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Deer Creek Mine
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M E M O R A N D U M

TO: RON DANIELS
DIVISION OF OIL, GAS & MINING

FROM: BARBARA W. ROBERTS
Assistant Attorney General *WR*

DATE: MARCH 1, 1983

RE: DIVISION JURISDICTION OVER THE C-2
PORTION OF THE OVERLAND CONVEYER
AT THE UP&L DEER CREEK MINE
ACT/015/019A

This memorandum contains my advice to the Division regarding the questions surrounding the Utah Power & Light Deer Creek Mine and specifically the C-2 conveyer running from the mine site to the power plant. This is neither a formal nor informal opinion of the Attorney General, but is my advice based upon my research on this matter. If the Division determines that a formal or informal opinion is required on this matter, please route such request through the proper channels.

Mr. Jerman has stated in his letter of February 22, 1983, that "it is the position of Utah Power & Light Company that the overland conveyer from the coal crusher to the Huntington Power Plant is a transportation system and does not constitute a surface mining activity either under the Utah Coal Mining Reclamation Act or the Federal Surface Mining Control and Reclamation Act." On that basis Mr. Jerman asserts that the Division has no jurisdiction over this portion of the conveyer. In support of this contention, Mr. Jerman cites Utah Power & Light Company v. Office of Surface Mining, DVO-23-P, April 17, 1981. The subject matter of that decision, however, was a conveyer running from the power plant's stockpile to the power plant itself. The opinion stated that "the storage of coal at and for the operation of an electric power plant does not constitute surface operations and surface impacts directly resulting from or directly incident to the operation of an underground mine." The opinion seemed to exclude the C-1

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and C-2 system by its statement, "the breach (of the berm) was not near the conveyer system that transports coal in another direction from the mine stockpile to the plant stockpile."

We are not here dealing with a non-adjacent, off-site facility which was constructed incident to the mining activities at the Deer Creek Mine. What is at issue here is the structure used in connection with underground coal mining activities, i.e. a surface conveyer system used to transport coal from the Deer Creek Mine to another site.

Utah Code Annotated 40-10-9 states that: "No person shall engage in or carry out surface coal mining operations within the State unless that person has first obtained a permit..." Surface coal mining operations is defined in Utah Code Annotated 40-10-3(18)(b) as: "The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land, the use of which is incidental to the activities" (Emphasis added.) In addition, UMC 700.11(a) states that "this Chapter applies to all coal exploration and underground coal mining activities..." and (e)(1) of that same section states that "... each structure used in connection with ... underground coal mining activities shall comply with the performance standards and the design requirements of subchapter (k) of this chapter...." Under the performance standards, UMC 817.180 specifically includes "surface conveyer systems" within the transportation facilities which are covered under the Chapter.

After reviewing the applicable statutes and regulations, there seems to be some very important differences between the C-1/C-2 conveyer system and the conveyer operating from the power plant stockpile to the power plant bunkers. First, the power plant was not built incident to the mining operations at the Deer Creek Mine. The power plant would have been built without the existence of the Deer Creek Mine and, in fact, the plant existed separately from the mine prior to the purchase of the mine by Utah Power & Light. It is, therefore, not "incident to" the coal mining activities and is not regulated under the

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Federal or State laws indicated above. The C-1/C-2 conveyer system would not have been built but for the existence of the Deek Creek Mine. It is therefore incidental to the activities occurring at the mine.

Another point of difference between the C-1/C-2 conveyer and the stockpile-to-plant conveyer is that of control. The stockpile-to-plant conveyer system was always appurtenant to and a part of the power plant and under the control of Utah Power & Light. The C-1/C-2 conveyer was built and operated by Peabody Coal, the owner of the Deer Creek Mine prior to the UP&L purchase. Even now, the conveyer is under the control of the mine operator, Emery Coal Company, and is not operated or maintained by UP&L. This fact further supports a finding that the C-1/C-2 conveyer is a part of and/or incident to the Deer Creek Mine.

In conclusion, then, it is my opinion that the C-1/C-2 conveyer system running from the Deer Creek Mine to the Huntington Power Plant falls within the statutory definition of surface coal mining operations and, as such, must be permitted through the Division.

If I can be of any further assistance on this matter, please contact me.

BWR/gh