

ROBERT HANSEN
ATTORNEY GENERAL

DENISE A. DRAGOO
SPECIAL ASSISTANT ATTORNEY GENERAL

Attorneys for State of Utah
1588 West North Temple
Salt Lake City, Utah 84116

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

E. S. CRAWFORD,	:	
	:	
Plaintiff,	:	STATE DEFENDANT'S MOTION
	:	TO DISMISS
vs.	:	
	:	
THE BOARD OF OIL, GAS AND MINING,	:	
DEPARTMENT OF NATURAL RESOURCES	:	
OF THE STATE OF UTAH and UTAH	:	Civil No. C 79-0153
POWER & LIGHT COMPANY,	:	
	:	
Defendants.	:	

State defendant Board of Oil, Gas and Mining hereby moves this Court to dismiss the above entitled action against the State on the grounds that:

1. The Board's Order in ACT/015/027 dated August 6, 1980, which is the subject of the Complaint is moot.

2. The plaintiff's Complaint fails to state a claim upon which relief can be granted and should be dismissed by this Court pursuant to Rule 12(b)(6), Utah Rules of Civil Procedure.

Respectfully submitted this 24th day of October, 1980, by:

ROBERT B. HANSEN
ATTORNEY GENERAL
STATE OF UTAH

Denise A. Dragoo
Denise A. Dragoo
Special Assistant Attorney General
for Natural Resource Agencies

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1588 West North Temple
Salt Lake City, Utah 84116

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

E. S. CRAWFORD,	:	
	:	
Plaintiff,	:	STATE DEFENDANT'S MEMORANDUM
	:	OF POINTS AND AUTHORITIES
vs.	:	
	:	
THE BOARD OF OIL, GAS AND MINING,	:	
DEPARTMENT OF NATURAL RESOURCES	:	
OF THE STATE OF UTAH and UTAH	:	Civil No. C 79-0153
POWER & LIGHT COMPANY,	:	
	:	
Defendants.	:	

The State defendant Board of Oil, Gas and Mining has moved to dismiss the above entitled action on the grounds that the Board Order which is the subject of plaintiff's Complaint is moot and therefore the action fails to state a claim upon which relief may be granted. The Board Order in ACT/015/027, dated August 6, 1980, was issued after a public hearing requested by Utah Power & Light Company under the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated. Proceedings were held on June 18, 1980, at the request of the Company to abate a Notice of Violation issued by the federal Office of Surface Mining at the Cottonwood Portal, Emery County, Utah. (Findings, Paragraph 1, Board Order ACT/015/027, Attachment A.) On July 7, 1980, the federal Notice of Violation which the earlier Board proceedings had sought to abate was terminated by the Office of Surface Mining. The new Notice of Violation was issued that same day and failed to request the Company to seek a public hearing before the Board of Oil, Gas and Mining or to take similar abatement measures involving the State of Utah (See Notice of Violation, Attachment B). Therefore, the Board Order in ACT/015/027 was moot upon issuance on August 6, 1980, in that the federal Notice of Violation it sought to abate had terminated.

In that the Board's Order in ACT/015/027, dated August 6, 1980, is moot, the State defendant respectfully requests this Court pursuant to Rule 12(b)(6), Utah Rules of Civil Procedure, to dismiss the above entitled action against the

State with prejudice, for failure of plaintiff's Complaint to state a claim upon which relief can be granted.

Respectfully submitted this 24th day of October, 1980.

ROBERT B. HANSEN
ATTORNEY GENERAL
STATE OF UTAH

By Denise A. Dragoo
DENISE A. DRAGOO
SPECIAL ASSISTANT ATTORNEY GENERAL
FOR NATURAL RESOURCE AGENCIES

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss and Memorandum of Points and Authorities was mailed, postage pre-paid on this 24th day of October, 1980, to Attorneys for Plaintiff:

H. Wayne Wadsworth
WATKISS & CAMPBELL
310 South Main, 12th Floor
Salt Lake City, Utah 84101

and

Robert E. Yunke
59 East Van Buren Street
Chicago, Illinois 60605

and, to Attorney for Defendant:

