance with all permits and performance standards. Mr. Kelley stated that the "haul road diversion, including water bars, was in good condition and contained a good cover of vegetation," and "[u]p to this time, vegetation has been very sparse because of the lack of moisture. Now, happily, due to recent rains, reseeded areas on both 'A' and 'B' seam fills are sustaining a fairly thick growth of vegetation."

Hidden Valley's contentions. In January 1992, the director issued an order upholding the NOV in its entirety. Hidden Valley appealed the decision of the director to the Board.

The chairman of the Board, acting as a hearing examiner, conducted a formal evidentiary hearing on Hidden Valley's contentions. The Board, after considering the chairman's proposed findings of fact and conclusions of law, issued an order upholding the Division's issuance of the NOV. The Board did, however, reduce the total amount of the penalty assessment to \$1,090.

[1] Hidden Valley filed an appeal in district court seeking judicial review of the Board's order pursuant to Utah Code Ann. § 40-10-30 (1993). The district court heard oral argument and later entered an order upholding in part the Board's decision. The court upheld the Board's decision with respect to the allegations that Hidden Valley had failed to maintain stable diversions, minimize erosion to the extent possible, and seed and revegetate disturbed areas. However, the court overturned the Board's decision with respect to the allegation that Hidden Valley had failed to place perimeter markers on all disturbed areas.³ Hidden Valley now appeals the Board's order to this court pursuant to section 40-10-30.

ISSUE

[2] Hidden Valley argues that the Board erroneously interpreted and applied the Utah Coal Mining and Reclamation Act (UCMRA), Utah Code Ann. § 40-10-1 to -31 (1993), in concluding that the Division established a prima facie case supported by substantial evidence for its issuance of the NOV and that

3. While we are required to review the actions of the Board and not the district court, see *Cowling v. Board of Oil, Gas & Mining*, 830 P.2d 220, 223 (Utah 1991), the issue of placement of perimeter markers was reversed by the district court and was not appealed to this court by the Division. Therefore, Hidden Valley's alleged failure to properly place perimeter markers is not before this court on appeal.

Hidden Valley failed to rebut the Division's case.⁴

STANDARD OF REVIEW

[3] Our review of the Division's actions under UCMRA is not governed by the Utah Administrative Procedures Act (UAPA), Utah Code Ann. § 40-10-31 (1993). The provisions of UCMRA relating to agency adjudicative proceedings before the Division or Board supersede the procedures and requirements of UAPA. *Id.* Therefore, the standard of review for this appeal is governed by Utah Code Ann. § 40-10-30 (1993) and pre-UCAPA case law.

Section 40-10-30 provides, in pertinent part:

(1) An appeal from a rule or order of the board shall be a trial on the record and is, not a trial de novo. The court shall set aside the board action if it is found to be:

- (a) unreasonable, unjust, arbitrary, capricious, or an abuse of discretion;
- (b) contrary to constitutional right, power, privilege, or immunity;
- (c) in excess of statutory jurisdiction, authority, or limitations;
- (d) not in compliance with procedure required by law;
- (e) based upon a clearly erroneous interpretation or application of the law; or
- (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.

For cases decided outside the confines of UAPA, "[w]hen a lower court reviews an

4. Hidden Valley raises two additional issues on appeal: (1) whether the Board erroneously interpreted and applied UCMRA and Utah law in concluding that the Division was not estopped from enforcing its NOV after it had repeatedly found the mine site to be in compliance with the reclamation plan and applicable law; and (2) whether the Board erred in concluding that the statute of limitations did not bar issuance of the NOV. Because of our holding on Hidden Valley's prima facie case argument, we need not reach Hidden Valley's additional issues.

The Division argues that this appeal is moot because Hidden Valley complied with the NOV by submitting an abatement plan. However, the underlying purpose of the NOV was physical abatement of the alleged violations found in the

order of an administrative agency and we exercise appellate review of the lower court's judgment, we act as if we were reviewing the administrative agency decision directly." *Cowling v. Board of Oil, Gas & Mining*, 830 P.2d 220, 223 (Utah 1991) (citing *Bennion v. Utah State Board of Oil, Gas & Mining*, 675 P.2d 1135, 1139 (Utah 1983)).

[4] Prior to the adoption of UAPA, agencies' findings of fact were "granted considerable deference and would not be disturbed on appeal if supported by substantial evidence." *Morton Int'l. Inc. v. State Tax Comm'n*, 814 P.2d 581, 585 (Utah 1991). Substantial evidence has been defined to be "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Johnson v. Board of Review*, 842 P.2d 910, 911 (Utah App. 1992) (quoting *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989)).

ANALYSIS

[5] Hidden Valley argues that the Division has not established a prima facie showing of the facts supporting its NOV. The Division has the burden of establishing a prima facie case as to the fact of a violation under UCMRA.⁵

[6] The evidence is uncontroverted that up until November 1, 1991, Hidden Valley was in full compliance with the reclamation plan. Because the Division certified that Hidden Valley was in full compliance on November 1, the Division was required to establish that some intervening event or condition occurred between the November 1 and No-

NOV, not merely the filing of an abatement plan. Hidden Valley has not undertaken any physical abatement under the NOV. This appeal is therefore not moot and the Division's argument to the contrary is without merit.

5. UCMRA is virtually identical to its federal counterpart, the Surface Mining Control and Reclamation Act (SMCRA). See 30 U.S.C. §§ 1201 to 1328 (1977). Under SMCRA, the Office of the Secretary of the Interior carries the burden of establishing a prima facie showing of a violation. See 43 C.F.R. § 4.1171(a). Based on this model, we likewise conclude that the Division bears the initial burden of establishing a prima facie showing of a violation under UCMRA.

ember 19 inspections in order to establish a prima facie showing that Hidden Valley was not in full compliance. The Division could also try to establish that its prior inspections were somehow deficient such that noncompliance actually occurred prior to November 1, 1991.

Failure to Maintain Stable Diversions

The Board found that Hidden Valley "failed to comply with the Permanent Program standards and the approved Reclamation Plan by failing to adequately construct and maintain erosion control structures on the outcrops of the access haul road." Based on this finding, the Board upheld the portion of the Division's NOV that cited Hidden Valley for failing to maintain stable diversions. At the formal hearing before the Board, the Division presented no evidence to indicate that in the eighteen days prior to the inspection giving rise to the NOV, there had been any change in conditions or circumstances with regard to the stability of the diversions on the road outcrops. Neither did the Division present any evidence that it had previously notified Hidden Valley that it was close to a violation with respect to the diversions. While Inspector Malencik did testify that during the inspection he conducted in April 1991 he considered several areas of the mine site, apparently including the diversions, to be close calls, he also testified that he only indicated that they should be watched because they had the potential to become problems. His report from that inspection indicated that Hidden Valley was in full compliance. Consequently, the Division has not supported this portion of its NOV with substantial evidence on the record. See *Morton Int'l*, 814 P.2d at 585; Utah Code Ann. § 40-10-30(1)(f) (1988) (court will set aside Board's action if an adjudicative proceeding is "unsupported by substantial evidence on the record"). The Division has not established a prima facie showing that Hidden Valley had, between November 1 and November 19, failed to maintain stable diversions at the mine site. In light of the lack of record evidence supporting the Division's position, the Board's decision to uphold this portion of the NOV was arbitrary and capri-

cious. We therefore conclude that the Board erred in upholding this portion of the NOV.

Failure to Minimize Erosion

[7,8] The Board made no findings with regard to Hidden Valley's alleged failure to "minimize erosion to the extent possible." This court has reiterated that an administrative agency must make findings of fact that are sufficiently detailed so as to permit meaningful appellate review. *Adams v. Board of Review of Indus. Comm'n*, 821 P.2d 1, 11 (Utah App.1991).

In order for us to meaningfully review the findings of the [Board], the findings must be "sufficiently detailed and include enough subsidiary facts to disclose the steps taken by which the ultimate conclusion on each factual issue was reached...." [T]he failure of an agency to make adequate findings of fact in material issues renders its findings "arbitrary and capricious" unless the evidence is "clear and uncontroverted and capable of only one conclusion."

Id. at 4-5 (quoting *Nyrchu v. Industrial Comm'n*, 800 P.2d 330, 335 (Utah App.1990) (citations omitted), cert. denied, 815 P.2d 241 (Utah 1991)). We may not, however, assume that an undisclosed finding was in fact made. *Id.* at 5. The party defending the agency's action bears the burden of showing that the undisclosed finding was actually made. *Id.*

For this Court to sustain an order, the findings must be sufficiently detailed to demonstrate that the [Board] has properly arrived at the ultimate factual findings and has properly applied the governing rules of law to those findings.... It is not the prerogative of this Court to search the record to determine whether findings could have been made by the [Board] to support its order, for to do so would be to usurp the function with which the [Board] is charged.

Id. (quoting *Mountain States Legal Found. v. Public Serv. Comm'n*, 636 P.2d 1047, 1052 (Utah 1981)).

Our review of the record reveals no evidence indicating that Hidden Valley failed to take adequate steps to minimize erosion between the November 1 and November 19

inspections. Inspector Malencik testified that, in his opinion, there were several additional steps Hidden Valley could have taken to minimize erosion, but did not identify any specific steps that Hidden Valley had apparently failed to take during that eighteen-day period. The Board made no findings with respect to Hidden Valley's alleged failure to minimize erosion, and there was no evidence presented that would have supported such a finding. In light of the absence of evidence, the Board could not have found that Hidden Valley had, between November 1 and November 19, failed to take all reasonable steps to minimize erosion. We therefore conclude that the Board erred in upholding this portion of the NOV.

Failure to Seed and Revegetate Disturbed Areas

The Board found that Hidden Valley "failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to seed the disturbed area constituting the outcrops of the access road." Based on this finding, the Board upheld that portion of the Division's NOV that cited Hidden Valley for failing to seed and revegetate disturbed areas.

There is some dispute in the record as to whether Hidden Valley failed to seed and revegetate the disturbed areas. However, the Division did not introduce any evidence that Hidden Valley had failed to meet seeding and revegetating requirements between November 1 and November 19. Consequently, the Division has not supported this portion of the NOV with substantial evidence on the record. The Division has not established a prima facie showing that Hidden Valley had, between November 1 and November 19, failed to seed and revegetate all disturbed areas at the mine site. In light of the lack of record evidence supporting the Division's position, the Board's decision to uphold this portion of the NOV was arbitrary and capricious. We therefore conclude that the Board erred in upholding this portion of the NOV.

CONCLUSION

The Division failed to establish a prima facie showing of the facts underlying the

violations charged in the NOV. We therefore reverse the Board's decision upholding the Division's issuance of the NOV and vacate the Division's penalty assessment against Hidden Valley.

JACKSON and ORME, JJ., concur.



FALULA FARMS, INC., Plaintiff
and Appellee,

v.

Bonnie B. LUDLOW, Defendant
and Appellant.

No. 930050-CA.

Court of Appeals of Utah.

Dec. 2, 1993.

Grantee of deed from county purporting to convey fee title in vacated county highway brought quiet title action against abutting landowner. The First District Court, Rich County, Clint S. Judkins, J., entered judgment quieting title in grantee. Abutting landowner appealed. The Court of Appeals, Greenwood, J., held that: (1) county obtained defeasible fee simple title in roadway dedicated as part of subdivision map, but (2) county lost its fee interest by vacating part of roadway.

Reversed and remanded.

1. Quieting Title ☞1

Quiet title action involves ultimate conclusion of law as to who owns disputed piece of property.

2. Appeal and Error ☞842(2)

In reviewing trial court's conclusions of law, appellate court accords it no particular deference, but reviews it for correctness.

EXHIBIT D

Thomas A. Mitchell (3737)
William R. Richards (4398)
3 Triad, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203
Telephone: (801) 538-5340

IN THE UTAH COURT OF APPEALS

HIDDEN VALLEY COAL COMPANY,	:	STIPULATION
Plaintiff and Appellant,	:	
v.	:	Case No. 930073-CA
The UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Priority 15
Defendants and Appellants.	:	

Appellant and Appellee through counsel of record enter into this Stipulation concerning the following Notice of Violations ("NOVs").

NOV N91-26-8-2 required as a condition of abatement reseeding of the road surface referenced in the NOV. The terms of the 1991 NOV's abatement and the approved abatement plan itself, specifically addressed revegetation for the road surface. NOV N93-35-08-01 was written only for failure to attain perennial vegetation on the road surface, a previously uncited regulation. This failure to meet this performance standard is nonetheless addressed within the scope of the approved abatement plan submitted by Appellant.

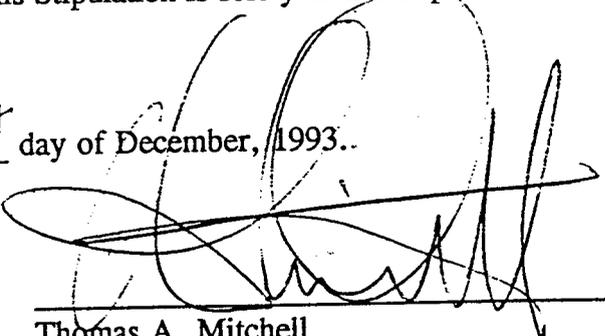
62.5

The parties therefore stipulate as follows:

1. NOV N93-35-08-01 is hereby vacated;
2. The Appellant's Emergency Motion to Enforce Order dated November 30, 1993, is withdrawn;
3. There shall be no further appeals as to the fact of violation concerning revegetation success on the road surface as it relates to N91-26-8-2;
4. If Plaintiff Appellants are successful in their appeal of NOV N91-26-8 the Division is not estopped from enforcing revegetation performance standards on the road surface not previously cited in NOV N91-26-8-2 or otherwise argued or raised by Appellants in this proceeding.

The basis for both parties entering into this Stipulation is solely in the Stipulation as set forth above.

SO STIPULATED this 15th day of December, 1993..



Thomas A. Mitchell
Assistant Attorney General
UTAH DIVISION OF OIL,
GAS & MINING

STIRBA & HATHAWAY

BY: _____



BENSON L. HATHAWAY, JR.
Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

FABIAN & CLENDENIN

BY: 

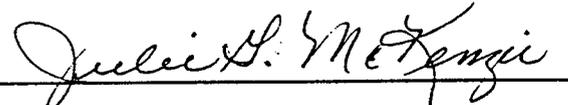
DENISE DRAGO

Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 3rd day of December, 1993, a true and correct copy of the foregoing STIPULATION was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL,
GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180



k/hvcc/stipulation

EXHIBIT E



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL, GAS AND MINING

Michael O. Laavitt
 Governor
 Ted Stewart
 Executive Director
 James W. Carter
 Division Director

365 West North Temple
 3 Triad Center, Suite 390
 Salt Lake City, Utah 84180-1203
 801-538-5340
 801-559-3940 (Fax)
 801-538-5919 (TDD)

July 5, 1995

7-5-95

Post-It™ brand fax transmittal memo 7871		# of pages > 6	
To	Lee Edmonson	From	Bill Malencik
Co.	HVCC - Calmat	Co.	DOG M
Dept.	Properties Div	Phone #	801-637-5806
Fax #	602-253-1026	Fax #	801-637-8603

Lee Edmonson
 Properties Division
 Cal Mat Company
 1801 East University Drive
 Phoenix, Arizona 85034

RE: Mining and Reclamation Seeding Commitment, Hidden Valley Mine, Cal Mat Company, ACT/015/007, Emery County, Utah

Dear Mr. Edmonson:

I am writing about disturbed areas that have not been seeded at the Hidden Valley Mine. Attached is a copy of my June inspection report. It highlights certain phone discussions and moreover, conclusions from Director Carter, as a result of phone discussions that were outlined to me on June 29, 1995. The phone discussions alluded to are those among Director Carter, Messrs. Edmonson, and Settle.

This matter was discussed further at the Division meeting on June 29, 1995. Personnel attending the meeting included Carter, Braxton, Helfrich, and the undersigned. Also, Mr. Carter consulted with Tom Mitchell of the Attorney General's office prior to the meeting.

Before considering and taking suggested enforcement action, proposed to DOGM management that I am allowed 10 days to try to resolve this issue without the necessity of writing a violation to Cal Mat Company.

Violation N91-26-8-2 concerned these issues:

- (1) Erosion road outslope on the reclaimed road,
- (2) Not seeding and mulching all disturbed areas as committed to in the Mining and Reclamation plan, and
- (3) Disturbed markers not properly located on a portion of the reclaimed road.



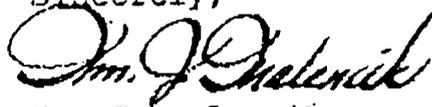
Page 2
L. Edmonson
Seeding
July 5, 1995

Issue (1) and (3) have been resolved with the cooperation of Mr. Edmonson and others. Further, it is in the best interest among all the concerned as discussed in our July 1994, meeting to rely on overall bond release requirements on the total site rather than on compliance to move toward long range common objectives.

It is in this spirit that I write you to explore how we may resolve the seeding issue without the necessity of relying on compliance and/or further litigation to resolve this matter.

It is my sincere opinion that we can do together what we cannot do alone. Would be amenable to utilize the seeding abatement plan you submitted in response to N91-26-8-2 as a starting point to resolve this matter.

Sincerely,



Wm. J. Malencik
Reclamation Specialist

sd
cc: Ed Settle, Consol

- Partial
- Complete
- Exploration

Inspection Date: June 14, 1995
 Time: 1:00 am pm to 4:00 am pm
 Date of Last Inspection: 5/28/95 & 6/15/95-12/95

Mine Name: Hidden Valley County: Emery Permit Number: Act 015/907
 Permittee and/or Operator's Name: Calchat Co.
 Business Address: 1801 University Drive, Phoenix, Arizona 85034
 Type of Mining Activity: Underground Surface Prep. Plant Other
 State Officials(s): Bill Malencik
 Company Official(s): N/A
 Federal Official(s): N/A

Weather Conditions: Pt. Cloudy, Temp 70's
 Existing Acreage: Permitted- 950 Disturbed- 7 Regraded- 7 Seeded- has been Bonded- 7
 Increased/Decreased: Permitted- _____ Disturbed- _____ Regraded- _____ Seeded- _____ Bonded- _____
 Status: Exploration / Active / Inactive / Temporary Cessation / Bond Forfeiture
 Reclamation (Phase I / Phase II / Final Bond Release / Liability 1996 Year)

REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

Instructions

1. Substantiate the elements on this inspection by checking the appropriate performance standard.
 - a. For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
 - b. For partial inspections check only the elements evaluated.
2. Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
3. Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
4. Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	EVALUATED	N/A	COMMENTS	NOV/ENE
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

inspection report

INSPECTION REPORT COMMENTS

Permit No. Act 0151007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

not approvable.

