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United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

BROOKS TOWERS

1020 15TH STREET

DENVER, COLORADO 80202

APR 12 1984

Mr. Clay E. Crawford
Route 1, Box 180-F
Cornelius, Oregon 97113

Dear Mr. Crawford:

This is in response to your January 14, 1984, letter (acknowledged by the Office of Surface Mining on January 27, 1984) and to your letter of March 8, 1984. Your specific question (relating first to the Wilberg mine, and in the second letter to the Deer Creek mine) was, "if significant damage does occur to the hydrologic and surface values, what provisions in the Utah Power and Light Company permit assure me, as well as the Federal Government, that adequate reclamation programs would be initiated by Utah Power and Light?"

Under UMC 784.20, the Utah Power & Light Company (UP&L) is required to file a subsidence control plan which describes: (a) the measures to be taken which may affect subsidence, (b) the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface, (c) the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands, and (d) the measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including pre-subsidence surveys and monitoring.

UMC 784.20(c) refers to UMC 817.124 Subsidence Control: Surface Owner Protection which includes specific requirements regarding the mitigation measures outlined under UMC 784.20(c). UMC 817.124 (a) requires that the operator "... shall adopt all measures, to the extent technologically and economically feasible, to prevent subsidence causing material damage or reducing the value or reasonably foreseeable use of surface lands, and to mitigate the effects of any such damage or reduction which may occur." UMC 817.124 then outlines, under (b), what the operator must do to repair the material damage, or to compensate the landowner.

UMC 784.14 covers requirements in the application for protection of the hydrologic balance. It requires a description of the measures to be taken to ensure the protection of: (a)(1) "The quality of surface and ground water ..."; (a)(2) "The rights of present users of surface and ground water;" and (a)(3) "The quantity of surface and ground water ... from adverse effects ... or to provide alternative sources of water, in accordance with UMC 783.17 and 817.54, where protection of quantity cannot be ensured"

UMC 783.17 requires that the operator identify the alternative sources of water supply that could [emphasis added] be developed to replace the existing sources. It is my understanding that UP&L has done this.

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ACT/015/019
Folder 206
cc: Mary
Ron D.
Jim S.

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APR 17 1984

DIVISION OF OIL
GAS & MINING

JIM

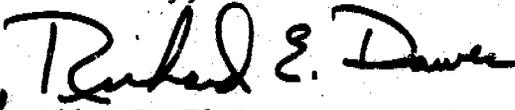
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UMC 817.54 Hydrologic Balance: Water Rights and Replacement contains two paragraphs, the first of which has been remanded. The first paragraph would have required that persons whose water supply is adversely affected by underground mining must have their water supply replaced by the mine operator. Thus, although Section 717 of the Surface Mining Control and Reclamation Act (SMCRA) requires protection for the supply of water where such supply is adversely affected by mining, the Flannery decision of May 16, 1980, found this section of SMCRA to be applicable only to surface mines and not to underground mines. Accordingly, the provision of Utah's proposed equivalent to regulation 30 CFR 817.54 was affirmatively disapproved by the Secretary at 30 CFR 944.12(34). Because of the Flannery ruling, the Office of Surface Mining cannot utilize UMC 817.54 to require replacement of water supply where diminution of quantity is related to underground mining.

Finally, the second paragraph of UMC 817.54 states that "nothing in this chapter shall be construed so as to diminish or interfere with the authority of the State Engineer to regulate State water rights." Thus you would presumably have additional recourse (in the case of diminished water quantity) from the Utah State Engineer's Office. We have asked the Division of Oil, Gas & Mining to obtain letters from the State Engineer's Office and from the State Department of Health, Division of Environmental Health, which describe their jurisdiction over adverse effects to water quantity and quality, respectively, where such adverse effects are demonstrated to be related to underground mining. We will forward a copy of these letters to you when we receive them.

To the best of my knowledge, this letter has summarized the options and limitations within the approved Utah Program. These options will be reflected in any permit issued to UP&L. Please do not hesitate to contact me if I can provide additional information.

Sincerely,


for Allen D. Klein
Administrator
Western Technical Center

cc: Dianne Nielson, DOGM
James W. Smith, Jr. DOGM ✓
Robert Hagen, OSM-AFO