

Office of the Area Mining Supervisor
Conservation Division
8426 Federal Building
125 South State Street
Salt Lake City, Utah 84133

July 14, 1977

Memorandum

To: Forest Supervisor - Price, Utah
Attention: Mr. Reed Christensen

From: Area Mining Supervisor

Subject: Surface Owner Agreements--Deer Creek & Wilberg Mines,
Utah Power & Light Company

As you are aware, this office is processing for approval a new mine plan for the Wilberg mine and also a more detailed plan for the Deer Creek mine. A part of this approval requires surface owner consent or rehabilitation requirements as prescribed by the surface management agency. See paragraph 2 of the attached memorandum dated April 8, 1977, from the Conservation Manager to this office.

Also attached is a letter dated July 11, 1977, from Utah Power & Light Company which I consider was submitted at least as a preliminary notification by the power company in lieu of surface owner consent.

Accordingly, would you please provide this office with your recommended surface rehabilitation requirements for those lands where the surface of the lands involved in the Wilberg and Deer Creek mines are in private ownership? We have submitted copies of these plans to your office.

Also attached for your information is a copy of the opinion of the Regional Solicitor relative to the rights of the surface owner and the lessee where the surface owner is different than the Federal Government. We view this as a civil matter and any agreements over damages, bonds, and etc. are to be determined by the adverse parties and the courts if necessary.

Jackson W. Moffitt

Attachments

cc: State Director - BLM
Denver

JW Moffitt:vjp



IN REPLY REFER TO

United States Department of the Interior

GEOLOGICAL SURVEY
Box 25016
Denver Federal Center
Denver, Colorado 80225

JACK 90

April 8, 1977

Memorandum

To: Area Mining Supervisor, WRMA
From: Conservation Manager, Central Region
Subject: Procedure for Requested Actions that Involve Private Surface
Overlying Federal Leases

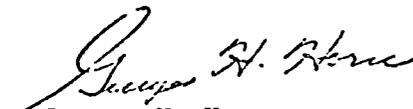
You recently requested clarification of the procedure that involved a mine plan with some 320 acres of private surface overlying a Federal coal lease as described from the Wilberg-Peabody Coal Company operations in your area.

We have reviewed all past actions and pertinent regulations and suggest the following procedure be applied:

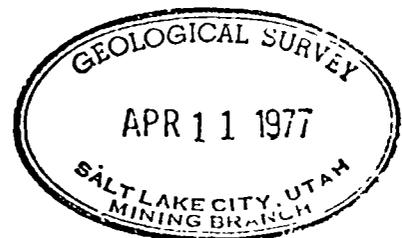
A letter of agreement from the lessee outlining the surface owner's rehabilitation requirements or a statement from the lessee on the reasons why the lessee has been unable to develop an agreement procedure with the surface owner is required as a minimum to properly address the responsibilities of the Federal Government with regard to the private surface owners.

Please obtain a letter from the lessee or a statement indicating why he has been unable to develop an agreement procedure with the surface owners on this requested action. If no agreement procedure is available from the private surface owner, the surface management agency will provide the rehabilitation requirements.

Please advise if we may provide any further assistance concerning this matter.


George H. Horn

cc: Area Mining Supervisors, CRMA, NRMA, SRMA
Acting Area Mining Supervisor, MCA



UTAH POWER & LIGHT COMPANY

DAVID R. NEILSON
MANAGER LANDS &
ADVISOR REM TAXES
350-8218

1407 WEST NORTH TEMPLE STREET
P. O. BOX 899
SALT LAKE CITY, UTAH 84110

July 11, 1977



RIGHT OF WAY
REPRESENTATIVES

WARLAN CLARK
350-3227

RAY A. HOLMES
350-3228

RAULAND BALLARD
350-3725

HELEN F. JOHNSON
350-3291

MELFORD P. CRAVEN
350-3226

KEVIN W. BOARDMAN
350-3985

SHERMAN H. CHRISTENSEN
350-3980

MICHAEL D. ERICKSON
350-3984

GEORGE K. MADSEN
(208) 356-7366

KENNETH E. CRELLIN
TAX REPRESENTATIVE
350-3221

Mr. Jackson W. Moffitt, Area
Mining Supervisor
Conservation Division
8426 Federal Building
125 South State Street
Salt Lake City, Utah 84138