The failure to seed disturbed areas was a matter before the Utah Court of Appeals in regard to notice of violation N91-26-B-2, wherein the court found some dispute in the record as to whether Hidden Valley failed to seed all the disturbed areas. As a result thereof the court held the Division did not introduce any evidence, finding that the disturbed areas had not been seeded between November 1 and November 19.

Prior to the foregoing litigation Hidden Valley submitted a seeding abatement plan to address and seed those areas that had not been previously seeded. Before such work could be undertaken, the Division notified Mr. Edmonson that seeding would restart the bond clock, resulting in litigation.

Director Carter, pursuant to a discussion with Mr. Edmonson, phoned Ed Settle, Consolidated Coal Co.

It is my understanding the discussions

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

WHITE-DOGM YELLOW-OPM PINK-PERMITTEE OPERATOR GOLDENROD-NOV HLE



INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

with both Messrs. Edmonson and Settle concerned the proposed DoGm permits transfer when an outstanding commitment in the mining and reclamation plan has not been met. It follows a notice of violation may be issued by the Division if this issue is not resolved.

While the inspection was conducted on 6/14/95, most of the contacts and details noted above took place after 6/14/95, however, because of proposed transfer and allied matters, I believe it is necessary to reduce to writing these matters should the foregoing not reflect your conclusions, please notify the undersigned.

Signs & Markers. The required, T.D sign, disturbed markers, and buffer zone markers were observed.

The County had placed road signs where the road conditions in certain areas required, some signs to alert the driver of caution in driving on these road areas.

Copy of report mailed to Col. Mat/John Edmonson; DSM/Donna Guffin; DOGm/Use Heltrich

Copy of report given to PEO CC: Ed Settle Consolidated Coal Co.

Inspector's signature [Signature] No. 26

WHITE - DOGm YELLOW - OSU PINK - PERFORMANCE OPERATOR GOLDENROD - NOV FILE

7/3/95

EXHIBIT F



STATE OF UTAH
NATURAL RESOURCES
Division of Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84150-1203 • 301-538-5340

NO. N 95-26-2-1

notice of violation

To the following Permittee or Operator

Name Cal Mat Company

Mine Hidden Valley Mine

County Emery

State Utah

Surface

Underground

Other

Telephone (602) 254-8465

Mailing Address 1801 East University Drive, Phoenix, AZ 85034

State Permit No. ACT/015/007

Ownership Category

State

Federal

Fee

Mixed

Date of inspection June 14, 1995

Time of inspection 1:00

a.m.

p.m.

to 4:00

a.m.

p.m.

Operator Name (other than Permittee) _____

Mailing Address _____

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Certified Z 254 438 027

Date of ~~signature~~/mailing July 20, 1995

Time of ~~signature~~/mailing 3:30 a.m. p.m.

Lee Edmonson

Manager

Permittee/Operator representative

Title

Signature

Jan J. Malencik

Reclamation Specialist

Division of Oil, Gas & Mining representative

Title

Signature

#26

7/20/95

Identification Number

SEE REVERSE SIDE

WHITE-DOG/M YELLOW-OPERATOR PINK-OSM GOLDENROD-NOV FILE



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

NOTICE OF VIOLATION NO. N 95-26-2-1

Violation No. 1 of 1

Nature of violation

Failure to comply with the terms and conditions of Hidden Valley Coal Mine and reclamation plan, permit ACT/915/007.

Provisions of act, regulations or permit violated

UCA, Title 40, Chapter 10, Paragraph 40-10-22

R645-300-140 and -143

Portion of operation to which notice applies

Hidden Valley Coal Mine approved reclamation plan

-Page 46, Section 5.1, Item 5

-Page 56, UMC 817.111, Revegetation: General Requirements

Certain Disturbed Areas not Seeded, to-wit:

-Road Outslope

-Stream Buffer Zone, Ivie Creek Upslope

Remedial action required (including any interim steps)

Revegetate all disturbed areas following the revegetation requirements as itemized and discussed in the approved reclamation plan, which among other items includes seedbed preparation, fertilization, required seed mix, and alfalfa hay mulch at the rate of 4000 lbs per acre.

Abatement time (including interim steps)

September 29, 1995

EXHIBIT G



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84130-1203
801-538-5340
801-359-3940 (fax)
801-538-5319 (TDD)

July 20, 1995

TO: James W. Carter, Director

THRU: Lowell P. Braxton, Associate Director, Mining *LB*

THRU: Joseph C. Helfrich, Permit Supervisor *JCH*

FROM: William J. Malencik, Reclamation Specialist *WJM*

RE: Hidden Valley Coal Mine, ACT/015/007, Folder #2, Emery County, Utah

This memorandum has reference to our meeting of June 29, 1995, regarding the issuance of a Notice of Violation ("NOV"). I was provided a 10-day window to ascertain if the necessary on-the-ground work could be accomplished without the necessity of taking formal compliance action.

Since our meeting of the 29th, I have not received any information from Mr. Edmonson. On the other hand, I have received a letter from his attorney, Denise Dragoo. From the tone of her letter, it appears that getting the environmental work done without formal compliance action will not be possible.

I telephoned Mr. Edmonson to fully understand his position. He is in Los Angeles. Talked to Carol, his secretary, and she said she would try to get Mr. Edmonson to phone me. In his absence tried to contact Mrs. Dragoo, but she is out until July 25th.

Again, reviewing the pros and cons in my own mind, the following key points come to the forefront:

Cons

1. I executed an NOV on the same issue in 1991 and the Utah Court of Appeals in substance did not uphold the District Court decision, even though the District Court upheld the administrative decision.

Page 2
James W. Carter
ACT/015/007
July 20, 1995

2. I do not have any new evidence. Further in my opinion, the vegetation on the area of concern is no different than in 1991.
3. Executed stipulation between DOGM and Hidden Valley Coal Company provides there shall be no further appeals as to the facts of violation concerning vegetation as related to the NOV I executed in 1991, i.e., N91-26-8-2.
4. The Division stipulated that it would not appeal the Appellate Court decision. Issuing an NOV at this time is contrary to the stipulation signed by the Assistant Attorney General for the Division.

Pros

1. Mr. Edmonson did perform the required field work on two other issues that were involved in the N91-26-8-2 violation when compliance action was discussed as a final course of action.
2. Pending permit transfer to Consolidated Coal Company.

jbe
H:\USERS\COAL\WP\HIDDVALL.MEM

EXHIBIT H



STATE OF UTAH
NATURAL RESOURCES
Division of Oil, Gas & Mining

Page 1 of 2

3 Trade Center - Suite 350 - Salt Lake City, UT 84103-1203 - (801) 638-6340

inspection report

- Partial
- Complete
- Exploration

Inspection Date: July 31, 1995
 Time: 9:00 ~~am~~ pm to 2:00 ~~am~~ pm
 Date of Last Inspection: 6-26-95

Mine Name: Hidden Valley County: Emery Permit Number: Act 0151007

Permittee and/or Operator's Name: Calomet Co

Business Address: 1801 University Drive, Phoenix, Arizona, 85034

Type of Mining Activity: Underground Surface Prep. Plant Other

State Official(s): Bill Malenick

Company Official(s): None

Federal Official(s): N/A

Weather Conditions: Hot

Existing Acreage: Permitted-950 Disturbed-7 Regraded-7 Seeded-7 ^{has had} Bonded-7

Increased/Decreased: Permitted-___ Disturbed-___ Regraded-___ Seeded-___ Bonded-___

Status: Exploration / Active / Inactive / Temporary Cessation / Bond Forfeiture
 Reclamation (Phase I / Phase II / Final Bond Release / Liability 1996 Year)

REVIEW OF PERMIT PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

Instructions

1. Substantiate the elements on this inspection by checking the appropriate performance standard.
 - a. For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
 - b. For partial inspections check only the elements evaluated.
2. Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
3. Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
4. Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. SLIDES AND OTHER DAMAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
15. CESSATION OF OPERATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 7/31/95

Please number comments to correspond with topics on previous page.

General Comments Conducted a partial inspection. Karla Knop who at times represented the permittee is not associated with DBR. Therefore by copy of this inspection report request that the permittee advise me who will be Hidden Valley Coal Co field contact.

Signs & Markers Required signs and markers were observed. If the permit transfer is approved, the ID sign will have to be changed to provide the required information pertinent to the transferee permittee.

Divisions Observed divisions and did not note any areas where runoff overtopped the ditch.

Vegetation Noted an increase in annual vegetation which I would judge as a slight increase, but not reflected in the perennial vegetation.

Compliance NOV was mailed to the permittee by the undersigned. The foundation for the NOV was alluded to in the inspection report of 6/14/95 and, moreover, concerning an outstanding matter in the MRP relative to seeding and mulching all disturbed areas in the permit area. NOV carried # N.95-26-7-1.

Copy of report mailed to Sal Chhat, Col. Lee Edmonson, OSM / Donna Griffin, DOSM / Joe Heltrich

Copy of report given to filed RFO

Inspector's signature

Tom J. Grubnik

No. 26

WHITE - DOSM YELLOW - OSM PINK - PERMITTEE OPERATOR GOLDENROD - NOV FILE

8/1/95

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF NOTICES OF)
VIOLATION:)

) DOCKET NO. 92-005

N91-26-9-2, AND N92-25-1-1)
HIDDEN VALLEY MINE, EMERY)
COUNTY, UTAH)

) CAUSE NO. ACT/015/007

Bill *9/5*
I excerpted
the portions I thought were
pertinent. Jess never testified
only his reports
were in the
record.

HEARING HELD JUNE 30, 1992

CLOSING ARGUMENT HELD: JULY 7, 1992

5980 South 300 East • Murray, Utah 84107

Certified Shorthand Reporters •



ORIGINAL

OUR FILE NO 503092

REPORTED BY

INTERMOUNTAIN COURT REPORTERS

DANA MORSE, CSR, RPR

263-1396

962

1 one way?

2 THE HEARING OFFICER: Do we have witness problems?

3 MR. RICHARDS: I mean, I'd invoke it.

4 MR. STIRBA: No, we don't have any witnesses here.

5 THE HEARING OFFICER: Okay. We'll keep it
6 consistent across-the-board. Let's have Mr. Edmonson
7 sworn.

8 LEE EDMONSON,
9 having been duly sworn was examined and testified
10 as follows:

11 THE HEARING OFFICER: Thank you.

12 DIRECT EXAMINATION

13 BY MR. STIRBA:

14 Q. Mr. Edmonson, would you please state your full
15 name and spell your last name for the record?

16 A. Lee Pearce Edmonson, last name is
17 E-D-M-O-N-S-O-N.

18 Q. Mr. Edmonson, are you presently employed?

19 A. Yes.

20 Q. And where are you employed?

21 A. I'm employed by CalMat Co.

22 Q. And where is CalMat Co. located?

23 A. The corporate office is in Los Angeles. I am
24 officed in Phoenix, Arizona.

25 Q. What is your position with that company?

1 A. I am the manager of planning and regulatory
2 affairs for CalMat, for Arizona, New Mexico, Utah
3 operations. I'm also an assistant secretary of a number
4 of subsidiaries, including Hidden Valley Coal Company.

5 Q. In your present capacity with CalMat, can you
6 generally describe what duties you have, especially as
7 it may relate to reclamation?

8 A. I am in charge of all of the acquisitions in
9 my region, whether it's acquisitions of companies or
10 lands that we would use for mining activities, and for
11 the short and long-term planning of those properties,
12 including all of the land use entitlements you'd use --
13 or need to utilize for mining operations.

14 Q. What kinds of business is CalMat Co.
15 principally engaged in?

16 A. Our principal business is mining and sale of
17 concrete aggregates or aggregates, rock and sands,
18 concrete and asphalt materials.

19 Q. CalMat Co., has it been involved in other
20 reclamation projects?

21 A. Yes, it has.

22 Q. Would you please tell the Chair about the
23 reclamation experience that CalMat Co. has had other
24 than the specific matter?

25 MR. RICHARDS: Is this relevant? I'd object on the

1 grounds of relevancy. CalMat's ability to perform under
2 their reclamation obligations under other sides is
3 irrelevant whether they performed under this.

4 THE HEARING OFFICER: I think I'll allow it just
5 for background.

6 MR. STIRBA: It's just background. That's all it
7 is. Let me just say, I think it's important for the
8 Chair to understand a little bit about this company
9 because there have been some serious accusations made
10 about its conduct, and I think it's important for the
11 Chair to have some appreciation for the kind of company
12 it is. That's why I'm asking.

13 THE HEARING OFFICER: I'm going to allow it.

14 MR. RICHARDS: That's fine. And I don't -- I agree
15 with his earlier characterization that CalMat's a good
16 citizen. We are not here for any bad conduct they've
17 done. We're here to make sure the regulations are
18 performed.

19 THE HEARING OFFICER: All right, thank you.

20 Mr. Stirba?

21 BY MR. STIRBA:

22 Q. If you remember the question, Mr. Edmonson?

23 A. I remember the question, and I'll preface that
24 CalMat is a publicly held company operations in
25 California, Arizona, New Mexico. In California all of

1 our operations are subject to the 1975 Surface and
2 Mining and Reclamation Act which is a state statute.

3 All of our facilities there numbering in excess of
4 30 have bonds and reclamation plans on them. We have
5 operations in Arizona; although there is no requirement
6 for reclamation plans, most of those have in-house
7 documents that we have, we follow and guide us in our
8 operations.

9 Q. And are you -- have received any commendations
10 for your reclamation work?

11 A. Yes, we have.

12 Q. Tell us about those, please?

13 A. We received an award from the California
14 Mining Association last year for a reclamation project,
15 I believe that one was in Poway on tribal lands near
16 San Diego; received a commendation from the Bureau of
17 Land Management for that same reclamation project; and
18 we are regularly -- well, at least once a year featured
19 on the California Division of Mines and Geology Magazine
20 which is published by the Department of Conservation for
21 several different types of reclamation that we do.

22 Q. Mr. Edmonson, the actual respondent in this
23 case is Hidden Valley Coal Company. Could you please
24 tell the Chair the relationship between Hidden Valley
25 Coal Company and CalMat Co.?

1 A. Hidden Valley Coal Company is the successor in
2 interest to Soldier Creek Coal Company. Soldier Creek
3 was owned originally by California Portland Cement
4 Company. It's a wholly-owned subsidiary, California
5 Portland Cement and a company named Conrock merged in
6 1984 creating CalMat. The Soldier Creek Mine was
7 sealed, I believe, earlier testimony was 1985. I'll
8 rely on that date.

9 The assets of the Hidden Valley property were
10 retained by the company. Soldier Creek was renamed to
11 become Hidden Valley Coal Company because, apparently,
12 the buyers wanted to retain the Soldier Canyon Mine
13 name, so we just changed the name of the corporation.
14 We still own the subsidiary and its asset, Hidden Valley
15 property.

16 Q. As such, Hidden Valley Coal Company owns the
17 mine property which is the subject of this dispute; is
18 that correct?

19 A. Correct.

20 Q. Now, calling your attention to the latter part
21 of 1970, do you have an understanding of the history of
22 the development of Hidden Valley -- the Hidden Valley
23 Mine at that time?

24 A. Yes.

25 Q. And could you please generally indicate what

1 your understanding is as to what was occurring in the
2 1978 to 1979 time frame?

3 A. The company was -- basically at that time had
4 purchased the property that was still a prospect. It
5 was exhibiting various types of feasibility analyses
6 concerning the extraction of coal to see if it would be
7 feasible to remove coal.

8 Q. Now, you say "a prospect." What do you mean
9 by a prospect?

10 A. Well, a mining property goes through several
11 phases when you analyze it and a feasibility analysis,
12 you need to know how much of what is there basically,
13 and to prove that out you use various drill hole
14 techniques, pull core samples to determine the quality
15 of material, the volume of material that's there. And
16 during that period of time that's basically what the
17 company was doing.

18 Q. What did the company do to investigate or
19 evaluate the prospect, as you refer to it?

20 A. We relied upon -- I think -- I believe there
21 were six drill hole analyses that had been conducted.
22 We drilled another two holes, I believe, and with those
23 results not being completely satisfactory, in other
24 words, they didn't give us all the information we were
25 looking for, appeared to be some inconsistencies, we

1 pulled some bulk samples from the existing mine attics
2 that were there, the portal areas that were identified
3 on some photos earlier were pre-existing, and we pulled
4 some bulk samples, I believe about 6,000 pounds, and
5 sent them to a laboratory for analysis.

6 Those results came back significantly different
7 than the original core hole analyses that were provided
8 by the seller of the property and lessor of interests.

9 Q. Did that analysis have an impact on a
10 determination as to whether or not the mine would be
11 made operational?

12 A. It caused a great deal of concern.

13 Q. Why is that?

14 A. Because the coal quality, specifically the
15 amount of sulfur that was found in the bulk samples, was
16 significantly higher than that which was found in the
17 core samples which were the basis for the purchase of
18 the land originally.

19 Q. And are you aware of the analysis that was
20 done by the management of Soldier Creek Coal Company at
21 that time as to whether or not the mine should be
22 developed?

23 A. Yes.

24 Q. Okay. What did -- what determinations were
25 made at that time?

1 A. Well, the end result was that the quality of
2 the coal in place was such that it would require
3 extensive preparation in order to remove the sulfur for
4 -- in order to be able to utilize the coal to fire our
5 cement kilns because of the environmental regulations in
6 place at the time and decided to stop the activity to
7 evaluate the prospect. We felt we had enough
8 information at that time to make a decision.

