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July 12, 1994

Thomas E. Ehmett
Acting Director, Albuquerque Field Office
Office of Surface Mining Reclamation
and Enforcement
505 Marquette Avenue N.W., Suite 1200
Albuquerque, NM 87102

Re: PacifiCorp Des-Bee-Dove Mine, CO No. C94-020-190-1

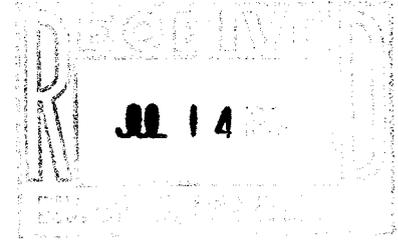
Dear Mr. Ehmett:

This law firm represents PacifiCorp in connection with matters relating to the Des-Bee-Dove Mine located in Emery County, Utah. On July 6, 1994 it came to PacifiCorp's attention that PacifiCorp had been listed on the Applicant Violator System ("AVS") as a result of the issuance of Cessation Order 94-020-190-01 (the "CO"). For the reasons more fully set forth below, we believe that the CO was improvidently issued and hereby request that OSM rescind the issuance of the CO and take appropriate action to remove the CO from the AVS listing.

The CO was issued by OSM on January 13, 1994 for PacifiCorp's alleged "[f]ailure to abate Notice of Violation 93-020-190-05 1 of 1 by 8:00 a.m. on January 13, 1994." The Notice of Violation 93-020-190-05 (the "NOV") referenced in the CO was served upon PacifiCorp by OSM on December 16, 1993 and stated the abatement period was to expire at 8:00 a.m. on January 13, 1994. In early January 1994, prior to the expiration of the abatement period, PacifiCorp requested an extension of time for performance of the abatement work. That request was denied by the Albuquerque Field Office.

On January 5, 1994 PacifiCorp submitted to the Office of Hearings and Appeals an Application for Review and Petition for Temporary Relief from enforcement of the NOV. A hearing on the granting of temporary relief was scheduled for January 14, 1994. Despite the impending hearing, OSM conducted

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a follow-up inspection of the Des-Bee-Dove Mine on January 13, 1994. That inspection resulted in the issuance of the CO. The following day a hearing was held before Administrative Law Judge John R. Rampton, Jr. Upon the conclusion of the presentation of the evidence, Judge Rampton granted temporary relief retroactively as of the abatement time of 8:00 a.m., January 13, 1994. Immediately following Judge Rampton's holding, the following exchange took place, in the record, regarding the status of the CO:

MR. HAISLEY: Your Honor, this action in effect vacates the CO litigation.

MR. JOHNSON: There is no CO litigation here.

THE COURT: No, there's no CO. It's merely the date of abatement that is temporary [sic] held in abeyance. What I mean is there was -- the abatement was given to yesterday at eight o'clock.

MR. KIRKHAM: That's correct.

THE COURT: And that is now -- the temporary relief from the date of that abatement is granted. So therefore, as I see it, I'm extending the date of abatement. Until such time as the determination is made as to whether or not the violation did occur.

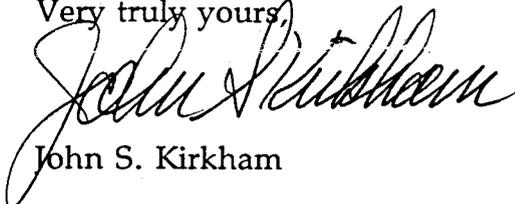
Transcript at p. 226.

The obvious conclusion from Judge Rampton's holding, and the subsequent discussion, is that temporary relief from enforcement of the NOV had been granted effective as of the time for abatement and that no abatement action was required by PacifiCorp until a determination could be made as to the fact of violation. Because the abatement period has been temporarily held in abeyance, there cannot now be any "failure to abate within the time for abatement" as alleged in the CO. For these reasons PacifiCorp requests that OSM take the appropriate action to show in the record that the CO has never existed and that the listing of the CO in the AVS be removed immediately.

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We look forward to your cooperation in resolving this matter and to your prompt response.

Very truly yours,



John S. Kirkham

JSK:cb

cc: Robert Uram - Director, Office of Surface Mining Reclamation and Enforcement
The Honorable John R. Rampton, Jr. - Office of Hearings and Appeals
Blake Webster - PacifiCorp
James W. Carter - Director, Utah Division of Oil, Gas & Mining
Jon Johnson, Esq. - Office of the Field Solicitor - Denver