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M E M O R A N D U M

TO: DIANNE R. NEILSON

FROM: BARBARA W. ROBERTS BWR

DATE: APRIL 16, 1990

RE: Comments on two NOV's that I vacated as ACO

The first NOV, N89-32-2-1 issued to Co-op Mining Company, was issued for the alleged failure to conduct mining operations in accordance with the approved plan. More specifically, Co-op was to install a sprinkler system for the ball park where the topsoil substitute was stored. Co-op had committed to install the sprinkler system to support the ball park vegetation and drew a picture indicating six sprinkler heads. Instead of the six sprinkler heads, there were only two on site when Henry Sauer inspected the area.

There were two rules cited as having been violated: UMC 771.19 (compliance with the approved plan) and UMC 817.23 (protection of topsoil storage areas).

At the outset, the discussion in the assessment conference ("AC") focused upon the less than spectacular success of the vegetation on the ball park fields. The operator apparently did not get the sprinkler system in place at the time of seeding and there was no precipitation to assist germination. Henry also repeatedly remarked that the sprinkler system that was ultimately installed was not adequate to "leech the topsoil substitute" in order to make it more likely to support vegetation efforts.

In response to the Division's presentation of the matter, Co-op stated that the existing sprinklers were adequate to support the vegetation and that leeching the topsoil substitute was not contemplated by the plan. It was agreed that additional seeding would be necessary to supplement that already established.

This issue had apparently been an ongoing point of irritation between the inspector and the operator for some time. There was clearly some miscommunication on the importance of the

sprinkler system: whether the water was for the purpose of establishing vegetation on the topsoil substitute or whether the water was for the additional purpose of leeching the soil substitute to improve its ability to support vegetation. The significance of the latter is that more water is needed to leech the soil than to support the vegetation mix as set out in the plan.

After reading the pertinent portions of the plan and questioning both the operator and the inspector, I concluded that the sprinkler system was intended to support the protective vegetative cover and not to specifically leech the soil substitute.

I then questioned Henry as to whether, in his opinion, the water delivery system was adequate to support the vegetation mix required by the plan. His response was that vegetation success had been low but that it was probably due to the poor soil and the lack of water at the time of germination and not the inadequacy of the sprinkler system. In fact, he agreed with the operator that the sprinklers in place delivered water to the entire ball park area in sufficient quantity to support vegetation outlined in the plan.

Therefore, in light of the inspector's statements that the water delivery system was indeed adequate to establish vegetation and since the NOV was written because the operator failed to install a sprinkler system, the NOV was vacated.

As an additional consideration, although the plan included a picture drawn with six sprinkler heads delivering water to the ball park, if two sprinkler heads result in the same amount of water delivered, then clearly the operator is in compliance with the plan. This is not a matter of safety or of complex calculations which necessitate evaluation and approval of a professional. In this case, two more powerful heads work as well as six less encompassing sprinklers.

The second NOV, N89-33-1-1 issued to Utah Power and Light Company, was issued for alleged failure to comply with the approved plan by neglecting to collect certain water quality measurements during the May 19 and June 12, 1989, flume sampling.

Although my notes on this one are sketchy, I believe that this NOV was vacated as a result of advise given to me by Rick Smith. I believe that Darin Worden, the issuing inspector, failed to attend the AC and I had no information from the Division except a memo written from Darin to Rick. I searched Rick down and he explained that these samples were an accommodation to him from UP&L and that he felt that the NOV should be vacated. So, I vacated it. I am sorry that I cannot be more helpful on this one.