9 Q. And when did that occur?

10 A. My recollection was late '80 or '81. I forget
11 the exact date.

12 MR. STIRBA: May I approach the witness, your
13 Honor?

14 THE HEARING OFFICER: Certainly.

15 MR. STIRBA: Your Honor. Mr. Chairman.

16 (Discussion off the record.)

17 BY MR. STIRBA:

18 Q. Mr. Edmonson, let me show you what has been
19 marked as R-8. Do you see that?

20 A. I'm sorry, you walked away.

21 Q. I'm sorry. R-8, do you see that?

22 A. Yes.

23 Q. And what is that?

24 A. This is an internal document of the Management
25 Committee meeting for Soldier Creek Coal Company.

1 A. No, I am not.

2 Q. Prior to November 19th of 1991 when the N.O.V.
3 was issued, were you -- or the inspection was occurred
4 where the N.O.V. was issued, did you receive any
5 information that there was a concern about vegetation,
6 revegetation of the site from the Division?

7 A. Revegetation what?

8 Q. Revegetation of the site that had been placed
9 at the site?

10 A. No.

11 MR. STIRBA: That's all I have at this time. Thank
12 you.

13 THE HEARING OFFICER: Mr. Richards?

14 CROSS-EXAMINATION

15 BY MR. RICHARDS:

16 Q. Mr. Edmonson, where were you employed in 1980?

17 A. I was employed by Southern Pacific Milling
18 Company, a subsidiary of -- I believe at that time it
19 was Coppers.

20 Q. How long did you remain employed there?

21 A. Approximately ten years.

22 Q. So till 1990 approximately?

23 A. From 1975 till 1984 with Southern Pacific
24 Milling Company based in Oxnard, California.

25 Q. Did that company have any relationship with

1 CalMat, Hidden Valley or Soldier Creek?

2 A. In a similar business.

3 Q. But not related by corporate documents?

4 A. No corporate relationship.

5 Q. So at the time the minutes of the Management

6 Committee were approved in September 9, 1980, you had no

7 personal knowledge whatsoever of what happened?

8 A. I was not present, no.

9 Q. You testified earlier that in September 9,

10 1980, Hidden Valley ceased mining operations; is that

11 true?

12 A. Correct.

13 Q. Is that permanent cessation?

14 A. Yes.

15 Q. Did the minutes the management -- that's a

16 tough one, management minutes reflect that operations

17 would cease permanently and they had no indication

18 whatsoever of future development?

19 A. Would you like me to read that?

20 Q. Yeah. Would you read paragraph one, please?

21 A. The entire thing?

22 Q. Yes. It's the portion you read earlier into

23 the record on page four.

24 A. Is this the same paragraph I read earlier?

25 MR. RICHARDS: May I approach the witness? Do you

1 mind me approaching him?

2 MR. STIRBA: No, not at all.

3 THE WITNESS: Oh, paragraph numbered one.

4 BY MR. RICHARDS:

5 Q. Right. Sorry.

6 A. Not the first paragraph. "Further development
7 of the Hidden Valley property will be temporarily
8 suspended and will be reassessed from time-to-time in
9 light of the then current level of capital expenditures
10 believed necessary to make the property operational as a
11 mine and the costs of mining and hauling coal therefrom
12 vis-a-vis the market for coal."

13 Q. So the minutes say that Hidden Valley's
14 temporarily suspending, not permanently, correct?

15 A. That's what they say.

16 Q. And they say they're going to assess the
17 requirement; is that true?

18 A. That's what it says.

19 Q. And they say they're going to weigh the coal
20 market against operational costs and make a
21 determination in the future whether they want to
22 produce, correct?

23 A. Correct.

24 Q. So they didn't permanently cease. Earlier you
25 testified in September -- it was 1980 or '81, I believe,

1 -- that you were doing exploration work; is that true?

2 A. Correct.

3 Q. Are you familiar with what is marked R-16?

4 It's an affidavit that you submitted. May I approach
5 the witness?

6 THE HEARING OFFICER: Yes.

7 THE WITNESS: Yes.

8 BY MR. RICHARDS:

9 Q. On paragraph -- is that your affidavit?

10 A. Yes, it is.

11 Q. And that's your true statement, to the best of
12 your knowledge?

13 A. Yes.

14 Q. On paragraph five, did you state that
15 exploration activities were conducted prior to 1977?

16 A. Yes, I did.

17 MR. RICHARDS: Thanks. That's all the questions I
18 have.

19 THE HEARING OFFICER: That's it? Anything
20 further?

21 MR. RICHARDS: On that exhibit.

22 THE HEARING OFFICER: Oh, on that exhibit. I'm
23 sorry.

24 BY MR. RICHARDS:

25 Q. Earlier you said that Hidden Valley or Soldier

1 Creek complied with every request made by the Division;
2 is that true?

3 A. Yes.

4 Q. Did you comply with the requests made in the
5 N.O.V. that's the subject of this action?

6 A. Yes. Insofar as we have done, we're going
7 through the administrative procedure which is the
8 correct way to address a grievance.

9 Q. The N.O.V., I believe, required you to submit
10 a plan to abate erosion. Did you submit that?

11 A. No.

12 Q. Have you reseeded the outslopes which was the
13 abatement measure for the N.O.V.?

14 A. No.

15 Q. Earlier you stated that you've complied with
16 all permit requirements and regular -- and performance
17 standard requirements; is that true?

18 A. Yes.

19 Q. I'd like to show you what has been marked
20 Exhibit 3 and 4. May I approach the witness?

21 THE HEARING OFFICER: Yes.

22 BY MR. RICHARDS:

23 Q. Let's start with Exhibit 3, please. Would you
24 -- I don't know if you've seen that before. I'll tell
25 you that that has been admitted as part of the

1 reclamation plan of the 1980 mining reclamation plan,
2 but if you'd take a second to read that.

3 On the last paragraph it states: "The rills or
4 gullies that may appear during post-reclamation
5 monitoring will be stabilized by filling with soil and
6 rocks. Chronic sites will be stabilized with small
7 gabions." Have you riprapped the channels?

8 A. Which channels are you referring to?

9 Q. On either one, two or three.

10 A. Yes.

11 Q. Sufficient to minimize erosion?

12 A. Yes.

13 Q. Okay. Have you placed small gabions at the
14 top of each channel?

15 A. There's no gabions, no.

16 Q. Okay. Would you turn to Exhibit 4. I would
17 like to read to you the -- well, it's the first full
18 paragraph under Revegetation, General Requirements.
19 There it states that the road fill slopes and some small
20 sites will require hand application of seed, mulch and
21 fertilizer.

22 Has anybody from Hidden Valley ever seeded the
23 outslopes?

24 A. Where were you reading from?

25 Q. Oh, I'm sorry. It's the first full paragraph

IMPORTANT MESSAGE

FOR _____

DATE _____ TIME _____ A.M.
P.M.

M _____

OF _____

PHONE _____
AREA CODE NUMBER EXTENSION

FAX

MOBILE _____
AREA CODE NUMBER TIME TO CALL

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE _____

SIGNED



1 under Revegetation, General Requirements.

2 A. Okay. You're starting in the middle of the
3 paragraph.

4 Q. Right. I'm sorry.

5 A. Okay.

6 Q. It's the second line down there, it says:
7 "The road fill slopes and some small sites will require
8 hand application of seed, mulch and fertilizer."

9 A. Yes.

10 Q. Is it your testimony that Hidden Valley has
11 actually seeded the outslopes?

12 A. No.

13 Q. Okay. So, in other words, then Hidden Valley
14 has not complied with what they promised to do in its
15 own reclamation plan; is that true?

16 A. That's not true.

17 Q. Didn't you just say that they haven't seeded
18 the out -- you haven't seeded the outslopes? Right here
19 it says: "The road fill slopes will require hand
20 application of seed."

21 MR. STIRBA: Object. It's argumentative.

22 THE HEARING OFFICER: I think he's entitled to an
23 answer to that one. Have they or haven't they done what
24 -- well, --

25 MR. RICHARDS: I believe he's -- actually, he's

1 BY MR. RICHARDS:

2 Q. What personal knowledge do you have of what
3 development work occurred in 1980 in the mine site?

4 A. No personal knowledge. I was not on-site.

5 MR. RICHARDS: Thank you.

6 MR. STIRBA: That's all I have for this witness.

7 THE HEARING OFFICER: All right. Thank you,
8 Mr. Edmonson.

9 (Discussion off the record.)

10 (Recess.)

11 THE HEARING OFFICER: Mr. Stirba, your next
12 witness?

13 MR. STIRBA: Yes. We would call Ms. Karla Knoop,
14 Mr. Chairman.

15 THE HEARING OFFICER: All right.

16 KARLA DIANNE KNOOP,
17 having been duly sworn was examined and testified
18 as follows:

19 THE HEARING OFFICER: Thanks again.

20 DIRECT EXAMINATION

21 BY MR. STIRBA:

22 Q. Now, Karla, I just want everybody to know you
23 have never testified before in this kind of context,
24 have you?

25 A. No.

1 Q. So this is a first and it's okay to be a
2 little bit nervous, but I just want everybody to know
3 that you're no professional expert or professional
4 witness; is that right?

5 A. Right.

6 MR. RICHARDS: We'll take that as an admission.

7 MR. STIRBA: I said professional.

8 MR. RICHARDS: You said expert.

9 MR. STIRBA: I said professional.

10 THE HEARING OFFICER: Come on now. Okay.

11 BY MR. STIRBA:

12 Q. So anyway, relax. Why don't you, if you
13 would, state your full name and spell your last name,
14 please?

15 A. My name is Karla Dianne Knoop, K-N-O-O-P.

16 Q. Where do you live, Ms. Knoop?

17 A. I live in Helper, Utah.

18 Q. And how long have you lived there?

19 A. Five and a half years.

20 Q. And are you presently employed?

21 A. Yes. I'm employed by JBR Consultants.

22 Q. And tell the chair what JBR Consultants is?

23 A. JBR Consultants is an environmental consulting
24 firm who does various types of environmental work for
25 various clients, including Hidden Valley Coal Company.

1 Q. And how long have you worked for those folks?

2 A. Approximately four years.

3 Q. Do you have a specific position with them?

4 A. Yes. I'm a hydrologist with JBR.

5 Q. And what does a hydrologist do?

6 A. A hydrologist is a person who deals with water
7 in very general terms, both the effects and the causes
8 of water; in our situation mainly in natural situations,
9 storm runoff, water quality, erosion and sedimentation.

10 Q. In your work for JBR as a hydrologist, have
11 you applied that expertise in your work on the Hidden
12 Valley Coal Mine?

13 A. Yes.

14 Q. And is that the particular perspective in
15 which you primarily worked at that site?

16 A. Primarily, yes.

17 Q. Now, Ms. Knoop, you've had some education in
18 that particular field; is that correct?

19 A. Right.

20 Q. Would you please tell the chair what your
21 educational background is in that respect?

22 A. I have a Bachelor's of Science in 1979 from
23 Utah State University, the G.E. degree is watershed
24 science.

25 Q. And since that time have you also worked in

1 the field of hydrology other than your work at JBR?

2 A. Yes, I have.

3 Q. Would you tell us, please, what other work
4 experiences you've had in the field of hydrology?

5 A. Upon graduating from college in 1979, I worked
6 approximately a year and a half for Oregon State
7 University as a research scientist on erosion and
8 sedimentation studies in the coast range of Oregon;
9 subsequent to that I worked for the BLM in their Denver
10 Federal Center which was also a research type branch of
11 the BLM and did erosion and sedimentation studies in
12 Carbon and Emery Counties of Utah; after that I worked
13 for another private environmental consulting company
14 called Uintex Corporation that was headquartered in Salt
15 Lake where we did numerous consulting short-term type
16 projects, some dealing with erosion and sedimentation,
17 some dealing with structure, design for various types of
18 clients.

19 Q. What kinds of work have you done for JBR in
20 the field of hydrology since you have been employed
21 there?

22 A. Quite a wide range of problem areas, water
23 quality issues, structure design, sediment pond
24 channels, riprap facilities for both mine areas, urban
25 areas, reclamation areas, water rights assessments,

1 permitting represented issues and reclamation issues, as
2 well mostly related to hydrology and sedimentation.

3 Q. Do you -- have you published any articles or
4 authoritative materials in the field of hydrology?

5 A. Yes. Several in professional bulletins with
6 various other authors and other nonpublished but
7 produced official documents that are related to work for
8 specific clients that are either private information and
9 public information, as well.

10 Q. The bulletins you're referencing, do you
11 recall what bulletins you have been published in?

12 A. Water Resources Bulletin is one which is a
13 professional bulletin of the American Water Resources
14 Association. I think probably the majority of them are
15 that.

16 Q. And is that considered an authoritative
17 bulletin in the field of hydrology?

18 A. Yes, it is.

19 Q. And are you also a registered professional
20 hydrologist?

21 A. Yes, I am.

22 Q. And what does that entail?

23 A. That's a certification procedure. Nationwide
24 certification is given by the American Institute of
25 Hydrology which is a professional organization similar

1 to the Professional Engineers Society certification is
2 accomplished by a combination of experience, an
3 examination procedure similar, again, to the engineering
4 certification that engineers go through, the combination
5 of those results of you being able to be certified.

6 Q. That certification is not automatic then; is
7 that correct?

8 A. Oh, no.

9 Q. Do you belong to any organizations in the
10 field of hydrology, professional organizations?

11 A. Yes. I belong to the American Institute of
12 Hydrology which is the organization that registers that
13 we just discussed. I belong to the American Water
14 Reserve Association, and I belong to the Association of
15 Women Geoscientists.

16 Q. Now, Ms. Knoop, you've worked on the Hidden
17 Valley Mine; is that correct?

18 A. Yes.

19 Q. And what kind of work have you done at the
20 Hidden Valley Mine in a general way?

21 A. I have done a combination of water sampling
22 for monitoring purposes, inspection and maintenance of
23 the site, as far as overviewing the effectiveness of the
24 revegetation and reclamation efforts at the site.

25 Q. And were you instrumental in any hydrology

1 designs or hydrology constructs that are presently at
2 the mine site?

3 A. Not in the original configuration. I've been
4 responsible for some of the work that was done
5 subsequent to the initial reclamation.

6 Q. And when did that -- when did your work start
7 at the site?

8 A. Beginning in 1987.

9 Q. Now, calling your attention to November 19th
10 of 1991, were you present at the mine site at that time?

11 A. Yes, I was.

12 Q. And what was your reason for being there?

13 A. I was there to accompany the Division
14 inspector on a regular monthly inspection at the site.

15 Q. Who was the Division inspector?

16 A. Bill Malencik.

17 Q. Was anyone else present at that time?

18 A. Yes. There was an OSM inspector present.

19 Q. And as a result of that inspection, were
20 certain N.O.V.'s or an N.O.V., rather, issued to the
21 company?

22 A. Yes, as a result of the inspection.

23 Q. And are you familiar with page one of that
24 N.O.V. as it would relate to drainage control issues on
25 the road?

1 A. Yes.

2 Q. And would you explain to the Chair how you're
3 familiar with that violation or that Notice of Violation
4 as it would relate to what happened on November 19th of
5 1991, just in a general way?

6 A. The violation was given as a result of the
7 fill slope of the road and erosion associated with that.

8 Q. How many specific areas were noticed up in the
9 violation?

10 A. There were three specific erosion features
11 mentioned predominantly along with a general, I think,
12 description of erosion elsewhere on the site.

13 Q. Those particular erosion features, you're
14 familiar with those?

15 A. Yes.

16 Q. You've seen them?

17 A. Yes.

18 Q. You know exactly what it is that the
19 inspectors are claiming is in violation?

20 A. Yes.

21 Q. How many times since 1987 have you been at the
22 mine site?

23 A. I visit the mine site at a minimum of six
24 times a year, so over the past five years that's a
25 minimum of 30 times I've been out at the site; in

1 addition to that, I have been down there on other
2 occasions other than the inspection visits to do
3 repairs, et cetera.

4 Q. Have you been at the mine site with Division
5 employees?

6 A. Yes.

7 Q. And what is the purpose of you being there
8 with them?

9 A. To accompany them on behalf of Hidden Valley
10 Coal Company on the inspection and to witness, answer
11 questions, et cetera on any aspect of the inspection
12 they might have.

13 Q. Approximately how many times have you been
14 there with Division employees from 1987 through November
15 of 1991?

16 A. Probably 12 to 15 times.

17 Q. During those inspections that you had with the
18 Division employees, do you engage in conversation about
19 the condition of the property?

20 A. Yes.

21 Q. Do you discuss hydrologic features or problems
22 of any kind?

23 A. Yes.

24 Q. Is it generally fair to say that there's a
25 discussion about the condition of the reclamation

1 project and any issues that may have arisen since the
2 last inspection?

3 A. Yes.

4 Q. Now, Ms. Knoop, there is a road which I'll
5 refer to as an access road that runs through the claimed
6 area, correct?

7 A. Yes.

8 Q. Could you describe that road for me, please?

9 A. The road is a cut and fill road constructed
10 sort of as a dugway along a steep cliff area. It was
11 constructed using dynamite and so forth and the end
12 result is a very steep cut slope, predominantly in
13 bedrock.

14 The road surface itself is at this point loose fill
15 material. The road outslope is comprised of varying
16 particle sizes all the way from small fine particles up
17 into course bedrock. There's some course boulders.
18 There's some exposed bedrock in the area. It's a very
19 steep, rocky outslope that toes out into the bottom of
20 the ephemeral street channel that parallels it.

21 Q. Are there water bars on the road?

22 A. Yes.

23 Q. What is a water bar?

24 A. A water bar is a road drainage feature that --
25 it's used to direct roadway and upstream area runoff

1 across the road in a safe manner so that it does not
2 continue down the road surface.

3 Q. How many water bars are there?

4 A. Approximately 13.

5 Q. And why would you not want the water to run
6 down the road surface rather without having water bars?

7 A. The roadway itself is a fairly steep feature.
8 The water bars serve to break up the drainage area
9 contributing flow to the road into smaller parcels and
10 thereby reducing the volume of water that is conveyed on
11 any one portion of the road reducing the velocity of
12 that water and the subsequent potential for erosion off
13 of the road surface itself.

