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WATKISS & CAMPBELL  
ATTORNEYS FOR PLAINTIFF

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SALT LAKE CITY, UTAH 84101  
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File

ACT 10/5/027

IN THE DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

DATE SERVED 13 Oct 80

AT RESIDENCE No

*Direct* UPON Cleon B. Feight

SINDT, Constable Murray Precinct  
Salt Lake County, State of Utah

Deputy C. Samuel

E. S. CRAWFORD,

Plaintiff,

SUMMONS

vs.  
THE BOARD OF OIL, GAS AND  
MINING, DEPARTMENT OF NATURAL  
RESOURCES OF THE STATE OF UTAH  
and UTAH POWER & LIGHT  
Defendants

Civil No. C 80-7839

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT: THE BOARD OF OIL,  
GAS AND MINING, DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF UTAH:

You are hereby summoned and required to file an answer in writing to the attached  
complaint with the Clerk of the above-entitled Court, and to serve upon, or mail to  
WATKISS AND CAMPBELL, Plaintiff's attorneys, Twelfth Floor, 310 South Main  
Street, Salt Lake City, Utah, a copy of said answer, within 20 days after service of this  
summons upon you.

If you fail so to do, judgment by default will be taken against you for the relief demanded  
in said complaint, which has been filed with the Clerk of said Court and a copy of which is  
hereto annexed and herewith served upon you.

Please serve: Mr. Cleon B. Feight  
1588 West North Temple  
Salt Lake City, Utah

WATKISS AND CAMPBELL

By *H. Wayne Wadsworth*  
H. WAYNE WADSWORTH

DATED: October 9, 1980

H. WAYNE WADSWORTH  
of and for  
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310 South Main, 12th Floor  
Salt Lake City, Utah 84101  
Telephone: 801/363-3300

ROBERT E. YUHNKE  
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Chicago, Illinois 60605  
Telephone: 312/939-1530

Attorneys for Plaintiff

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

E. S. CRAWFORD,	:	
Plaintiff,	:	COMPLAINT
-vs.-	:	
THE BOARD OF OIL, GAS AND	:	
MINING, DEPARTMENT OF NATURAL	:	
RESOURCES OF THE STATE OF UTAH	:	Civil No. C 80- 7839
and UTAH POWER & LIGHT COMPANY,	:	
Defendants.	:	

Comes Now the plaintiff above named and alleges as follows:

1. Plaintiff is an owner of surface rights and all mineral rights, except coal, of certain property in Emery County, State of Utah, access to which is by means of the public roadway referred to hereafter.
2. Defendant, The Board of Oil, Gas and Mining, Department of Natural Resources of the State of Utah, hereinafter referred to as the "Board", is an agency of the State of Utah charged with the enforcement of regulations promulgated under Title 40, Chapter 10, Utah Code Annotated, 1953, and certain Federal regulations pertaining to the mining of coal when such mining activities may adversely affect the rights of surface owners.
3. Defendant Utah Power & Light Company, hereinafter referred to as "UP&L", is a public utility of the State of Utah which is mining coal in the vicinity of plaintiff's property and is the subject of the Board's Order of August 8, 1980, hereinafter complained of.

4. The defendant UP&L is the holder of a permit issued by the Board to explore the Cottonwood Canyon Portal located in Emery County, and its activities in connection with said permit have found to be in violation of Federal regulations by the Office of Surface Mining of the Department of Interior, which activities jeopardize plaintiff's access and beneficial use of his property.

5. The defendant Board on or about August 8, 1980, in THE MATTER OF THE APPROVAL OF UTAH POWER & LIGHT COMPANY'S APPLICATION TO EXPLORE THE COTTONWOOD CANYON PORTAL IN TOWNSHIP 17 SOUTH, RANGE 7 EAST, AND TOWNSHIP 17 SOUTH, RANGE 6 EAST, EMERY COUNTY, UTAH entered Order No. ACT/015/027, a copy of which is attached hereto and made part hereof as Exhibit "A".

6. The aforementioned Order jeopardizes plaintiff's access and beneficial use of his property and was entered contrary to law and should be set aside and declared null and void for the following reasons:

(a) The findings and conclusions of the Board are not in accordance with the facts, and are contrary to law, in that:

(1) The Federal Notice of Violation referred to in the findings of the Board was terminated by the Office of Surface Mining on July 7, 1980 and replaced with a new Notice of Violation which did not either require or allow UP&L to obtain permission from the Board for the disturbance caused by UP&L's activities within 100 feet of the public road at the Cottonwood Canyon Portal. The initial Federal Notice of Violation which was relied upon by the Board for its action was not in effect at the time of the Board's action.

(2) There is no evidence in the record to support the Board's finding No. 3 that the activities conducted by UP&L at the Cottonwood Canyon Portal were conducted pursuant to a valid

exploration permit issued under Utah law.