Utah Power & Light Company
Ralph L. Jerman
P. O. Box 899
Salt Lake City, Utah 84110

By Denise A. Dragoo
Denise A. Dragoo
Special Assistant Attorney General

ATTATCHMENT "A"

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE APPROVAL OF UTAH)
POWER & LIGHT COMPANY'S APPLICATION TO)
EXPLORE THE COTTONWOOD CANYON PORTAL) ORDER
IN TOWNSHIP 17 SOUTH, RANGE 7 EAST,) NO. ACT/015/027
AND TWONSHIP 17 SOUTH, RANGE 6 EAST,)
EMERY COUNTY, UTAH.)

This cause came on for hearing before the Board of Oil, Gas and Mining,
Department of Natural Resources, State of Utah, on Wednesday, June 18, 1980, at
10:00 a.m., in the Wildlife Resources Auditorium, 1596 West North Temple, Salt
Lake City, Utah.

The following Board members were present:

Charles R. Henderson, Chairman of the Board

Steele McIntyre, Board Member

Thadis Box, Board Member

Appointed by the Board as Hearing Examiner and sitting with the Board in
this matter was Cleon B. Feight, Director of the Division of Oil, Gas and
Mining.

The following staff members of the Division were present:

Ron Daniels, Deputy Director

Denise Dragoo, Special Assistant Attorney General

Mary Ann Wright, Reclamation Biologist

Thomas J. Suchoski, Engineering Geologist

James W. Smith, Coordinator of Mined Land Development

Appearances were made as follows:

For Utah Power & Light Company:

Mr. Ralph Jerman, Counsel for Utah Power & Light Company

Mr. Dean Bryner, Vice President for Utah Power & Light Company

For the Livestock Association:

Mr. Jim Peacock

For himself:

Mr. Ed Crawford

NOW THEREFORE, the Board having considered the testimony and exhibits presented in this hearing and being fully advised in the premises, now makes and enters the following:

FINDINGS

1. This hearing was held at the request of the Utah Power & Light Company in order to abate a notice of violation issued by the Federal Office of Surface Mining at the Cottonwood Canyon Portal, Township 17 South, Range 7 East, and Township 17 South, Range 6 East, Emery County, Utah.

2. The federal notice of violation requires Utah Power & Light Company to request a public hearing pursuant to Section 40-10-24(4)(c) of the Utah Coal Mining and Reclamation Act, Utah Code Annotated, 1953, which provides:

After the effective date of this Chapter and subject to valid existing rights, no surface coal mining operations, except those which exist on that date, shall be permitted within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right-of-way line and except that the Division may permit these roads to be re-located or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interest of the public and the land-owners affected thereby will be protected.

3. Although the activities conducted by Utah Power & Light Company were taken pursuant to a valid exploration permit issued by the Division of Oil, Gas and Mining, and although exploration activities are not within the scope of Section 40-10-24(4)(c), U.C.A., the Board has set this matter for hearing to give Utah Power & Light Company an opportunity to abate the federal notice of violation in this matter.

4. Proper notice of this hearing was given pursuant to the Utah Coal Mining and Reclamation Act, Title 40, Chapter 10, Utah Code Annotated, 1953. In that no party requested the Board to appear in the locality of the Cottonwood Canyon Portal, Township 17 South, Range 7 East, and Township 17 South, Range 6 East, Emery County, Utah, the Board held the hearing in this matter in Salt Lake City, Utah.

5. Testimony presented at this public hearing indicates to the Board that exploration activities affecting the area within 100 feet of a public road have caused an inconvenience to the public, but will be limited to the extent presently conducted at the Cottonwood Canyon Portal.

6. In that Utah Power & Light Company has withdrawn its application to conduct further underground coal mining activities at the Cottonwood Canyon Portal, Emery County, Utah, the company should commence reclamation activities pursuant to an approved reclamation plan as soon as possible.