14 Q. The water bars that exist at the Hidden Valley
15 Mine, do they direct the flow of water?

16 A. Yes.

17 Q. And where do they direct the water flow?

18 A. They direct water flow across the road to the
19 crest of the road fill.

20 Q. The area where they're directing the water,
21 can you call that an outslope?

22 A. Uh-huh, yes.

23 Q. Is that a good term for it?

24 A. Yes.

25 Q. And would you tell the Chair what the outslope

1 entails at the Hidden Valley Mine?

2 A. The outslope is simply the fill material of
3 the road fill itself. It's not a structure, a designed
4 feature down the fill. It's simply the edge where the
5 water bar -- the downstream edge of the water bar stops
6 and spills over the crest of the road and that is the
7 outslope area.

8 Q. So is it fair to say that the drainage
9 directed by the water bars envisions that the water will
10 go onto the outslope of the road?

11 A. Yes.

12 Q. Given that, would there be erosion that would
13 occur as a result of that water going down the outslope?

14 A. Yes.

15 Q. Would you please explain to the Chair how that
16 occurs and why?

17 A. Water, as I said, is conveyed across the water
18 bar to the edge of the crest of the road and at that
19 point is discharged down the fill slope. The fill slope
20 is very steep. Slopes are between one and one and a
21 half to one so it's almost a vertical slope of the
22 length of the slope which is approximately 50 feet in
23 most areas.

24 So you have a very long and very steep stretch of
25 material which is a nonengineered type of fill when the

1 road was constructed as -- again, as I said, there's all
2 sorts of particle sizes, including very fine particles
3 that are susceptible to erosion with water moving over
4 any velocity at all across that.

5 Q. Describe, please, what the water bar looks
6 like and what it's composed of?

7 A. The water bar is constructed of the same
8 material as the road surface itself, just the native
9 fill material that was used in the building of the road
10 during reclamation to construct the water bar, a
11 bulldozer was simply used to push -- scoop out a small
12 channel across the road surface at an angle, at about a
13 45 degree angle downstream, and there's a small dip on
14 the uphill side, and then a fairly small, about
15 approximately two foot high berm on the outside downhill
16 side of the road. It's angled such that it will direct
17 water down at a fairly uniform gradient across the water
18 bar.

19 Q. Are they angled across the road?

20 A. Yes, at approximately 45 degrees.

21 Q. Why is that?

22 A. If they were angled -- if they weren't angled
23 and they were perpendicular to the road surface, they
24 would really not be on sufficient grade to convey water
25 across. Water would tend to pond on the road itself.

1 If they were at a steeper angle then that water would be
2 conveyed across them, but you could have erosive
3 velocities, the steeper the angle that the water is
4 being conveyed at the more likely you are to have
5 erosion.

6 Q. Now, Ms. Knoop, since 1987 when you started to
7 work on this project, have you been aware and personally
8 observed the water bars continuously in your inspections
9 from that point until November of 1991?

10 A. Yes.

11 Q. And is that also true with the outslope areas
12 where the water is directed?

13 A. Yes.

14 Q. Thank you. Now, I'm going to offer,
15 Mr. Chairman, our video which, I believe is Exhibit
16 R-80, and I'd like to play that at this time and I'll
17 ask Ms. Knoop -- and I'll get out of your way. The
18 video R-80, you've seen that, correct?

19 A. Yes, I have.

20 Q. And that is a video of the mine site and the
21 particular gullies that evidently are in violation,
22 true?

23 A. True.

24 Q. And does that fairly and accurately depict the
25 condition of the mine property as of the date, June 17th

1 of 1992?

2 A. Yes.

3 Q. When the actual video was shot?

4 A. Right.

5 Q. All right. Well, we'll play it.

6 (Whereupon the videotaped was played.)

7 BY MR. STIRBA:

8 Q. I'm just going to stop it here, Ms. Knoop, and
9 I realize it's not the greatest, but I think we can just
10 get a good picture when I continue this back. I just
11 want to ask you this area in here, is that the access
12 road?

13 A. Yes.

14 Q. And is this area over here that I'm pointing
15 to which is to my left and to the left of the screen, is
16 that the area where the water bars direct the water to
17 the outslope?

18 A. Yes.

19 Q. And then that goes into the ephemeral drain
20 that you just identified?

21 A. Right.

22 (Whereupon the videotape was continued.)

23 BY MR. STIRBA:

24 Q. Ms. Knoop, you've mentioned in the video about
25 the size of the particles on the outslope rocks or other

1 material. Does that have some significance to you as a
2 hydrologist in terms of the hydrology of that project?

3 A. Yes. For two reasons: First, just because of
4 the variety and the nature of the particle sizes that
5 are comprising the fill slope, it makes any sort of
6 structural features to be placed on the road fill very
7 difficult to design. You've got an unengineered fill
8 slope basically with any number and variety of particles
9 that don't necessarily compact well or fit together
10 well.

11 The second reason that is of significance is
12 because in general one can say that the finer or the
13 smaller the particle sizes, the more likely it is to be
14 eroded by water running across it.

15 Q. In your opinion, as a hydrologist, the
16 configuration of the water bars, is that the most
17 effective way of controlling drainage or certainly an
18 effective way of controlling drainage with respect to
19 that road?

20 A. Yes.

21 Q. You talked in the video about an event in
22 1987, storm event. Would you please explain what that
23 storm event was?

24 A. Yes. In late summer of 1987, there was a
25 severe thunderstorm event over the site and we don't

1 know specifically how much rain fell in what period of
2 time, but it was a significant amount of rainfall in a
3 very short period of time.

4 It resulted in runoff occurring basically all over
5 the site itself, as well as runoff occurring in the
6 upstream undisturbed ephemeral drainage that was
7 conveyed through the site.

8 Q. As a result of that storm, was there any
9 activity that was performed concerning the drainage on
10 the road?

11 A. Yes.

12 Q. Tell us what that was?

13 A. There was quite extensive repair work done all
14 over the entire site, specifically on the road. The
15 water bars were completely redone, rock was brought in
16 from off-site, as well as rock moved around on-site to
17 place into the gullies that were created as a result of
18 that water being conveyed over the water bars.

19 The integrity of the road surface itself was
20 maintained by placement of rock and re-excavation,
21 reconstruction of those water bars. After that was
22 done, the entire road surface was ripped again to
23 provide moisture retention capacity and revegetation was
24 done.

25 Q. Now, did you personally observe the condition

1 of the particular N.O.V. sites after the repair work was
2 done in 1987?

3 A. Yes.

4 Q. And you certainly -- I think you testified you
5 observed them on November 19th of 1991, correct?

6 A. Yes.

7 Q. Was there a difference between the condition
8 of those sites in 1987 at the time you observed them in
9 the condition that they appeared in 1991?

10 A. Yes.

11 Q. Would you please describe what difference, if
12 any, there was?

13 A. There's basically a difference because of two
14 different reasons: First, another severe rainstorm
15 event occurred in the fall of 1989 and some of the
16 material placed in the water bar outfalls in 1987 was
17 lost down slope.

18 In addition to that, there's been incremental
19 erosion of those water bar outfalls slightly enlarging
20 the gullies that were created in '87.

21 Q. With respect to the gullies, would you
22 consider the difference between '87 and '91 to be
23 significant?

24 A. Not significant. There's been some change but
25 not a substantial change.

1 Q. Is the general configuration of the gullies
2 the same in '91 as it existed after the repair work in
3 '87?

4 A. Generally.

5 Q. Now, did you have a conversation with anyone
6 at the inspection on the 19th of November of '91?

7 A. Yes.

8 Q. And who did you have a conversation with?

9 A. Well, I had conversations both with
10 Bill Malencik and Mitch Rawlings, the OSM inspector.

11 Q. And specifically did you have conversations
12 about the apparent concern about the gullies which are
13 now the subject of the N.O.V.?

14 A. Yes.

15 Q. And would you please tell the Chair who said
16 what at that time about the gullies?

17 A. The -- basically the OSM inspector,
18 Mitch Rawlings, was quite concerned about the gullies.
19 That was his second visit to the site. He was not
20 familiar with the site in the past five years.

21 He was quite concerned about these gullies because
22 they exceeded what he considered to be the standards for
23 erosion in the area. We had discussions -- I brought up
24 the fact that these gullies had been there since 1987
25 and that there had never been a problem on previous

1 inspections with those and he said that that was
2 basically irrelevant. The gullies were there, they were
3 excessive, and he proceeded to make measurements on
4 them.

5 Q. At any time prior to that day, did anyone from
6 the State who inspected the property with you indicate
7 to you that the condition of those gullies and those
8 outflows after the repair work in '87 was in violation
9 of any rule or regulation?

10 A. There may have been some discussion after the
11 event in 1989 where we had planned on putting some more
12 rock in those. We certainly, I'm sure, talked about
13 those gullies but no mention of those had been made on
14 anything annual -- or the monthly inspections.

15 Q. Now, calling your attention to January of
16 1992, were you at the mine site in January of 1992?

17 A. Yes.

18 Q. Do you recall the day when you were there?

19 A. I believe it was the 20th of January.

20 Q. And were you there with anyone?

21 A. Yes. I was there with Tom Munson, Division
22 hydrologist, conducting an inspection.

23 Q. Mr. Munson is a Division of Oil, Gas and
24 Mining hydrologist?

25 A. Yes.

1 Q. And you were there with him on his inspection
2 of the site?

3 A. Right.

4 Q. At that time was anyone else present?

5 A. No.

6 Q. Did you have a conversation with him about the
7 subject matter of page one of the N.O.V.?

8 A. Yes.

9 Q. Would you explain, tell us, please, what
10 conversation you had with him at that time about that?

11 A. We discussed the N.O.V. We discussed the
12 technical aspects of responding to the terms of the
13 N.O.V., what his recommendations might be on how to
14 address those, what the practicality of addressing those
15 would be, what options we might have in addition to
16 simply trying to come up with a way to repair the
17 gullies since there's really no good solution to that.

18 We also discussed the regulations that were cited
19 in the N.O.V. and the regulations in general as far as
20 their applicability to his site, such as the Hidden
21 Valley site.

22 Q. Did he express an opinion at that time to you
23 about the applicability of the rules?

24 A. Yes.

25 Q. What did he say?

1 A. He said that it -- that it's evident that the
2 regulation don't knowingly in all cases fit the
3 environmental situation, and especially in an area like
4 Hidden Valley where you have a very harsh site, very
5 arid but yet with the potential to have very short-term
6 severe precipitation events.

7 Q. What was he referring to when you say "harsh
8 site" and significant rain events? What does that mean?

9 A. Well, just basically that the site is a desert
10 site with a low annual rainfall making establishment of
11 vegetation and topsoil very difficult. There's a lot of
12 exposed rock geologically.

13 The climate of the area, the weather patterns are
14 such that you get very infrequent severe rainfall events
15 that don't allow enough storage of soil moisture to
16 produce plant growth but can cause major damage from
17 erosion through unvegetated areas.

18 Q. Is all that significant in terms of the
19 ability to control erosion on the outcrops and with the
20 water bars configured as they are?

21 A. Yes.

22 Q. And what is the significance?

23 A. The significance is, again, that there is
24 little likelihood of getting vegetation established on
25 those areas. There is no real way to engineer a

1 structure across those fill slopes given the nature of
2 the material.

3 The whole area, both the disturbed area and the
4 surrounding undisturbed area, is basically void of
5 vegetation. Runoff occurs -- severe runoff occurs
6 across those natural slopes and erodes those, as well.
7 Under the regulations there's not a lot of room for
8 taking that into consideration.

9 Q. Did Mr. Munson on that date also express an
10 opinion to you as to the ability to structure something
11 different --

12 A. Yes.

13 Q. -- than what is presently there with the water
14 bars draining off the outslopes?

15 A. Yes.

16 Q. And what did he say in that regard?

17 A. That it will be a very difficult, if not
18 impossible, engineering feat given the nature of the
19 road fill itself; again, going back to what I mentioned,
20 it's an unengineered fill. Any sort of hydrolic
21 structure, no matter what type of environment it's going
22 to be on, has to be on a sound, solid foundation, and
23 that's not a possibility at this site.

24 He expressed his opinion that there were some
25 things we could look at doing that would be perhaps

1 helpful but that would generally be cosmetic and would
2 certainly not present a long-term permanent solution to
3 erosion on the road fill.

4 Q. Ms. Knoop, you're familiar with the regulation
5 that has been cited by the Division in its N.O.V.?

6 A. Yes.

7 Q. And I don't have it right in front of me.
8 It's Exhibit 1, but it specifically relates and recites
9 two specific rules, correct?

10 A. Yes.

11 Q. Have you looked at those rules since the
12 N.O.V. was issued?

13 A. Yes, I have.

14 Q. And you've read those rules?

15 A. Yes.

16 Q. And the one rule -- and perhaps maybe we ought
17 to be more specific about it. The one rule is 742 --
18 well, actually, it's Rule 614-301-742.312. Have you
19 looked at that one?

20 A. Uh-huh. Yes.

21 Q. And is that the one that identifies
22 diversions?

23 A. I believe so.

24 Q. What is a diversion?

25 A. A diversion is a hydrolic structure that is

1 used to redirect water from its natural pathway to
2 channelize that water in a manner where it's conveyed
3 either through or away from a disturbed area.

4 Q. Would a water bar be a diversion?

5 A. Not technically, no.

6 Q. Why not?

7 A. A water bar is -- especially under the
8 regulations, is a road drainage feature, not a
9 diversion. It doesn't serve to redirect water anywhere
10 other than where it's already going anyway. It's part
11 of a road drainage way system and not a diversion system
12 which is separated under the regulations.

13 Q. Can you give us an example of a diversion?

14 A. A diversion would be a structure such as
15 occurs elsewhere on this site where water is redirected
16 away from fill slope areas on the reclaimed path areas
17 that are not associated with the roadway. There are
18 several other diversions on the property.

19 Q. So, for example, would a diversion be a
20 structure that might change the flow of the stream?

21 A. Yes.

22 Q. And you mentioned the term "roadway drainage"?

23 A. Uh-huh.

24 Q. That's what a water bar is?

25 A. Yes.

1 Q. Where do you come up with that terminology?

2 A. Water bar or --

3 Q. No. Roadway drainage. Is there some other
4 provision that is referenced in the rules concerning
5 that?

6 A. Well, there's -- I don't know the specific
7 citations but the rules -- the regulations have
8 different requirements that need to be met for a
9 diversion structure or for a roadway drainage structure,
10 and the N.O.V. cited the diversion part of the rules and
11 I'm not sure where exactly the roadway drainage is. I
12 think it follows that under regulations.

13 Q. But your opinion is that the water bar
14 configuration and the water going off of the outslope is
15 a roadway drainage, correct?

16 A. Yes. Water bars are only used for a roadway
17 situation. You would never have a water bar.

18 Q. So is it also your opinion when the
19 regulations cited 742.312 which says: "The diversion in
20 its pertinent structures will be designed, located,
21 constructed, maintained and used to be stable," that is
22 a totally inapplicable or a totally inappropriate
23 application of that rule to this situation?

24 A. Yes. The water bar is a diversion and the
25 water bar is stable. It was a diversion.

1 MR. STIRBA: Thank you, Ms. Knoop. That's all I
2 have at this time.

3 THE HEARING OFFICER: Mr. Richards?

4 CROSS-EXAMINATION

5 BY MR. RICHARDS:

6 Q. You stated that there was a major event in
7 1987?

8 A. Yes.

9 Q. Is that a rainfall event?

10 A. Yes, it was a rainfall thunderstorm.

11 Q. And at that time you stated that that did
12 cause some erosion on the site?

13 A. Yes.

14 Q. Mr. Stirba has referred to three areas as the
15 N.O.V. erosion sites. Did erosion occur in 1987 based
16 on that event at those sites?

17 A. Yes.

18 Q. You testified that you undertook some
19 activities to control the erosion at the three N.O.V.
20 sites during 1987?

21 A. We did work at those sites to control and
22 protect the integrity of the roadway above those.

23 Q. But you never -- did you do anything to the
24 gullies themselves?

25 A. Yes.

1 Q. The erosion gullies themselves?

2 A. Yes.

3 Q. And what type of activities did you conduct?

4 A. At that time we placed rock, riprap rock that
5 both was salvaged from on-site adjacent areas and
6 brought into the site. That rock was placed in the
7 bottom of the gullies.

8 Q. Were you working with the Division personnel
9 at this time --

10 A. Yes.

11 Q. -- as to how to do that?

12 A. Yes.

13 Q. And did the Division and Hidden Valley work
14 together to try and design a program that could minimize
15 the erosion?

16 A. Yes.

17 Q. So it would be fair to say that you and the
18 Division were well aware that these three sites
19 constituted an erosion problem in 1987?

20 A. Yes.

21 Q. You testified that there was an event in 1989;
22 is that true?

23 A. Uh-huh.

24 Q. And you testified that that actually increased
25 the erosion at these three sites?

1 A. No. That event removed the particles that we
2 placed in 1987, some of those were removed out of the
3 gullies in 1989.

4 Q. That was the riprap?

5 A. Right.

6 Q. And so would it be your testimony that the
7 riprap you placed in 1987 was ineffective?

8 A. No. Some of it stayed in place, some of it
9 did not.

10 Q. Was there incremental erosion between '87 and
11 '89?

12 A. Yes.

13 Q. So these gullies were continuing to erode?

14 A. Probably.

15 Q. You testified that you did some other work
16 during 1989, and I can't honestly remember what you
17 stated. Did you do other work during 1989?

18 A. Yes.

19 Q. And what work was that?

20 A. We did work all throughout the entire site.
21 We, again, reconstructed the water bars and we placed
22 additional large rock in the outfall areas.

23 Q. Were you working with the Division at this
24 time?

25 A. Yes.

1 Q. Were they -- were you and the Division aware
2 that this was a continuing problem in 1989?

3 A. Well, we were aware that the erosion had
4 continued and that it -- the integrity of the road would
5 be at stake if something was not done.