(3) Utah law does not require an operator to obtain approval from the Division for a permit to conduct exploration if less than 250 tons of coal are removed during the course of exploration. UP&L's "Exploration Permit Application" states that less than 250 tons of coal will be removed. Therefore, the Division did not have authority to approve or disapprove the so-called "Exploration Permit Application" submitted by UP&L in 1979. Any purported "approval" issued to UP&L by the Division with respect to such "Exploration Permit Application" is without authority and without legal effect as a matter of law. Therefore, the Board's finding that the activities conducted by UP&L at the Cottonwood Canyon Portal were pursuant to a valid exploration permit issued by the Division of Oil, Gas and Mining is inconsistent with law.

(4) The reclamation portion of UP&L's Exploration Permit Application fails to provide for reclamation of the disturbed area in accordance with the performance standards of Section 40-10-17, U.C.A., 1953, as amended, including, but not limited to the failure to provide for restoration of the approximate original contour, failure to provide for contemporaneous reclamation and failure to revegetate in accordance with the Act. Such deficiencies in the Exploration Permit Application render the plan of reclamation inconsistent with law, and thereby render any approval of such application by the Division inconsistent with law.

(5) The activities described in UP&L's Exploration Permit Application and the activities conducted by UP&L at the Cottonwood Canyon Portal are not

exploration, but are mining operations subject to the full requirements of Title 40, Chapter 10, Utah Code Annotated, 1953, as amended, including, but not limited to the permit requirements for surface coal mining operations. Therefore, the Board's finding No. 3 that UP&L was conducting exploration operations not within the scope of Section 40-10-24(4)(c), U.C.A., 1953, as amended, is inconsistent with law.

(b) The Order issued by the Board is inconsistent with law in that:

(1) The Order fails to require abatement of UP&L's violations of Title 40, Chapter 10, and the regulations issued thereunder, including, but not limited to UP&L's failure to restore the site to approximately original contour, failure to replace topsoil and other plant growing materials and failure to revegetate the disturbed area in accordance with applicable requirements governing species selection, seeding, fertilization and mulching procedures.

(2) The Order fails to require abatement of UP&L's violations of Title 40, Chapter 10, Utah Code Annotated, 1953, as amended, and the regulations issued thereunder within the period required by law to the extent that paragraph 3 of the Order relieves UP&L of any obligation to abate its violations if it submits a plan to conduct further activities at the site.

(3) The Order attempts to authorize a disturbance within 100 feet of a public road under Section 40-10-24(4)(c), U.C.A., 1953, as amended, when such disturbance is unlawfully created and is now unlawfully maintained by UP&L.

(c) The Board is not constituted in accordance with the requirements of Section 40-6-3.2, U.C.A., 1953, as amended.

(d) The hearing conducted in the above mentioned matter on Wednesday, June 18, 1980, was not held in the locality of the Cottonwood Canyon Portal as required by law.

(e) At the time of the hearing on Wednesday, June 18, 1980, a quorum of the Board was not present and, therefore, the Order subsequently entered pursuant to said hearing was contrary to law.

(f) The Board was without authority to set aside a notice of violation issued by the Office of Surface Mining of the Department of Interior.

WHEREFORE, plaintiff prays that this Court enter an order vacating Order No. ACT/015/027 of the Board of Oil, Gas and Mining of the Department of Natural Resources dated August 8, 1980, and requiring the defendant UP&L to abate the violations of the Utah Mining and Reclamation Act in accordance with the regulations issued thereunder within the time prescribed by law.



H. WAYNE WADSWORTH  
of and for  
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310 South Main, 12th Floor  
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and

ROBERT E. YUHNKE  
59 E. Van Buren Street, Suite 1600  
Chicago, Illinois 60605

Attorneys for Plaintiff

Plaintiff's Address:  
1809 Yalecrest Avenue  
Salt Lake City, Utah

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 TOWNSHIP 17 SOUTH, RANGE 6 EAST, )  
EMERY COUNTY, UTAH. )

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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.

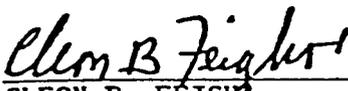
SO ORDERED this 8th day of August, 1980, by the Board of Oil, Gas and  
Mining of the State of Utah, by:

  
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CHARLES R. HENDERSON  
Chairman

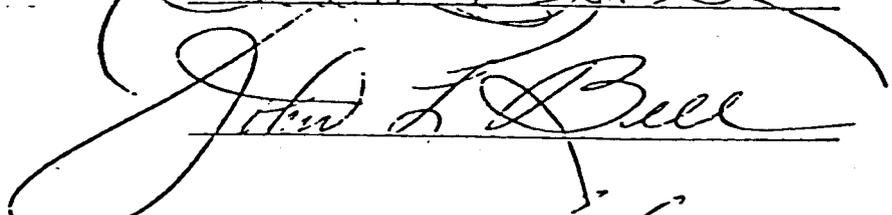
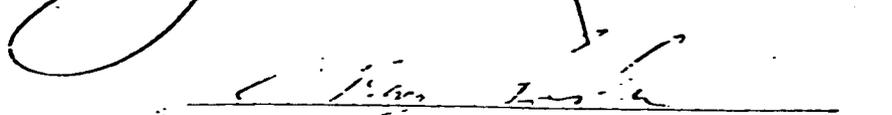
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THADDIS BOX  
Board Member

  
\_\_\_\_\_  
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 in accord with the action herein taken.

  
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