ORDER

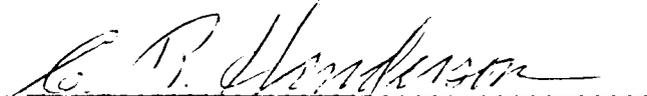
IT IS HEREBY ORDERED BY THIS BOARD:

1. The Board finds that exploration activities at the Cottonwood Canyon Portal which are within 100 feet of a public road can be conducted in such a manner that the interest of the public and land-owners affected by said exploration activities are protected, if the company will stabilize the slope and recontour to prevent damage to the public road.

2. The Board orders that Utah Power & Light Company take whatever measures are necessary to insure that further exploration or reclamation activities conducted pursuant to the approved exploration permit at the site within 100 feet of the public road are conducted in such a manner that the interest of the public and the land-owners affected by such activities are protected.

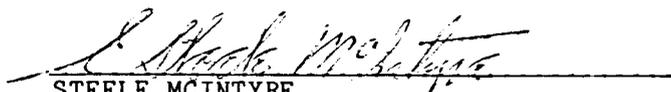
3. In that Utah Power & Light Company has withdrawn its application to conduct underground coal mining activities at the Cottonwood Canyon Portal in Emery County, Utah, the Board orders the company to either commence reclamation activities at the site pursuant to the approved reclamation plan within 45 days of the date of this Order or to submit a proposed plan to conduct further activities at the site, within 30 days of the date of this Order.

SO ORDERED this 8th day of August, 1980, by the Board of Oil, Gas and
Mining of the State of Utah, by:



CHARLES R. HENDERSON
Chairman

THADDIS BOX
Board Member



STEELE MCINTYRE
Board Member

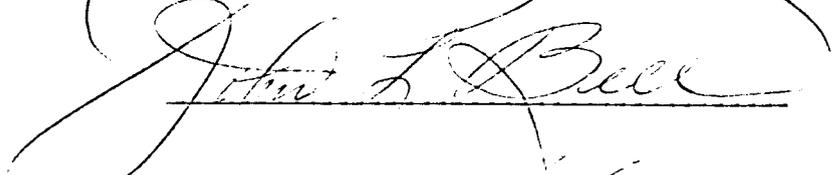
Approved by:

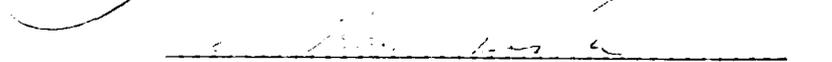


CLEON B. FEIGH
Hearing Examiner

Ray Juvelin, John Bell, and Edward Beck, Board Members, reviewed the
transcripts and exhibits of this proceeding and being fully advised in the
premises are inaccord with the action herein taken.







REGION V ON-SITE INSPECTION REPORT

UTAH POWER AND LIGHT
 COTTONWOOD CANYON
 P.O. Box 899
 Salt Lake City, Utah 84110
 (801) 535-4227

DATE: July 7, 1980
TIME: 4:15 p.m.
WEATHER: Clear, sunny, and warm
COUNTY AND STATE: Emery, Utah
COMPANY OFFICIAL: Larry Guymon
STATE OFFICIALS: Joe Helfrich, Mary Kay Stein, and Lee Spencer
OSM OFFICIAL: Larry Damrau
STATE PERMIT NUMBER: None
MSHA ID: None
FEDERAL ENFORCEMENT
ACTIONS: NOV 80-5-3-11

GENERAL COMMENTS

A follow-up inspection was conducted to evaluate the reclamation activities conducted by the company following their request for withdrawal of the mining/reclamation plans dated May 28, 1980. Termination of the outstanding Violation under Notice of Violation 80-5-3-3 was also intended to take place during the inspection.

NOV 80-5-3-3

Violation No. 1 - Operating or developing a site for surface coal mining operation without a State permit in violation of 30 U.S.C. 1252 paragraph (a).

A mining and reclamation plan had been submitted to OSM on September 17, 1979. The area which the company had disturbed was included in the September 17, 1979 plan, but no action had been taken by this office at the time the area was affected (October - December 1979). An exploration mining and reclamation plan was submitted to the State Regulatory Authority on October 3, 1979. The State approved the plan October 18, 1979. The company contends that all operations conducted at the site were exploration and in accordance with the approved State exploration plan. A request for withdrawal of the modification to the Wilberg Mining Plan (submitted September 17, 1979) was made by the company. The request letter was dated May 28, 1980. In that the company proposed to delay any present activities at the site, Violation 1 of 6 was terminated during this follow-up inspection.