6 Q. So in 1987 -- 1987, the Division -- did the
7 Division ever inform you that this was not an erosional
8 problem?

9 A. They never informed us that it was or it
10 wasn't.

11 Q. Okay. You were working with them to control
12 the erosion; is that true?

13 A. They knew what we were doing, yes.

14 Q. And you knew the erosion was increasing?

15 A. We knew that it had the potential to increase,
16 yeah.

17 Q. And then in 1989 you testified that the
18 erosion did, in fact, increase?

19 A. Uh-huh.

20 Q. Then, again, in placing -- you were
21 undertaking other activities to try and reduce the
22 amount of erosion, correct?

23 A. Not necessarily. We were taking activities to
24 protect the road so that there would not be further
25 future erosion of the road surface.

1 Q. Of the road surface?

2 A. Yeah, the top road surface, not the gully
3 itself.

4 Q. Did you undertake any activities on the
5 outslope in 1989?

6 A. We placed rock in the outslope but that was
7 for the protection of the road surface.

8 Q. I see. Once again, those activities that took
9 place in 1989, you were working in conjunction with the
10 Division?

11 A. The Division approved the plans to put those
12 rock in.

13 Q. What date did you have that conversation with
14 Mr. Munson that you referred to after the N.O.V.
15 discussion of the site?

16 A. I believe it's the 20th, the date of --

17 Q. November 20th?

18 A. No. January 20th, I'm sorry.

19 Q. Of 1991?

20 A. '92, the --

21 Q. 1992. So this conversation was after the
22 N.O.V. was written?

23 A. Yes.

24 Q. And you testified that Mr. Munson stated that
25 this was a difficult engineering problem to overcome

1 erosion here?

2 A. (Whereupon the witness nodded her head up and
3 down.)

4 Q. Did he ever tell you that you did not have to
5 comply with the regulations?

6 A. No.

7 Q. Did he ever tell you that the erosion was not
8 a problem?

9 A. I don't know specifically if he said that or
10 not.

11 MR. RICHARDS: Okay. That's all the questions I
12 have.

13 THE HEARING OFFICER: Mr. Stirba?

14 MR. STIRBA: Yes. May I approach the witness,
15 please?

16 THE HEARING OFFICER: Certainly.

17 REDIRECT EXAMINATION

18 BY MR. STIRBA:

19 Q. Ms. Knoop, let me show you what has already
20 been received as Exhibit R-26. Do you see that?

21 A. Uh-huh.

22 Q. And this is a inspection report prepared by
23 some State inspectors when they inspected the mine site
24 on September 3, 1987. Do you see that?

25 A. Yes.

1 Q. And there is a reference in here to -- on page
2 two under general comment, it states: "A high
3 intensity, short duration thunderstorm occurred at the
4 mine site. Tom Munson (staff hydrologist) determined by
5 visual observation, actual main channel flow depth
6 measurements and other means that the storm event was
7 well in excess of the 100 year return interval."

8 Do you see that?

9 A. Yes.

10 Q. Now, is that referencing the storm event you
11 testified to in '87?

12 A. Yes.

13 Q. Does the fact that that was a storm event that
14 exceeded the 100 year interval have any significance in
15 terms of what you would have designed as a hydrologist
16 for reclamation of that project?

17 A. Yes. The mine plan, reclamation plan states
18 that all permanent structures of which the water bars
19 are considered permanent in this situation were designed
20 to convey any storm events that would be produced up to
21 the 100 year, 24 hour storm event.

22 Q. So the fact that there was damage done as a
23 result of that particular event was not something that
24 was envisioned under the reclamation plan?

25 A. Yes. That event was in excess of what the

1 designs were anticipated to handle.

2 Q. There's been some testimony also about these
3 gullies this morning and that if they continue on
4 without some attention that the road would be undercut.
5 Do you have an opinion as to what impact, if any, these
6 gullies now have on that road?

7 A. The gullies as they are now and as they have
8 been since we've done work to them have not undercut the
9 road at all. One of the regular maintenance items that
10 we do on the water bars is to create check dams and
11 excavate out the deposit sediments to insure that that
12 head cutting does not continue up into the road area.
13 That was also the reason that rocks were placed in the
14 gully during the initial attempts.

15 MR. STIRBA: Thank you. Nothing further.

16 THE HEARING OFFICER: Mr. Richards?

17 MR. RICHARDS: No.

18 THE HEARING OFFICER: All right. Thank you very
19 much.

20 MR. STIRBA: Let's call another witness.

21 THE HEARING OFFICER: All right.

22 MR. STIRBA: I will call Rich Bate and I'll go get
23 Mr. Bate.

24 THE HEARING OFFICER: Okay.

25 RICHARD LEE BATE,

1 briefed, but you can certainly add to them. I would
2 like at this point to take a five minute break. Let's
3 do that. We will then proceed with Mr. Stirba's last
4 witness, and then Mr. Richards' witnesses, whoever they
5 might be, followed then by some closing argument and any
6 other questions or directions you'd like to provide me.

7 MR. STIRBA: Great.

8 THE HEARING OFFICER: Thank you. We'll recess for
9 five minutes.

10 (Recess.)

11 THE HEARING OFFICER: Let's go back on the record
12 and see if we can wind this up. Mr. Stirba, are you
13 ready to call your next witness?

14 MR. STIRBA: I believe so, Mr. Chairman.

15 THE HEARING OFFICER: All right.

16 MR. STIRBA: We call Mr. Joe Jarvis.

17 THE HEARING OFFICER: All right. We'll have
18 Mr. Jarvis sworn.

19 (Discussion off the record.)

20 JOSEPH M. JARVIS,
21 having been duly sworn was examined and testified
22 as follows:

23 THE HEARING OFFICER: Thank you.

24 DIRECT EXAMINATION

25 BY MR. STIRBA:

1 Q. Mr. Jarvis, would you please state your full
2 name and spell your last name, please?

3 A. Joseph M. Jarvis, J-A-R-V-I-S.

4 Q. And, Mr. Jarvis, are you presently employed?

5 A. Yes.

6 Q. And what do you do?

7 A. I'm employed with JBR Consultants Group, one
8 of the principals.

9 Q. And what do you do for JBR?

10 A. What do I do. I handle a lot of the
11 permitting and biological work and revegetation work and
12 reclamation.

13 Q. Do you have education in the field of that
14 that would relate to your work in revegetation?

15 A. Yes. I have a Master's from Humboldt State in
16 wildlife biology.

17 Q. And where is Humboldt State located?

18 A. Northern California.

19 Q. And have you previously had experience in the
20 field of reclamation or wildlife resources or the like?

21 A. Yes. I've worked for State and Federal
22 agencies and then in private industry, I've been
23 involved in all -- oh, half a dozen or more of mine
24 reclamation.

25 Q. You're not going to tell me you worked once

1 with the Division of Oil, Gas and Mining, are you?

2 A. No.

3 Q. All right.

4 A. Missed that one.

5 MR. RICHARDS: Only Hidden Valley's attorneys do
6 that.

7 BY MR. STIRBA:

8 Q. What State and Federal agencies are you
9 referring to?

10 A. I worked for the Bureau of Land Management as
11 a federal agency, and I worked in this state for the
12 Division of Wildlife Resources.

13 Q. Now, Mr. Jarvis, have you worked as a
14 consultant to Hidden Valley Coal Company?

15 A. Yes.

16 Q. And is that with respect to the reclamation
17 that occurred at the Hidden Valley Mine site?

18 A. Yes. We started with them in early 1986.

19 Q. And were you involved in the preparational
20 reclamation plan for Hidden Valley?

21 A. Yes.

22 Q. And, in fact, you coauthored that plan; isn't
23 that correct?

24 A. That's correct.

25 Q. You're aware that there has been an N.O.V.

1 issued with respect to the work at that mine site,
2 correct?

3 A. The recent N.O.V.?

4 Q. Yes.

5 A. Yes.

6 Q. You've seen that?

7 A. Yes.

8 Q. You're aware of the allegations?

9 A. Yes.

10 MR. STIRBA: May I approach the witness, please?

11 THE HEARING OFFICER: Yes.

12 BY MR. STIRBA:

13 Q. Let me ask you if you could approach this
14 diagram behind you here, Mr. Jarvis, and make sure you
15 talk loud enough so everybody can hear you. This has
16 been marked as R-81. I'll offer it, and I will also
17 indicate to the Chair and counsel that this is something
18 that I just received from Mr. Jarvis.

19 That's why it was not provided earlier or I would
20 have, obviously, provided it earlier. And I'll ask you,
21 Mr. Jarvis, if you can identify what R-81 is, please?

22 A. Okay. This is the map that was included with
23 the original reclamation plan that was written for the
24 Hidden Valley Mine. It's called -- the title of it's
25 called Final Reclamation which is originally dated 1986,

1 has been updated in 19 -- well, the end of '86 and then
2 again in 1991 and --

3 Q. Let me ask you --

4 A. Yes.

5 Q. -- first before you proceed, the reclamation
6 plan you testified to was the 1986 plan which you
7 coauthored, correct?

8 A. Yes.

9 Q. And your testimony is that this particular map
10 was made a part of that plan and attached to that plan;
11 is that correct?

12 A. That's correct, yes.

13 Q. Now, this particular map, R-81, has this been
14 provided to the Division?

15 A. Yes. This was provided to the Division and
16 the original plan in 1986 and subsequent amendments as
17 noted here in late '86 and '91.

18 Q. And, as noted, you're referring to some
19 identifying marks down here under final reclamation?

20 A. Yes.

21 Q. What does that tell you?

22 A. Well, this down here just under revisions, it
23 gives the initials of those of the response for the
24 revisions and the date that they were entered on this
25 map.

1 Q. Generally, what does the map purport to show?

2 A. The map shows that the disturbed areas and the
3 techniques to be applied to those disturbed areas in the
4 Hidden Valley Mine and explains the areas that were --
5 or shows the areas that were explained in the text.

6 Q. Now, let me show you, Mr. Jarvis, an exhibit
7 which is going to be Exhibit 4 which has already been
8 introduced into evidence and there is some language
9 there under Revegetation, General Requirements. Do you
10 see that?

11 A. Yes.

12 Q. That is part of the 1986 plan, correct?

13 A. Yes.

14 Q. Had you seen that before? You're familiar
15 with that language?

16 A. Yes. Right.

17 Q. You'll notice there's a provision that states
18 here as part of the plan: "The road fill slopes and
19 some small sites will require hand application of seed,
20 mulch and fertilizer. The reclamation work is delayed
21 for 1986." Do you see that?

22 A. Yes.

23 Q. Was there such a requirement as is indicated
24 in that particular sentence to see the fill slopes of
25 the road?

1 A. As indicated by that sentence?

2 Q. Yes.

3 A. Yes. But as indicated by the map -- let me
4 just back up and explain the legend here a little bit.

5 Q. I think that would be most helpful.

6 A. Okay. This is the road alignment that was --
7 and is showing with the hatch marks here and indicates
8 this is the road regraded with watermarks and if you
9 look -- this is a scale of one inch to 100 feet.

10 Q. Now, let's just make sure, for the record,
11 some points -- somebody may have to look at this.
12 You're telling us that the road is identified by hatch
13 marks, these black hatch marks; is that right?

14 A. That's right.

15 Q. All right.

16 A. And if you look at the scale of one inch
17 equals 100, it shows the average width of this road mark
18 area is about 25 and it does extend to 30 feet wide
19 which indicates that this is the road bed that is shown
20 on this map and this was -- and this is outlined.

21 Then if I can just step to the next explanation,
22 this stippled area includes all of this shown, as you
23 can see in the dark here, is graded, seeded benches and
24 disturbed areas. So the combination of these areas here
25 and this road, as indicated, were the defined disturbed

1 areas that were to be reclaimed in this plan, and the
2 fill slopes and small sites were those that are included
3 within this hatched area or within the stippled area.

4 Q. And, in fact, have those areas that are
5 included in the map been so seeded?

6 A. Yes, they have.

7 Q. All right. Now you may sit down again,
8 Mr. Jarvis, instead of standing up. I'll stand. And
9 let me show you Exhibit 3, and that's also part of the
10 1986 plan, correct?

11 A. Yes, that is.

12 Q. And that references rills and gullies, a
13 portion of that; is that correct?

14 A. Yes, it does.

15 Q. And do you know to what that is referring?

16 A. Well, the title of it's -- the section there
17 is Regrading or Stabilizing Rills and Gullies, and it
18 says: "The existing rills in the road surface will be
19 eliminated with water-barring and ripping of the road
20 surface."

21 And prior to reclamation in our initial inspections
22 down there we -- because of the steep grade of the road
23 bed, they had developed some rills and small gullies in
24 the road surface.

25 Okay. The sentence -- the next sentence says:

1 "The rills or gullies that may appear during
2 post-reclamation monitoring will be stabilized by
3 filling with soils and rocks. Chronic sites will be
4 stabilized with small gabions or small rock check dams,"
5 which is referring, of course, back to the first
6 sentence which means if those rills continued in the
7 road surface, then we would, of course, fill them with
8 rock and soils and -- which has been done several times
9 to stop that.

10 Of course, the initial treatment with the water
11 bars and the reenforcement of the water bars has
12 eliminated the long run of the water and has fairly well
13 eliminated the force or the energy required to make the
14 further rills or gullies --

15 Q. In other words -- excuse me, I'm sorry.

16 A. -- in the road surface. Go ahead.

17 Q. In other words, Exhibit 3, the language in
18 there of rills and gullies and the continuing duty to
19 maintain those refers to the road surface; is that
20 right?

21 A. That's -- yes, that's --

22 Q. It does not refer to the outslopes?

23 A. No, because that was not a defined area.

24 Q. Let me show you, Mr. Jarvis, what has been
25 marked and we'll offer as R-82 and R-83. Those are

1 photographs, correct?

2 A. Yes. Those are photographs taken in 1986
3 showing the road surface prior to reclamation when we
4 were just planning it and, of course, you can see in the
5 photos the gullies or the rills and gullies that were
6 referred to as present.

7 Q. Referred --

8 A. As existing prior to reclamation.

9 Q. I see. Now the roads -- sorry, the rills and
10 gullies shown in those photographs are on the road
11 surface, correct?

12 A. That's right.

13 Q. And that was the condition that appeared back
14 in 1986 while you were in the process of preparing the
15 reclamation plan, correct?

16 A. That's correct. And the references in Exhibit
17 3 of rills and gullies and the duty to maintain those
18 are referring to those kinds of problems that are
19 illustrated on Exhibits R-82 and R-83.

20 At that time along with the DOGM people we realized
21 that those would have to be controlled as part of the
22 reclamation plan. That's why they were spelled out.

23 Q. Thank you. I just got these, I should state
24 for the record, as well. That's why I showed them to
25 counsel before and I'll show them to the Chair.

1 THE HEARING OFFICER: Okay.

2 BY MR. STIRBA:

3 Q. Now, Mr. Jarvis, on page two of the N.O.V.,
4 there is a reference made to failure to clearly mark
5 with perimeter markers all disturbed areas. Have you
6 had any involvement in the placing of the markers or
7 have any knowledge of the placing of the markers at that
8 site?

9 A. Yes.

10 Q. And could you tell us what knowledge you have
11 concerning the present placement of those markers?

12 A. Okay. The markers were placed after the
13 reclamation was completed and were placed at the
14 perimeter of all the reclaimed sites as they were
15 defined as previously disturbed areas, and so the
16 markers exist on both sides of the road, road bed and
17 around the disturbed areas as defined by this map. They
18 were placed there in 1987.

19 Q. Are you aware prior to November of '91 anybody
20 ever saying to you or anybody at your firm that those
21 road markers should be at a different location than
22 where they were placed in '87?

23 A. No, we've never -- I've never had any
24 permanent -- or we've never had any written
25 communication to change those markers or that they were

1 improperly placed.

2 Q. And as of November 19th of 1980 -- 1991,
3 rather, the markers were placed where they should be
4 consistent with the map which is R-81, correct?

5 A. Yes. And I might add that they have not been
6 changed since 1987 to November '91.

7 MR. STIRBA: That's all I have. Thank you.

8 THE HEARING OFFICER: Mr. Richards?

9 CROSS-EXAMINATION

10 BY MR. RICHARDS:

11 Q. I'd like to refer you to Exhibit 4. Do you
12 have that in front of of you?

13 A. This says Exhibit 3.

14 Q. I'd like to refer you to the paragraph that
15 you just discussed with Mr. Stirba.

16 A. Okay.

17 Q. He stated that that section in the text
18 required the seeding of the road fill slopes and you
19 stated yes; is that true?

20 A. I stated yes, as far as they were marked
21 clearly within the area of this map.

22 Q. But you stated that's what the text said?

23 A. That's what the text says, yes.

24 Q. What does the map show exactly? I mean, you
25 drew a line down there that shows the road?

- 1 A. Yes.
- 2 Q. Does it show anything else? Does the map
3 anyplace? I'd like to see.
- 4 A. You're referring just to this?
- 5 Q. Right.
- 6 A. Across the hatched area.
- 7 Q. Right.
- 8 A. That refers, yes, to the road bed surface.
- 9 Q. But I see no indication on the map whatsoever
10 of the road -- the outslopes; is that true?
- 11 A. Only as topographical lines show.
- 12 Q. But there's no delineation as we go down the
13 access road showing the outslopes?
- 14 A. No, because they were not part of the
15 reclamation plan.
- 16 Q. When this road was constructed, we have heard
17 testimony earlier that was a cut road, a cut and fill
18 slope road; is that true?
- 19 A. Yes.
- 20 Q. When a road is built like that, is material
21 cast over the side?
- 22 A. Yes.
- 23 Q. Would that, under the rules, be defined as a
24 disturbed area?
- 25 A. Well, it would -- it could be defined as a

1 disturbed area.