Re: SL-064900

Dear Mr. Moffitt:

This letter will outline the efforts of Utah Power & Light Company to acquire the surface of the land proposed to be mined at the Wilberg Mine. As I am sure you are aware, the Company's ability to expedite this purchase is limited and the landowners in some cases must become involved in rather complex transactions to enable them to sell and get the most possible tax or other benefits.

Our representatives have made at least two contacts with each private landowner in the area. We have made alternative offers to each landowner. Our first preference and initial offer to each landowner has been to purchase his surface. The alternative offer made to each owner was to enter into an agreement to indemnify the landowner from any damage which may result from subsidence.

There are six private landowners. We have thus far completed one purchase. Several more are in the mill, but are being delayed for various reasons, including requests by the landowners for some time to assess the tax impacts of sale or to see what land could be purchased by them as replacement for the land which would be sold.

It has been our experience, to date, that all the owners, except one, are interested in selling, that they do not wish to sign the indemnification agreement because they believe it weakens

Mr. Jackson W. Moffitt
July 11, 1977
Page Two

their position in selling the property. They believe despite our assurances that once they sign that agreement we would no longer have the desire to purchase the property.

We do not feel that purchase price represents a significant problem and that the delays being experienced are due to other factors. We intend to continue our efforts to purchase this property and feel that with the exception referred to, we will be successful in acquiring most or all of the property. The exception is a single landowner with whom the Company had a problem in the past at another location. This did not involve mining property, but has created a relationship where negotiations between the parties is very difficult. We will, of course, continue our efforts and stand ready, willing and able to deal with this party on the same terms as all other landowners in the area.

We shall also be happy to keep you informed of our continuing efforts and progress in this matter.

Very truly yours,



DAVID R. NEILSON
Manager of Lands and Ad Valorem
Taxes

DRN:cw

June 15, 1977

Memorandum

To: Area Mining Supervisor, Geological Survey, SLCU

From: Regional Solicitor, SLCU

Subject: Rights of the Lessee under Coal Lease Utah 040151,
Emery County, Utah

This is in response to your recent oral request for an opinion as to the rights, if any, of the holder of Coal Lease Utah 040151 to enter and conduct mining activities upon the lands covered by the lease in the absence of consent by the surface owner.

The lands in question are located in Township 17 South, Range 7 East, Salt Lake Meridian, Utah, and consist of 1720 acres. Present owners of record are Edward and Clay Crawford and Annette Jensen, whose title derives from the State of Utah. The subject coal lease was issued by the Bureau of Land Management to Cooperative Security Corporation on March 1, 1962. The lands were selected as part of 200,000 acres of unpatented public land made available for selection by the state for support of an agricultural college pursuant to Section 8 of the Utah Enabling Act (Act of July 16, 1894, 28 Stat. 107). The selection of these lands, together with others, was approved by the Assistant Secretary on April 8, 1912, with the following proviso:

. . . reserving to the United States all coal in the lands so selected, and to it, or persons authorized by it, the right to prospect for, mine and remove coal from the same, upon compliance with the conditions and subject to the limitations of the Act of Congress approved March 3, 1909 (35 Stat. 844).

The applicable conditions and limitations of the Act of March 3, 1909, (30 U.S.C. 81) are set forth as follows:

The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction.

Apparently the lessee is presently negotiating with the owners of the subject property for permission to enter and carry out mining activities thereon. However, should such negotiations fail for any reason, the lessee, pursuant to the above-cited provisions, may still obtain access to the coal deposits by obtaining court-approved security sufficient to pay for damages which may be caused to the surface estate by the coal mining activities.

REID W. NIELSON
Regional Solicitor

By

Roland G. Robison, Jr.

ROLAND G. ROBISON, JR.
Assistant Regional Solicitor

RGR:d1w