Violation No. 2 - Mining within 100 feet of the outside right-of-way line of a public road.

COTTONWOOD CANYON

Violation ilo. 2 (cont'd)

The company submitted a request to the State of Utah to hold the required public hearing for the activity conducted within 100 feet of the road within Cottonwood Canyon. The public hearing was held in June. The results of the hearing have not been made. The company also submitted plans for the disposition and stabilization of the material. The plans were dated May 12, 1980 and submitted to the State and this office. Violation No. 2 of 6 was terminated during this follow-up inspection.

Violation No. 4 - Placing material on the downslope, below a (future) portal site and at the excess rock and earth material deposition area.

Plans for deposition for the excess rock and earth materials as well as a stability analysis of the deposited material was submitted to the State Regulatory Authority and to this office. The plans were dated May 12, 1980. The State Regulatory Authority requested supplemental information of the company in a letter dated June 26, 1980. Violation No. 4 was terminated during this inspection.

Violation No. 6 - Failure to use an approved surface water monitoring plan.

A surface water monitoring plan was submitted by the company to the State Regulatory Authority. The plan was dated May 12, 1980. Violation No. 6 was terminated during this inspection.

ENFORCEMENT ACTION TAKEN

During this inspection, it was observed that the company had transported the material excavated from the south sedimentation pond up to the excess rock and earth materials deposition area at the far north portion of the affected area. A catch basin, to control sedimentation, was established at the lower edge of the newly deposited material. An endloader and a backhoe, utilized in the transportation and placement operations, was present at the site. Both pieces of machinery were inactive during the inspection. No operator or mining personnel other than Mr. Guyman was present at the site during the inspection.

In that the company had requested withdrawal of the proposed mine and no activity to reclaim the area had or was taking place, Notice of Violation No. 80-5-3-11 was issued for failure to regrade affected area to approximate original contour. Remedial action required (including interim steps) that the company backfill, regrade, redistribute topsoil and revegetate the affected areas by October 6, 1980.


LARRY D. KRAU
RECLAMATION SPECIALIST

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Vacation or Termination of Notice or Order

to the following Permittee or Operator:

Name Utah Power and Light Co. - Cottonwood Canyon

Mailing Address Box 899, Salt Lake City, Utah 84110

State Permit No. NONE

Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-120 U.S.C. 1201), with respect to:

Notice of Violation No. N80-5-3-3 Y L T V dated 27 February, 1980

Cessation Order No. C Y T V dated _____, 19__

Violation No. 1 is hereby Terminated Vacated because: Company request for withdrawal of submitted proposal to mine.

Violation No. 2 is hereby Terminated Vacated because: Request for a public hearing submitted by company. Plan submitted by company.

Violation No. 4 is hereby Terminated Vacated because: PLANS submitted by company

Date of Service 7 July 1980 [Signature] #13
Signature of Authorized Representative

Time of Service or Mailing 5:00 a.m. p.m. D. L. DAMRAI #13
Name and I.D. No.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Vacation or Termination of Notice or Order

to the following Permittee or Operator:

Name Utah Power and Light Co - Cottonwood Canyon -

Mailing Address Box 899, Salt Lake City, Utah 84110

State Permit No. None

Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-92, 30 U.S.C. 1201), with respect to:

Notice of Violation No. N 80-5-3-3 Y TV dated 27 February, 1980

Cessation Order No. C _____ Y TV dated _____, 19__

Violation No. 6 is hereby Terminated Vacated because: Plans submitted by company.

Violation No. ___ is hereby Terminated Vacated because:

Violation No. ___ is hereby Terminated Vacated because:

Date of Service 7 July 1980

[Signature] #13
Signature of Authorized Representative

Time of Service or Mailing 5:00 a.m. p.m. D.L. DARRAU #13
Name and I.D. No.