2 Q. Disturbed by Hidden Valley's mining
3 activities?

4 A. By the road building, yes.

5 Q. So that map doesn't indicate what the
6 disturbed areas are; is that true?

7 A. Well, it doesn't -- it indicates disturbed
8 areas were taken under consideration for the reclamation
9 plan at that time, yes, and were approved as --

10 Q. What does the key say for the road? Does that
11 say disturbed areas?

12 A. No. It says the road regraded with water
13 bars.

14 Q. Okay. There's no indication whatsoever that
15 the out slopes will not be required to be --

16 A. No. Like I say, there's several areas on
17 there that were not included within that reclamation
18 plan or within this map.

19 Q. Okay. You said you placed the markers on the
20 top of the roads, on both sides of the top of the roads;
21 is that correct?

22 A. At the edge of the road beds, yes.

23 Q. But you earlier testified that the out slopes
24 were disturbed; is that not true?

25 A. They are disturbed areas, yes.

1 Q. Then why didn't you place the disturbed areas
2 at the bottom of the disturbance?

3 A. Well, let me repeat that the initial
4 inspections along with DOGM personnel --

5 Q. My question is --

6 MR. STIRBA: Wait. Wait a second. You asked him
7 to explain. He's going to explain it. You asked him
8 why. He's trying to answer. I think he's entitled to
9 answer.

10 THE HEARING OFFICER: Let's let him respond to that
11 last question, as he understood it, and then you can
12 follow-up if you need to.

13 THE WITNESS: Okay. Prior to formulating the
14 reclamation plan and devising which areas to do and how
15 to do them, we had several ground inspection discussions
16 of this area and along with the CalMat people,
17 ourselves, JBR people, and DOGM people, and there was
18 two things that were considered at the time and that was
19 the fact that there was going to be a variance on the
20 road and that we would have to stabilize the road bed to
21 prevent the erosion that was occurring at that time in
22 the road bed.

23 There was no inspection of the out slopes as far as
24 erosion or as an erosion problem there. And also that
25 same consideration applies to this area down here in the

1 stream bed that had been modified previously by
2 construction was it will be accepted as it is now,
3 modified and reclamation based upon that and that was
4 not changed either.

5 BY MR. RICHARDS:

6 Q. Are you aware of a regulation that requires
7 the seeding and revegetation of all disturbed areas?

8 A. Yes.

9 Q. Were the out slopes which you have testified as
10 disturbed areas, have they ever been seeded and have
11 they been revegetated?

12 A. They're not seeded, they're not revegetated.

13 Q. Did you help design the erosion runoff system
14 that we've heard testified today on the road?

15 A. No. I'm sorry, that's not in my expertise.

16 Q. Were you -- would you be aware of the fact
17 that water bars were constructed on the road which would
18 direct the water off the road over the out slope?

19 A. Yes, I'm aware of that.

20 Q. But you didn't construct --

21 A. No.

22 Q. You weren't involved in the construction of
23 that, but you were aware that water would be coming out
24 of the bars down over the out slope?

25 A. Yes.

1 MR. RICHARDS: That's the only questions I have of
2 this witness.

3 THE HEARING OFFICER: Mr. Stirba?

4 REDIRECT EXAMINATION

5 BY MR. STIRBA:

6 Q. Mr. Jarvis, insofar as the outslopes are
7 concerned, as they exist today or existed back in
8 November of '91, do you have an opinion as to the
9 efficacy of seeding those areas?

10 A. If I just take a second to explain those
11 areas.

12 Q. Please.

13 A. As I say, the area was initially reclaimed and
14 reseeded in the fall of 1986 and reseeded again in 1989,
15 following some repair, extensive repair works due to
16 flood events. And we have experienced that while it's
17 good to reseed areas that it's -- because it's such a
18 marginal site that it takes an exceptional precipitation
19 year to really get anything to grow, and it's only in
20 the last few years we've been able to get anything to
21 grow.

22 And so sites like those very steep slopes would be
23 very difficult to seed at the proper time to predict
24 that you would get growth out of them. And we have
25 experienced fairly good growth now from our previous

1 seeding efforts, but we've also realized that there's
2 been a lot of colonization by the natural vegetation
3 that we didn't see there to occupy sites and to invade
4 sites that were unvegetated.

5 And the outslopes of the road do not show any
6 indication of colonization either by natural plants or
7 natural seeding from our seeded community because our
8 plant seeding community now is to the stage this year
9 and last year is producing seed and has produced seed
10 from the plants that have established themselves over
11 the years, and we have yet to experience any
12 colonization of those slopes to any extent at all.

13 So I would say that our efforts would have to be
14 very timely to be effective and probably, in most cases,
15 would not be effective since we do have a natural
16 colonization and a natural seeding effort going on there
17 now.

18 Q. Irrespective of the effectiveness, do you have
19 any other concerns about seeding those outslopes as it
20 may relate to altering their condition or movement?

21 A. Well, yes. Realize that those slopes are so
22 steep that if we got anybody on them, there will be
23 quite a bit of disturbance and movement of materials and
24 so we will -- I would suspect that we will loosen a lot
25 of materials and cause a lot of unraveling and, you

1 know, the pushing of materials and sediments by -- not
2 sediments, but anyway loosening of materials into the
3 drainage at the foot of the slopes into those because
4 they're hard to stand on; in fact, most places you can't
5 stand on. They're too steep.

6 MR. STIRBA: Thank you.

7 MR. RICHARDS: Just two quick questions.

8 THE HEARING OFFICER: Mr. Richards?

9 RE-CROSS-EXAMINATION

10 BY MR. RICHARDS:

11 Q. But your testimony was that the outslopes had
12 not been seeded?

13 A. That's right.

14 Q. And your testimony is you were aware the
15 regulations require all disturbed areas to be seeded?

16 A. Not seeded by our interests. They've been
17 seeded by natural efforts.

18 Q. But you've never seeded them?

19 A. No.

20 Q. And it's your testimony that the regulations
21 require the seeding and revegetation of disturbed areas?

22 A. That's true. And what you've got to consider
23 one thing here is that in this plan there's a variance
24 for the road and the action taken in to contain the road
25 as we -- as the road alignment, I should say, was to

1 stabilize the road bed and that's -- that's the efforts
2 that were put forth in the reclamation plan and approved
3 as the only efforts needed on the road.

4 MR. RICHARDS: No further questions.

5 MR. STIRBA: Done.

6 THE HEARING OFFICER: Anything further? All right,
7 we're through with this witness. Mr. Stirba, any
8 further testimony?

9 MR. STIRBA: No. Mr. Chairman, we would just offer
10 the exhibits that -- I think it's 81, 82 and 83 and then
11 we would rest.

12 THE HEARING OFFICER: Any objection?

13 MR. RICHARDS: No. I'd like to talk to one
14 witness, if I could, about rebuttal. Could we have a
15 five minute recess?

16 THE HEARING OFFICER: All right. We'll hang
17 another five minutes but don't go far. And we'll admit
18 81, two and three.

19 (Recess.)

20 MR. RICHARDS: I have one rebuttal witness.

21 THE HEARING OFFICER: Let's swear this witness in.

22 AL MUNSON,
23 having been duly sworn was examined and testified
24 as follows:

25 THE HEARING OFFICER: Mr. Richards?

1 DIRECT EXAMINATION

2 BY MR. RICHARDS:

3 Q. Would you state your name for the record?

4 A. Al Munson.

5 Q. Who do you work for?

6 A. Division of Oil, Gas and Mining.

7 Q. And what is your educational background?

8 A. I'm a hydrologist and I graduated from Utah
9 State University in 1979 in the watershed science
10 program.

11 Q. How long have you been employed by the
12 Division as a hydrologist?

13 A. About ten years this August.

14 Q. And what type of jobs do you do as a
15 hydrologist for the Division?

16 A. I deal with erosion control issues, permitting
17 of any kind of hydrologic issues related to permitting
18 or coal mining.

19 Q. Are you familiar with the Hidden Valley Mine
20 site?

21 A. Yes, I am.

22 Q. Are you familiar with a person named
23 Karla Knoop?

24 A. Yes, I am.

25 Q. Did you have a meeting with her on January 20,

1 1992?

2 A. I believe so.

3 Q. She testified to the fact that you did?

4 A. Yes. Yes, I did.

5 Q. She stated in her testimony that you had
6 stated that it was difficult, if not impossible, to
7 control erosion at this site. Is that a fair
8 characterization?

9 A. I would say that that in the -- depends in
10 what context she made that statement. We've had many
11 conversations regarding erosion in the Hidden Valley
12 Mine site, and I don't think anything is impossible.

13 I think the erosion there is extreme. It's extreme
14 throughout that whole area in the Colorado plateau, but
15 it's not impossible technically to control erosion.

16 Q. When you were discussing that, did you discuss
17 any of the three specific gullies that are at issue here
18 today?

19 A. We made -- we probably did. We probably
20 looked at them and discussed erosion on the site and in
21 terms of what would be necessary to control erosion in
22 terms of those gullies, we did have that conversation,
23 yes.

24 Q. Just a general brainstorming session regarding
25 what type of hydrologic methods would control erosion?

1 A. Exactly, yes.

2 Q. And -- go ahead.

3 A. Okay. Do you want the context of the
4 conversation?

5 Q. Yeah, why don't you put her and your
6 conversation into context.

7 A. Okay. In terms of the -- we had conversations
8 of what would be required to control the erosion in
9 those gullies and looking at the gullies, they're on a
10 one-to-one slope and in terms of any kind of erosion
11 control, i.e. riprap conventional methods on a slope
12 like that, and then consolidated materials is basically
13 impossible.

14 What the conversation came down to is what would be
15 required to implement a feasible erosion control method.

16 MR. STIRBA: Well, wait a minute. I'm going to
17 object. I don't mean to interrupt, but the way you do
18 it is, I think, he's entitled to testify as to a
19 conversation. If he has -- he remembers what was said
20 or he can testify as to the substance of what was said.
21 His interpretation of the conversation or his
22 impressions of the conversation is inadmissible. He can
23 testify as to what she said, what he said or the
24 substance of what they may have said, if that's all he
25 can remember, but he's putting an interpretive gloss on

1 this, Mr. Chairman, which, I think, is inadmissible and
2 inappropriate.

3 MR. RICHARDS: I just asked him to place the
4 conversation. I'm not looking for any evidence here at
5 all.

6 THE HEARING OFFICER: Can I think?

7 MR. RICHARDS: Let's rephrase it. It's getting
8 late. We can certainly get around this.

9 THE HEARING OFFICER: The substance of the
10 conversation, I think, is of interest.

11 BY MR. RICHARDS:

12 Q. Did you ever tell her that erosion was not a
13 problem at those three specific sites?

14 A. No.

15 Q. Did you ever tell her that Hidden Valley would
16 not have to control that erosion?

17 A. No.

18 MR. STIRBA: Well, I'm going to object; leading and
19 suggestive. I know it's late but this is a critical
20 conversation, and I think he needs to ask appropriately
21 direct examination questions, was there a conversation,
22 who was present, do you remember what was said and go
23 through it. This is a critical conversation.

24 MR. RICHARDS: I asked a question, simple
25 question.

1 THE HEARING OFFICER: I think -- well, my
2 understanding is that there are only two people present
3 during this conversation and perhaps we should clarify
4 that, but I understood Mrs. Knoop's -- or Ms. Knoop's
5 testimony to be the essence of the conversation was what
6 she testified to that there was -- that Mr. Munson had
7 represented that it was not possible or difficult or
8 something to that effect for control erosion in the
9 gullies, so I suppose it's appropriate to let Mr. Munson
10 testify as to his recollection of the substance of the
11 conversation.

12 MR. STIRBA: Absolutely. But let him say it.

13 THE HEARING OFFICER: All right. Okay.

14 BY MR. RICHARDS:

15 Q. Did you have a conversation with her regarding
16 specific gullies?

17 A. Yes.

18 Q. Did you discuss whether the gully was eroding
19 or not?

20 A. Yes.

21 Q. Did you ever discuss whether there were
22 reclamation activities that would prevent erosion?

23 A. I'm not sure if I understand.

24 Q. Were there hydrologic methods that could be
25 used to prevent erosion? Did you discuss the type of

1 things that could be done?

2 A. Sure. Yes, we did.

3 Q. In your opinion, are there things that could
4 be done to mitigate the erosion at the three sites?

5 A. Yes.

6 Q. Have you been at the site and witnessed each
7 gully site?

8 A. Yes.

9 Q. In your opinion, is erosion continuing?

10 A. Yes.

11 Q. Will it continue?

12 A. Yes.

13 Q. Okay. I'd like to show you what's been marked
14 as Exhibit 3. Would you read the last paragraph out
15 loud into the record?

16 A. "The rills or gullies that may appear during
17 the post-reclamation monitoring will be stabilized by
18 filling with soils and rocks. Chronic sites will be
19 stabilized with small gabions or rock check dams."

20 Q. We have had testimony that those last two
21 sentences are only related to preventing erosion down
22 the road and had no relation to the outslope. Is that a
23 fair statement of what that provision says?

24 MR. STIRBA: Well, I'm going to object. First of
25 all, it's not for him to comment upon somebody else's

1 testimony. The document speaks for itself. And the
2 person who otherwise testified about it was the coauthor
3 of the document.

4 THE HEARING OFFICER: I think it's fair for him to
5 testify as to what it says to him, in other words.

6 MR. RICHARDS: He was involved in the process.
7 It's no different than what his witness said about the
8 meaning of that document in his mind at the time it was
9 drafted.

10 THE HEARING OFFICER: Well, again, it's fair for
11 him to testify as to what he interprets that to say, but
12 I do agree that with regard to competing interpretations
13 -- I'm not sure how to restrict that exactly. I think
14 it's fair for him to testify as to what he thinks it
15 says.

16 BY MR. RICHARDS:

17 Q. What do you think it says?

18 A. I would say that it means that rills or
19 gullies that may appear during the post-mining,
20 post-reclamation monitoring will be stabilized by
21 filling with soil and rocks, exactly what it says. It
22 means that gullies -- rills and gullies will be repaired
23 during the post-reclamation monitoring phase.

24 Q. Would -- excuse me.

25 A. Yeah.

1 Q. Would those be gullies on the outslope?

2 A. Those would be gullies anywhere found within
3 the permit area.

4 Q. Did you ever discuss with Hidden Valley
5 whether -- let me rephrase the question. If you put
6 water bars on the road, would the water be channeled
7 down the road, concentrate the water bar and go over the
8 outslope?

9 A. Yes.

10 Q. Were both parties aware of that at the time of
11 the reclamation plan?

12 A. Yes.

13 Q. Was part of your concern in handling the
14 erosion aspects of this cut slope road handling the
15 erosion off the road onto the outslope?

16 A. Yes.

17 Q. So you were concerned both with the outslope
18 and the erosion over the outslope?

19 A. Yes.

20 MR. RICHARDS: That's the only questions I have.

21 THE HEARING OFFICER: Mr. Stirba?

22 CROSS-EXAMINATION

23 BY MR. STIRBA:

24 Q. Mr. Munson, prior to November of '91, do you
25 recall when you had been at that site to inspect it?

1 A. The specific dates?

2 Q. Correct.

3 A. I would -- I couldn't give you specific dates
4 without looking at inspection reports and whatnot, no.

5 Q. How many times have you been prior to November
6 19th of '91 at the actual site for purposes of
7 inspecting it?

8 A. Many times, many times.

9 Q. How many is many times?

10 A. I don't know a specific number. I would have
11 to say greater than ten.

12 Q. And do you know whether you were there in
13 1991?

14 A. Whether I was there in 1991? I believe so, as
15 the conversation on January 20, 1991, wasn't it with
16 Karla?

17 Q. No. The conversation was January 29, 1992.

18 A. '92, oh, okay, yeah. Right, in '91.

19 Q. Do you know --

20 A. I'm sure it was there in '91. I've been there
21 almost every year, I believe.

22 Q. Okay. So you're telling us that you were
23 there in '91. You're sure of that, right?

24 A. Yeah. A specific date? What are we getting
25 at here? I don't understand. Maybe I --

1 MR. STIRBA: Maybe I won't ask anymore questions.

2 MR. RICHARDS: I do think you've got to give him
3 some indication of this time period you're talking
4 about.

5 BY MR. STIRBA:

6 Q. It was a very simple question, Mr. Munson, if
7 you'll listen to me. It was a very simple question.

8 A. Yes.

9 Q. I used your words.

10 A. Yes.

11 Q. I asked you: Are you telling me that you were
12 there in 1991?

13 A. Yes.

14 Q. And you're sure of that?

15 A. Yes.

16 Q. All right. And do I also understand it that
17 that would -- that presence would be reflected on the
18 inspection reports for 1991, correct?

19 A. If I was accompanying an inspection, yes; if I
20 was just there on a visit per se dropping by the mine on
21 my way, which has occurred in the past, and you would
22 not have a record on an inspection report of me being
23 there.

24 Q. Okay. And in 1989, were you aware of being at
25 the mine site that year?

1 A. I would have to say yes.

2 Q. Okay. Once again, would that be reflected in
3 the inspection reports if you were there, other than
4 some visit for whatever reason you would just go see it?

5 A. Yes.

6 Q. The same would be true in '88 and also the
7 years 1990, correct?

8 A. Yes.

9 MR. STIRBA: May I approach?

10 THE HEARING OFFICER: Yes.

11 BY MR. STIRBA:

12 Q. Let me show you an exhibit which the exhibit
13 number is somewhat obliterated, but it's an inspection
14 report in 1988, correct? It's one of the exhibits that
15 has been admitted into evidence?

16 MR. RICHARDS: I'd like to get that before me
17 before you ask any questions. Do we have an exhibit
18 that's obliterated?

19 MR. STIRBA: No, no. The exhibit number is
20 obliterated. I was going to give you the date.

21 Q. The date on it is July 5, 1988; isn't that
22 right?

23 A. Yes.

24 Q. And that's a State Inspection Report, correct?

25 A. You give it to Bill, that's fine. I've seen

1 it.

2 Q. Okay. You've seen it?

3 A. Yeah.

4 Q. You're aware of that?

5 A. Yeah.

6 Q. And you're also aware that in this inspection
7 report you were present with Mr. Warmack, correct?

8 A. Correct.

9 Q. And it says there under general comments: No
10 erosion problems were encountered; isn't that true?

11 A. That's correct.

12 Q. And it also indicates under roads dealing with
13 the access road drainage controls, dealing with
14 compliance with permits and performance standards, it's
15 X'd yes; isn't that correct?

16 A. Right.

17 Q. In other words, at that time when you were
18 there, July 5, 1988, the drainage controls on that road
19 were in full compliance with the permit and the
20 applicable rules and regulations, true?

21 A. Can I ask a question off the record?

22 Q. No. Wait a minute. You can't ask a
23 question.

24 MR. RICHARDS: If you need clarification as to his
25 question, feel free to ask that.

1 THE WITNESS: Okay.

2 MR. STIRBA: Would you please read back the
3 question?

4 (Whereupon the requested portion of the record was
5 read.)

6 THE WITNESS: In terms of that, I would have to say
7 no, they weren't.

8 BY MR. STIRBA:

9 Q. Even though the document has checked yes?

10 A. I would have to say yes, that's correct.

11 Q. Nothing further.

12 A. And the reason being --

13 Q. There's no pending question.

14 A. Okay.

15 MR. STIRBA: If counsel wishes to ask you a
16 question, fine.

17 THE HEARING OFFICER: Mr. Richards, anything
18 further?

19 REDIRECT EXAMINATION

20 BY MR. RICHARDS:

21 Q. When you stated that the erosion on the road
22 was fine, were you looking solely at the road at that
23 time?

24 A. No. We may not have even been looking at the
25 road. That was a partial inspection. I had nothing to

1 do with writing that inspection report. That was
2 written by Bill Warmack. He was the inspector. I was
3 merely accompanying him. Whether or not we conversed
4 about that, whether I even saw that inspection report
5 before it went out of the office is another question.

6 Q. So you have no personal knowledge about the
7 statement made here?

8 A. No.

9 Q. No further questions.

10 A. And it's a partial inspection. We may not
11 have even looked at that aspect.

12 THE HEARING OFFICER: Mr. Stirba?

13 MR. STIRBA: Nothing further.

14 THE HEARING OFFICER: All right. Mr. Richards,
15 anything further?

16 MR. RICHARDS: No.

17 THE HEARING OFFICER: All right. Have we completed
18 the presentation of all the testimony of the witnesses?

19 MR. STIRBA: I have nothing, no surrebuttal.

20 THE HEARING OFFICER: All right. It appears that
21 we have --

22 MR. MITCHELL: Question before we close off the
23 record. The entire stack of documents that you labeled,
24 Mr. Stirba, whether they've been -- whether a particular
25 witness has talked about them or not, you've sought to

1 enter and you believe are entered; is that correct?

2 MR. STIRBA: Absolutely. They've been received, I
3 believe.

4 MR. MITCHELL: I just wanted to clarify.

5 THE HEARING OFFICER: They've been admitted.

6 MR. MITCHELL: They've been admitted, that entire
7 stack, whether they've been talked about or not.

8 THE HEARING OFFICER: So I believe we've got all
9 the documents and all the testimony in, and I'll leave
10 it to counsel for the parties as to whether you would
11 like to make closing statements and argument right now,
12 how long you think that might take or whether you'd like
13 to schedule that later, if you think there's going to be
14 more in the way of argument? Let's -- I'll ask
15 Mr. Stirba first. What's your sense?

16 MR. STIRBA: Well, my own view is at this point it
17 might be prudent to schedule that at some other time.
18 And I say that not to take up any additional time. I'm
19 not talking about extensive argument, but I do think you
20 might benefit, if you're going to benefit at all, from
21 some well thought-out argument rather than some quarter
22 of 6:00, tired, just get it done argument.

23 THE HEARING OFFICER: I tend to agree. And I have
24 thought of questions of my own that I want to ask you
25 during argument and Mr. Richards, as well. Perhaps what

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we should do is close the hearing for this evening and put our heads together to schedule a time for argument.

I think just the three of us are the only required attendees, although we'll want to put it on the record. So with that, we'll close the hearing for today and let's then go off the record and determine when we'll reconvene.

(Whereupon the hearing was adjourned at 5:45 pm.)

VI Revegetation - Including Seeding, Mulching, Planting, Irrigation, Etc.

EXHIBIT

I

UMC 817.111 Revegetation: General Requirements

The entire 6.7 acres of disturbed ground will be properly scarified, seeded, fertilized, mulched and covered to provide the best possible opportunity for plant growth. The road fill slopes and some small sites will require hand application of seed, mulch and fertilizer. The reclamation work is scheduled for late fall, 1986.

The proposed fertilization rate is based upon lab analysis of composite soil samples secured in March, 1986. Additional soil samples will be taken after topsoil materials are spread on the "B" seam pad and from mixed materials on "A" seam pad. These later analyses will be used to determine the actual fertilization rates.

Irrigation is not planned.

It is not contemplated that there will be a pest or disease control problem.

Cattle grazing during the revegetation process will be limited to

EXHIBIT VI

EXHIBIT II

September 5, 1995

Mr. William Malencik, Reclamation Specialist
Division of Oil, Gas, and Mining
451 East 400 North
CEU Box 156
Price, UT 84501-2699

Re: Hidden Valley Mine

Dear Bill,

This letter is to clarify my position with regard to the inspection you and I conducted on the Hidden Valley Mine on November 19, 1991, and the inspection conducted with Jess Kelly on October 8, 1991.

The October inspection was conducted with one concern; to determine whether or not the remaining highwall on the "A" seam side of the mine was required to be eliminated under the Utah program. We walked the mine and surrounding areas to view the topography, aspect, etc., solely to help us in this determination. I did not conduct a compliance inspection, what you would consider an oversight inspection of the mine. I identified as a concern the access road cut and fill slopes, however, I did not investigate and issue a Ten-Day Notice as would have been required if I was conducting a complete inspection. The access road to which I refer is the unpaved road from the end of the blacktop to the pad area.

The November inspection was conducted as a complete inspection. We discussed the access road cut and fill slopes and the pad out slopes immediately above Ivie Creek with the consultant. **I cannot recall what her exact response was, but in effect the company did not believe it was responsible for revegetating those slopes. To her knowledge those slopes had never been seeded.** I believed this to be a violation because the company is responsible for the slopes. You addressed the issue in a manner that satisfied my concerns, so no Federal action was taken.

If you have any questions, please call me at 505-248-5070. This is the new AFO telephone number.

Sincerely,

Mitchell S. Rollings, Reclamation Specialist
Albuquerque Field Office



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor

Dee C. Hansen
Executive Director

Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

January 13, 1992

EXHIBIT III

TO: Pamela Grubaugh-Littig and Dianne Nielson
FROM: Wm. J. Malencik, Reclamation Specialist
RE: Response to Hidden Valley Coal Co. Request to Vacate
NOV N91-26-8-2 Hidden Valley Mine, ACT/015/007

On December 30, 1991, Ms. Denise A. Dragoo submitted a memorandum to the Director, DCGM to identify points and authorities in support of vacating the Notice of Violation N91-26-8-2.

The undersigned reviewed the memorandum and supporting information. Responses are attached. To augment responses appropriate portions of the reclamation plan and regulatory performance standards are attached as exhibits.

The NOV was based on the failure of the permittee to meet Utah Coal Mining Regulation performance standards. Some of the performance standards items were identified as commitment items in the Reclamation Plan. The NOV did not cite the failure to meet plan commitments, but relied on performance standards.

Photos clearly show the interface of the disturbed areas with the undisturbed areas and the erosion.

Allegation #5

NOV is barred under the statute of limitations [UMCRA, S40-8-9(2)].

Response #5

A corporate guarantee of \$152,500 was posted to cover reclamation obligations which clearly provides a continued liability on the part of HVCC until final bond release.

Allegation #6

Areas cited in the violation were not included in the reclamation plan approved by the Division in 1986.

Response #6

Not factual. The road outslope was specifically covered in the plan. The plan was silent on the upslope. Both areas must comply with the Utah Regulation Performance Standards with respect to erosion and diversions.

The reclamation plan states that the road fill slopes would be seeded, mulched and fertilized. This would further substantiate that the road outslopes would be reclaimed, and are part of the plan.

Stabilizing rills and gullies are committed to and identified in the plan. Rills and gullies during post reclamation will be stabilized by filling with soil and rocks. Chronic sites will be stabilized with gabions or rock check dams. (Refer to Exhibit II, PUMC 817.106.)

VI Revegetation - Including Seeding, Mulching, Planting, Irrigation, Etc.

UMC 817.111 Revegetation: General Requirements

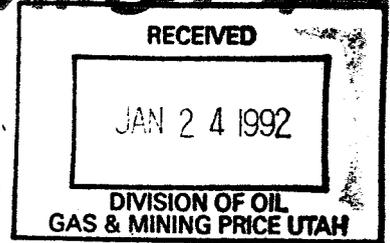
The entire 6.7 acres of disturbed ground will be properly scarified, seeded, fertilized, mulched and covered to provide the best possible opportunity for plant growth. The road fill slopes and some small sites will require hand application of seed, mulch and fertilizer. The reclamation work is scheduled for late fall, 1986.

The proposed fertilization rate is based upon lab analysis of composite soil samples secured in March, 1986. Additional soil samples will be taken after topsoil materials are spread on the "B" seam pad and from mixed materials on "A" seam pad. These later analyses will be used to determine the actual fertilization rates.

Irrigation is not planned.

It is not contemplated that there will be a pest or disease control problem.

Cattle grazing during the revegetation process will be limited by



BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

Mine File-Enf.

---00000---

IN THE MATTER OF THE APPEAL	:	FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION	:	AND ORDER
#N91-26-8-2, HIDDEN VALLEY	:	
COAL COMPANY, [REDACTED]	:	INFORMAL HEARING
[REDACTED], EMERY COUNTY, UTAH	:	CAUSE NO. [REDACTED]

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On December 20, 1991, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation for the above-referenced Notice of Violation ("NOV").

The following individuals attended:

- Presiding: Dianne R. Nielson, Director
Division of Oil, Gas and Mining
- Petitioner: Lee Edmonson
Hidden Valley Coal Company
("Hidden Valley")
 - Denise Dragoo
Fabian and Clendenin
Counsel for Hidden Valley Coal Company
 - Joe Jarvis
JBR Consultants
Consultant to Hidden Valley Coal Company
 - Karla Knoop
JBR Consultants
Consultant to Hidden Valley Coal Company
- Division: Lowell Braxton
Associate Director for Mining
 - Pamela Grubaugh-Littig
Permit Supervisor
 - Susan White
Reclamation Specialist

disturbed area. There is no map in the plan which delineates the disturbed area boundary. However, failure by Hidden Valley to properly designate the fill slopes as disturbed area or failure to include the area in the reclamation calculation does not obviate the responsibility of Hidden Valley to reclaim the fill slopes, as described in the plan.

7. The Division has not waived and hence is not estopped from taking enforcement action.

8. The statute of limitation does not apply.

9. Hidden Valley's consultant has indicated that they did not seed the fill slopes of the road or the subject fill slopes associated with the pads. There is no information to indicate that the Division was aware of those facts at the time of phase I bond release. The success of erosion mitigation measures, including prevention of rills and gullies and reestablishment of vegetation is ongoing during the reclamation period. The reclamation plan and the performance standards require mitigation when problems are noted by the operator or the Division. Because that monitoring and preventative action is an ongoing responsibility, it cannot be stayed by any statute of limitations.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N91-26-8-2 parts 1 of 2 and 2 of 2 are upheld, except with ~~_____~~ of the road

EXHIBIT ~~III~~
V

BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF NOTICE OF	:	HIDDEN VALLEY COAL COMPANY
VIOLATION N91-26-8-2,	:	
HIDDEN VALLEY MINE,	:	PETITION FOR TEMPORARY
ACT/015/007.	:	RELIEF
	:	
	:	CAUSE NO. ACT/015/007

Pursuant to Utah Code Ann. § 40-10-22(3), Applicant, Hidden Valley Coal Company, a Utah corporation ("Hidden Valley"), by and through its counsel of record, hereby petitions the Board of Oil, Gas & Mining ("Board") for temporary relief concerning abatement of Notice of Violations N91-26-8-2 ("NOV"). This NOV was issued by the Utah Division of Oil, Gas & Mining ("DOG M") on November 22, 1991, concerning reclamation of the Hidden Valley Mine ("Mine"), Permit No. ACT/015/007. A copy is attached as Exhibit "A." Hidden Valley has appealed the fact of this violation to the DOGM to challenge, among other things, the nature of the abatement requested by the NOV. The Mine has been reclaimed and revegetated in accordance with a reclamation plan approved by DOGM. Under the terms of the NOVs, DOGM is now requesting that new areas, not formerly identified in the reclamation plan, be reseeded and revegetated. (NOV Part 2 of 2). Hidden Valley is objecting to this abatement action due to its concern that the

reseeding and revegetation will disturb the reclaimed area and cause erosion of slopes. In addition, the reseeding and revegetation activities will extend the period of liability under Hidden Valley's reclamation bond. Hidden Valley also objects to abatement action required under Part 1 of the NOV concerning submission of an erosion control plan. If the NOV is vacated, this plan will not be required. It is an unnecessary waste of resources to require such a plan until the fact of the violation is reviewed.

Under the terms of the NOV, reseeding and revegetation must occur no later than December 20, 1991. Hidden Valley respectfully requests an extension in the abatement period pending review the fact of the violation by DOGM. During a recent reinspection of the Mine conducted last week, DOGM inspectors disagreed on the abatement action required. DOGM inspector Tom Munson agrees with Hidden Valley's consultant that the required abatement may cause environmental damage to reclaimed areas. A hearing before DOGM is required to resolve these conflicting opinions.

In addition, abatement of the NOV prior to hearing essentially deprives Hidden Valley of its opportunity for hearing in violation of Utah Code Ann. § 40-10-22(3) and the due process provisions of the federal and state Constitutions. U.S. Const.

Amend. V and XIV; Utah Const. Art. I, Section 7. Finally, if Hidden Valley is successful in its appeal and the DOGM vacates the NOVs, the abatement action required in the NOV will no longer be necessary.

For the above-stated reasons, Hidden Valley respectfully requests that the Board extend the abatement period for both Part 2 and 2 of the NOV for a period from December 20, 1991 until the DOGM enters its written determination regarding the fact of the violation. If the NOV is upheld, Hidden Valley requests a reasonable period of time following the hearing in which to conduct the abatement activity required by DOGM.

SUBMITTED this 12th day of December, 1991.

HIDDEN VALLEY COAL COMPANY

BY: 

Denise A. Dragoo
FABIAN & CLENDENIN,
a Professional Corporation
215 South State Street
Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF NOTICES OF VIOLATION:

N91-26-8-2, AND N92-25-1-1
HIDDEN VALLEY MINE, EMERY
COUNTY, UTAH

DOCKET NO. 92-005

CAUSE NO. ACT/015/007

HEARING HELD JUNE 30, 1992

CLOSING ARGUMENT HELD: JULY 7, 1992

5980 South 300 East • Murray, Utah 84107

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OUR FILE NO 603092

ORIGINAL

REPORTED BY

INTERMOUNTAIN COURT REPORTERS

DANA MORSE, CSR, RPR

263-1396

962

1 stream bed that had been modified previously by
2 construction was it will be accepted as it is now,
3 modified and reclamation based upon that and that was
4 not changed either.

5 BY MR. RICHARDS:

6 Q. Are you aware of a regulation that requires
7 the seeding and revegetation of all disturbed areas?

8 A. Yes.

9 Q. Were the outslopes which you have testified as
10 disturbed areas, have they ever been seeded and have
11 they been revegetated?

12 A. They're not seeded, they're not revegetated.

13 Q. Did you help design the erosion runoff system
14 that we've heard testified today on the road?

15 A. No. I'm sorry, that's not in my expertise.

16 Q. Were you -- would you be aware of the fact
17 that water bars were constructed on the road which would
18 direct the water off the road over the outslope?

19 A. Yes, I'm aware of that.

20 Q. But you didn't construct --

21 A. No.

22 Q. You weren't involved in the construction of
23 that, but you were aware that water would be coming out
24 of the bars down over the outslope?

25 A. Yes.



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

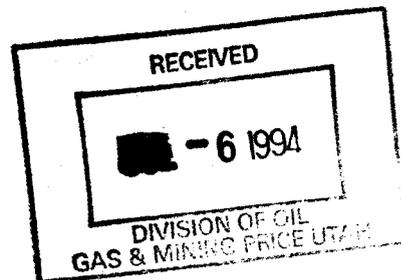
Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 1, 1994

Correspondence
EXHIBIT VII

Lee Edmonson
Cal Mat Company
Properties Division
1801 East University Drive
Phoenix, Arizona 85034



Re: Hidden Valley Coal Company [REDACTED] Mine, [REDACTED] Folder #2,
Emery County, Utah

Dear Mr. Edmonson:

I am writing about our upcoming meeting regarding the Hidden Valley Mine. The Division would like to discuss some new initiatives directed at long-term resolution of the reclamation issues at the mine.

I have attached a meeting notice and a draft agenda. The agenda is issue-driven, and, we hope, will pave the way for discussing approaches that are goal-related. Also attached is a listing of issues we have identified. We batched the eighteen issues into several broad categories. Should you have any issues that concern you, please send me your list.

I appreciate your willingness to come to Salt Lake City. We had planned to come to Phoenix, but this should be better for all attendees, except perhaps for you. Let me know what your travel schedule will be, so that we can set an appropriate meeting time.

Very truly yours,

James W. Carter
Director

jbe
Enclosure (3)
cc/enc: W. Malencik
H:HIDVALME.LTR

Meeting Notice

What: Hidden Valley Mine Meeting

When: July 21, 1994

Where: Salt Lake City, Utah, Division of Oil, Gas and Mining Office,
#3 Triad Center, Suite 350

Why:

1. Discuss Goals
2. Discuss pending issues relating to compliance and Phase II bond release
3. Identify consensus issues and nonconsensus issues
4. Explore and arrive at a process to resolve nonconsensus issues

Who To Attend: DOGM: James W. Carter, Lowell P. Braxton, and
William J. Malencik
Hidden Valley Mine: Lee Edmonson and Karla Knoop

Estimated Length: 3 Hours

Meeting Preparation: Exchange before meeting a written list of issues from each party in order to expedite preparation, discussions, and conclusions.



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Tod Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 29, 1994

Lee Edmonson, Properties Division
Cal Mat Company
1801 University Drive
Phoenix, Arizona 84034

Re: [REDACTED], July 21, 1994 Meeting Follow-Up, [REDACTED] Folder #5,
Emery County, Utah

Dear Mr. Edmonson:

I am writing to follow up on our meeting on the Hidden Valley Mine held July 21, 1994. I want to thank you for inviting Ed Settle of Consolidated Coal Company to the meeting, and appreciate the comments and contributions he made to the success of the meeting.

I appreciate your agreeing in principle to the 18 issues discussed and noted in the attached minutes. I also appreciate your willingness to jointly commit to an action plan on issues including back-filling and grading, roads and wells, signs and markers, vegetation, and updating the mining and reclamation plan on some pending items. While issues concerning runoff control, erosion and sediment control, and bond clock were discussed, the first two will need to be revisited from time to time to determine if control measures are meeting our joint goals of bond release and are meeting compliance requirements. Further, a technical meeting of the minds on practical methods for collecting defensible data on the sediment control component of Phase II bond release needs to be reached. Please consult with Daron Haddock and Tom Munson of my staff for their suggestions and assistance in that regard.

While the bond clock remains an issue, this action plan and other new initiatives, if approved, together with the husbandry practice rules now in the process of approval, will provide a better understanding of where and how this issue may evolve.

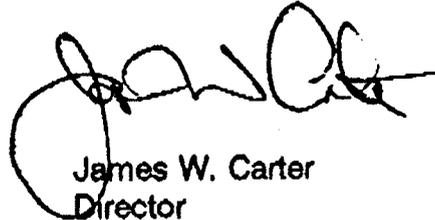


Page 2
Lee Edmonson
July 29, 1994

It is my opinion we all left the meeting with a better appreciation of the constraints which face us. It is important that we collectively recognize the adverse implications of conflicting technical data. In this instance, because of the nature of some issues, I believe we cannot do alone what we can do together. We are committed to a joint endeavor if we are to resolve some of the more difficult issues. However, with our limited staff and budget, this cannot be our normal style of operation or we could not fulfill our main mission. I encourage you to take care of the paperwork and the field work on those items listed in the minutes. The urgency of those items is related to compliance. Based on our discussions, we anticipate that you will be able to complete these items by August 15, 1994.

As we discussed, I believe our discussions and the conclusions reached at the meeting will pave the way for taking care of less complex issues that are potential compliance issues, and refining and carrying out an action plan for the more complex technical issues. Thanks for your participation and your willingness to explore new initiatives in order to achieve successful reclamation at the Hidden Valley Mine. As noted below, I am providing a copy of this letter and attachments to Mr. Settle.

Very truly yours,



James W. Carter
Director

vb
Attachments
cc: E. Settle
HIDDENVA.HID

ATTACHMENT I

**Division of Oil, Gas and Mining
Hidden Valley Mine Issues Relating to Compliance and/or Bond Release Matters**

- I. Backfilling and Grading**
 - 1) Highwalls, A & B Seams**
 - 2) Approximate Original Contour, Cutslope Road**
 - 3) Reclaimed Road Bed**

- II. Roads/Wells**
 - 4) Roads to Seven Wells/Wells**
 - 5) Public Vehicle Encroachment on Reclaimed Road**

- III. Signs and Markers**
 - 6) All Disturbed Areas Not Properly Marked, Maps Do Not Properly Depict Disturbed Areas**
 - 7) Buffer Zone Areas Not Properly Marked**

- IV. Vegetation**
 - 8) All Disturbed Areas Not Seeded and Mulched**
 - 9) Seeded Areas Show Poor Vegetal Establishment**
 - 10) Division Provide Policy to Permittee in Writing Prior to Joint Meeting on How Vegetation Parameters Will be Measured and Quantified as Related to Phase II Bond Release and Compliance**
 - 11) Poisonous Plant Establishment on Reclaimed Site**
 - 12) With Xerophytic Environment, et al., Will Vegetation Provide Adequate Erosion Control/Sediment Control, Phase II Bond Release Parameters? If Not, Then What?**

- V. Runoff Control**
 - 13) Undisturbed Runoff Interfacing With Disturbed Runoff**
 - 14) Water Bars**

- VI. Erosion and Sediment Control**
 - 15) Road Outslope**
 - 16) A & B Seam**
 - 17) Borrow/Staging Area**

- VII. Bond Clock**
 - 18) Further Reclamation Work That Will Start Bond Clock**



State of Utah
DEPARTMENT OF NATURAL RESOURCES
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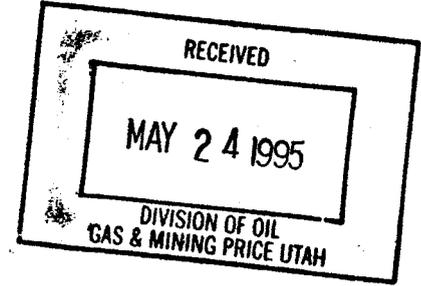
355 West North Temple
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801-538-5319 (TDD)

mine file
permit

**EXHIBIT
VIII**

May 5, 1995

Lee Edmonson
Properties Division
CalMat Company
1801 East University Drive
Phoenix, Arizona 85034



Re: Extension of Time to Respond to Plan Inadequacies, [REDACTED] Coal Company,
Hidden Valley Mine, [REDACTED], Folder #3, Emery County, Utah

Dear Mr. Edmonson:

I have been made aware that certain issues outlined in our April 12, 1995 correspondence may warrant further discussion prior to your addressing them. In order to allow that discussion to occur, I have been authorized to grant an additional 30 days time to respond to the notice of inadequate amendment, i.e. June 14, 1995.

We look forward to working with you on resolving these issues. Please contact us in order to set up the needed discussions.

Sincerely,

Daron R. Haddock
Daron R. Haddock
Permit Supervisor

cc: K. Knoop (JBR)
S. White
B. Malencik
P. Grubaugh-Littig

extensi.hvc

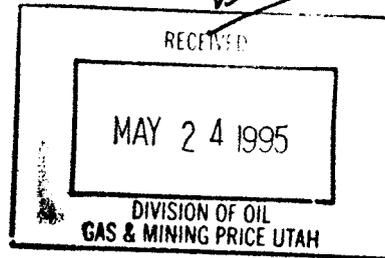


State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL, GAS AND MINING

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April 11, 1995



TO: Daron Haddock, Permit Supervisor

FROM: Susan M. White, Senior Reclamation Biologist *SMW*

RE: Amendment 94A Received 3/2/95, Hidden Valley Coal Company
ACTING PERMIT HOLDER #2, Emery County, Utah

SYNOPSIS

Amendment 94A, Received by the Division on March 2, 1995 was reviewed in a Technical Analysis type format. The amendment may not be approved for reasons discussed below.

RECLAMATION PLAN

TOPSOIL AND SUBSOIL

Regulatory Reference: R645-301-232, -301-234, -301-242, -301-243

Analysis:

The proposed amendment (page 56-B) states that "portions of the slopes do not have adequate growth medium or water retention to produce vegetation". No plans for amending, locating or importing adequate growth medium is discussed in the amendment. Regulations R645-301-232.720 and R645-301-233.100 outline the requirements of using substitute material in order to fulfill the revegetation requirements of R645-301-356, when no available material can be located on site.

Finding

The permittee must provide the following, prior to approval, in accordance with the requirements of:



R645-301-232.200, the amendment must demonstrate how an adequate growth medium will be obtained on the road fill slopes and pad outsoles in order to achieve the revegetation standards of R645-301-356.

REVEGETATION

Regulatory Reference: R645-301-244, -301-353, -301-354, -301-355, -301-356

Revegetation: Timing.

Analysis:

The permittee states in the amendment that "seed was apparently applied to the road fill slopes during original reclamation in 1986". Testimony given by Frank Jensen (an employee of JBR Environmental Consultants, Inc.) under oath and whom was present at the time of reclamation, is contrary to this statement. This statement must be verified or otherwise removed from the amendment.

The pad outsoles near Ivie Creek and the road fill slopes were not seeded. The amendment states that the revegetation method used on the road fill slopes and the pad outsoles is natural regeneration. No site specific data is presented to verify that natural regeneration is a viable revegetation method for this mine site. The outsoles and fill slopes have been in the current condition for at least nine years. If regeneration is occurring at a reasonable rate for bond release then the data should be provided to the Division in support of this method.

Finding:

The permittee must provide the following, prior to approval in accordance with the requirements of:

R645-301-354, all disturbed areas must be planted during the first normal period for favorable planting conditions. The amendment must discuss when the road fill slopes and the pad outsoles will be seeded. An alternative may be to provide statistical data which will verify that the natural regeneration method of revegetation will achieve the success standard of R645-301-356. The statement that the road fill slopes were seed must be deleted.

Revegetation: Mulching and other soil stabilizing practices.

Analysis:

The amendment states that "redisturbance of these areas - either by simply accessing them, or by mechanically disturbing the soil crusts - will likely result in destabilization, increased erosion, and loss of the existing vegetation". No discussion is provided as to how the permittee will stabilize the slopes after seeding.

Finding:

The permittee must provide the following, prior to approval, in accordance with the requirements of:

R645-301-355, the amendment must address how a suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded.

Revegetation: Standards for success.

Analysis:

The amendment states that natural regeneration will be used to revegetate, however the success standard for the road fill slopes and the pad out slopes near Ivie Creek may not be met. The permit describes the reference area (page 60) as steep rocky slopes. This reference site appears to favorably compare to the out slopes of the road and pad. No site specific site data is presented in the amendment that would indicate otherwise.

R645-301-353 only exempts the surface areas of roads and water areas from the establishment of a vegetative cover that is in accordance with the approved permit. Therefore, no exemption may be approved and the permittee must delete the reference to not meeting the vegetation standard.

Findings:

The permittee must provide the following, prior to approval, in accordance with the requirements of:

R645-301-356, success of the revegetation must be compared to the approved success standard, a variance to this performance standard is not allowed. Therefore, the reference to not meeting the standard must be deleted from the amendment.

RECOMMENDATION

Page 4
ACT/015/007
April 11, 1995

The permittee must address those deficiencies as found within this Draft Technical Analysis and provide the following, prior to approval, in accordance with the requirements of:

R645-301-232.200, the amendment must demonstrate how an adequate growth medium will be obtained on the road fill slopes and pad outslopes in order to achieve the revegetation standards of R645-301-356.

R645-301-354, all disturbed areas must be planted during the first normal period for favorable planting conditions. The amendment must discuss when the road fill slopes and the pad outslopes will be seeded. An alternative may be to provide statistical data which will verify that the natural regeneration method of revegetation will achieve the success standard of R645-301-356. The statement that the road fill slopes were seeded must be deleted.

R645-301-355, the amendment must address how a suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded.

R645-301-356, success of the revegetation must be compared to the approved success standard, a variance to this performance standard is not allowed. Therefore, the reference to not meeting the standard must be deleted.

cc: **Bill Malencik**
hidden.apr

EXHIBIT
IV

NO. N 95-26-2-1

notice of violation

To the following Permittee or Operator:

Name Cal Mat Company
Mine Hidden Valley Mine Surface Underground Other
County Emery State Utah Telephone (602) 254-8465
Mailing Address 1801 East University Drive, Phoenix, AZ 85034
State Permit No. ACT/015/007
Ownership Category State Federal Fee Mixed
Date of inspection June 14, 1995, 19____
Time of inspection 1:00 a.m. p.m. to 4:00 a.m. p.m.
Operator Name (other than Permittee) _____
Mailing Address _____

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Certified Z 254 438 027

Date of ~~service~~/mailing July 20, 1995

Time of ~~service~~/mailing _____ a.m. p.m.

Lee Edmonson

Manager

Permittee/Operator representative

Title

Signature

Wm J. Malencik

Reclamation Specialist

Division of Oil, Gas & Mining representative

Title

Signature

#26

Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OPERATOR PINK-OSM GOLDENROD-NOV FILE



NOTICE OF VIOLATION NO. N 95-26-2-1

Violation No. 1 of 1

Nature of violation

Failure to comply with the terms and conditions of Hidden Valley Coal Mine
and reclamation plan, permit ACT/015/007.

Provisions of act, regulations or permit violated

UCA, Title 40, Chapter 10, Paragraph 40-10-22
R645-300-140 and -143

Portion of operation to which notice applies

Hidden Valley Coal Mine approved reclamation plan
-Page 46, Section 5.1, Item 5

-Page 56, UMC 817.111, Revegetation: General Requirements

Certain Disturbed Areas not Seeded, to-wit:

-Road Outslope

-Stream Buffer Zone, Ivie Creek Upslope

Remedial action required (including any interim steps)

Revegetate all disturbed areas following the revegetation requirements as
itemized and discussed in the approved reclamation plan, which among other items
includes seedbed preparation, fertilization, required seed mix, and alfalfa hay
mulch at the rate of 4000 lbs per acre.

Abatement time (including interim steps)

September 29, 1995

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

General Comments. Completed a partial inspection of the reclaimed Hidden Valley mine. Areas that were observed in the instant inspection included the sealed well/dry hole adjacent to a road and above mine escarpment, borrow area, reclaimed road and A&B Deam reclaimed areas.

Permit. Have been advised by the Division that a DOGM permit transfer application has been submitted. The proposed transfer involves Cal Mat and Consolidated Coal Company.

Director Carter phoned Mr. Edmonson, Hidden Valley Coal Company concerning an outstanding commitment in the Hidden Valley mining and Reclamation plan. The commitment concerns seeding and mulching all disturbed areas. The record shows the reclaimed road outslope below the gate and the stream buffer zone, Sue Creek upslope, have not been seeded or mulched. The permittee submitted an amendment on this item; however the Division in substance advised the permittee the amendment was deficient and

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE / OPERATOR GOLDENROD - NOV FILE

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

not approvable.

The failure to seed disturbed areas was a matter before the Utah Court of Appeals in regard to notice of violation N91-26-8-7, wherein the court found some dispute in the record as to whether Hidden Valley failed to seed all the disturbed areas. As a result thereof the court held the Division did not introduce any evidence, finding that the disturbed areas had not been seeded between November 1 and November 19.

Prior to the foregoing litigation Hidden Valley submitted a seeding abatement plan to address and seed those areas that had not been previously seeded. Before such work could be undertaken, the Division notified Mr. Edmonson that seeding would restart the bond clock, resulting in litigation.

Director Carter pursuant to a discussion with Mr. Edmonson phoned Ed. Settle, Consolidated Coal Co.

It is my understanding the discussions

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE / OPERATOR GOLDENROD - NOV FILE

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

with both Messrs. Edmonson and Settle concerned the proposed DOGM permit transfer when an outstanding commitment in the mining and reclamation plan has not been met. It follows a notice of violation may be issued by the Division if this issue is not resolved.

While the inspection was conducted on 6/14/95, most of the contacts and details noted above took place after 6/14/95; however, because of proposed transfer and allied matters, I believe it is necessary to reduce to writing these matters. Should the foregoing not reflect your conclusions, please notify the undersigned.

Signs & Markers. The required I.D sign, disturbed markers, and buffer zone markers were observed.

The county had placed road signs where the road conditions in certain areas required some signs to alert the driver of caution in driving on these road areas.

Copy of report mailed to Cal Chat/Chx Edmonson; OSM/Donna Griffin; DOGM/Joel Helfrich

Copy of report: ^{filed} given to PEO
cc: Ed Settle Consolidated Coal Co.

Inspector's signature Jim O'Sullivan No. 26

WHITE - DOGM YELLOW - OSM PINK - PERMITEE/OPERATOR GOLDENROD - NOV FILE

7/3/95



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

EXHIBIT
XL

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
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July 5, 1995

Lee Edmonson
Properties Division
Cal Mat Company
1801 East University Drive
Phoenix, Arizona 85034

RE: Mining and Reclamation Seeding Commitment, Hidden Valley Mine, Cal Mat Company, ACT/015/007, Emery County, Utah

Dear Mr. Edmonson:

I am writing about disturbed areas that have not been seeded at the Hidden Valley Mine. Attached is a copy of my June inspection report. It highlights certain phone discussions and moreover, conclusions from Director Carter, as a result of phone discussions that were outlined to me on June 29, 1995. The phone discussions alluded to are those among Director Carter, Messrs. Edmonson, and Settle.

This matter was discussed further at the Division meeting on June 29, 1995. Personnel attending the meeting included Carter, Braxton, Helfrich, and the undersigned. Also, Mr. Carter consulted with Tom Mitchell of the Attorney General's office prior to the meeting.

Before considering and taking suggested enforcement action, proposed to DOGM management that I am allowed 10 days to try to resolve this issue without the necessity of writing a violation to Cal Mat Company.

Violation N91-26-8-2 concerned these issues:

- (1) Erosion road outslope on the reclaimed road,
- (2) Not seeding and mulching all disturbed areas as committed to in the Mining and Reclamation plan, and
- (3) Disturbed markers not properly located on a portion of the reclaimed road.

Page 2
L. Edmonson
Seeding
July 5, 1995

Issue (1) and (3) have been resolved with the cooperation of Mr. Edmonson and others. Further, it is in the best interest among all the concerned as discussed in our July 1994, meeting to rely on overall bond release requirements on the total site rather than on compliance to move toward long range common objectives.

It is in this spirit that I write you to explore how we may resolve the seeding issue without the necessity of relying on compliance and/or further litigation to resolve this matter.

It is my sincere opinion that we can do together what we cannot do alone. Would be amenable to utilize the seeding abatement plan you submitted in response to N91-26-8-2 as a starting point to resolve this matter.

Sincerely,



Wm. J. Malencik
Reclamation Specialist

sd
cc: Ed Settle, Consol