

0026

LEGAL OFFICES
 SIDNEY G. BAUCOM
 EXECUTIVE VICE PRESIDENT
 AND
 GENERAL COUNSEL
 ROBERT GORDON
 VICE PRESIDENT
 585-4258
 THOMAS W. FORSGREN
 585-4861
 SAM F. CHAMBERLAIN
 585-4972
 RALPH L. JERMAN
 585-4258
 ROSEMARY RICHARDSON
 585-4868

UTAH POWER & LIGHT COMPANY

P. O. BOX 899
 SALT LAKE CITY, UTAH 84110

July 6, 1984

JIM

JUL 10 1984

Jim Smith
cc: Mary
File Act/015/019

HELEN J. EDWARDS #246
 585-4255
 DAVID LLOYD
 585-2885
 EDWARD HUNTER
 585-4971
 JODY L. WILLIAMS
 585-2851
 DAVID A. WESTERBY
 585-4265
 THOMAS V. RASMUSSEN
 585-2875

Return

RECEIVED

JUL 9 1984

DIVISION OF OIL
GAS & MINING

Dianne R. Nielson, Director
 State of Utah
 Natural Resources
 Division of Oil, Gas and Mining
 4241 State Office Building
 Salt Lake City, UT 84114

Re: Coal Mining Permit UT-001
 Wilberg Mine, Emery County, Utah

Dear Dr. Nielson:

I am enclosing herewith a copy of the appeal which I have filed this date with the Office of Hearings and Appeals in connection with the above-numbered permit.

As I interpret the regulations, the appeal should be filed with the Office of Hearings and Appeals. This was also Glenn Tiedt's interpretation. However, there is some ambiguity in the regulations and, accordingly, I am also filing copies with the Office of Surface Mining and the Division of Oil, Gas and Mining.

Very truly yours,

Ralph L. Jerman
 Ralph L. Jerman

RLJ:p

Enclosure

RECEIVED

JUL 9 1984

DIVISION OF OIL
GAS & MINING

BEFORE THE HEARINGS DIVISION
OFFICE OF HEARINGS AND APPEALS
UNITED STATES DEPARTMENT OF THE INTERIOR
4015 Wilson Boulevard
Arlington, VA 22203

Appeal of:)
)
UTAH POWER & LIGHT) Coal Mining Permit
COMPANY, WILBERG MINE,) UT-001
EMERY COUNTY, UTAH)
)

NOTICE OF APPEAL AND
REQUEST FOR HEARING

Utah Power & Light Company, a Utah corporation, "appellant," pursuant to 30 CFR Part 775, and other applicable regulations, hereby appeals from and requests a hearing on the reasons for the decision of the Office of Surface Mining, through its Administrator, Western Technical Center, dated June 8, 1984. By said decision, appellant was granted a permit, No. UT-001 (incorporating Utah Permit ACT/015/019) to conduct surface coal mining and reclamation operations at appellant's Wilberg Mine in Emery County, Utah. This appeal and request for hearing relates only to two conditions, Special Conditions 2 and 9, contained in said permit.

As grounds for its appeal and request for hearing, appellant states that Special Condition No. 2 of the above-numbered permit purports to require appellant to--

. . . replace any water demonstrated to have been lost or adversely affected by mining operations with water from an alternate source in sufficient quantity and quality to maintain the rights of present users and current and post-mining land uses.

It is appellant's position that there is no legal basis in the Surface Mining Control and Reclamation Act or elsewhere authorizing the Office of Surface Mining (or the Utah Division of Oil, Gas and Mining) to impose such a condition. In fact a regulation requiring underground mining operators to replace the water supply of a landowner in the case of contamination, diminishment or interruption has been suspended by a United States district court. A similar Utah regulation was consequently disapproved by the Office of Surface Mining and is not in effect. Appellant believes a requirement that it assure sufficient quantity and quality of water to maintain post-mining land uses would be extremely onerous and burdensome and could serve to deprive appellant of its property without due process of law.

Finally, appellant contends that such requirement is in conflict with state water law which places exclusive authority in the Utah State Engineer to adjudicate water rights between opposing claimants and users. Inasmuch as there is no federal statute pre-empting state water law, in

this regard it should control.

The Office of Surface Mining cites as authority for such condition stipulations contained in three federal coal leases issued to appellant, as well as several regulations contained in Utah regulations pertaining to surface effects of underground coal mining activities. No cited authority, however, supports such requirement. The coal leases referred to are of a much more restrictive nature and provide only that appellant will replace water necessary to meet livestock and wildlife requirements--a condition to which appellant has agreed. Nor do the state regulations cited in the permit support the requirement of water replacement. Thus, UMC 784.14(a) merely requires that the mining plan contain a detailed description of the measures to be taken to protect the rights of present users to surface and ground water. The plan submitted by appellant clearly satisfies that section. Again, UMC 784.20(c) requires only a detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of lands and allows several alternatives to meet that requirement. Appellant's permit application complies with all requirements of said section. Similarly, UMC 817.41 requires that the underground coal mining activities be planned and conducted to minimize changes in the

hydrologic balance so that changes in water quality and quantity shall be minimized. There is nothing in the section which remotely suggests that the applicant be required to guarantee in perpetuity the replacement of water for both present users and post-mining land uses.

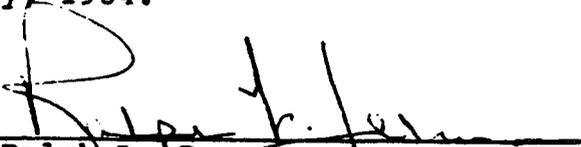
Finally, the permit cites Section 508(a)(13) of the Surface Mining Control and Reclamation Act. This language is basically identical to UMC 784.14(a) and pertains to the requirements of the reclamation plan. It does not require replacement of water.

In summary, Special Condition 2 purports to require appellant to make a commitment for the replacement of water which cannot feasibly be made and cannot legally be required. No one can reasonably see the extent or nature of post-mining land uses in the area of the Wilberg Mine and hence it is open-ended both in amount and time.

Special condition 9 provides that applicant shall participate in the USFWS study program relating to "Recovery of Endangered Fishes of the Upper Colorado Basin" if determined necessary by the Endangered Species Office. Appellant does not necessarily object to this requirement if its obligations thereunder are to be reasonable in amount. The way it is written, however, appellant has no way of knowing what its obligations thereunder might be in the

future. It is assumed that participation referred to shall be of a monetary participation, but even this is not defined. At the very least, the type of participation and the amount should be spelled out with a definite and moderate limitation.

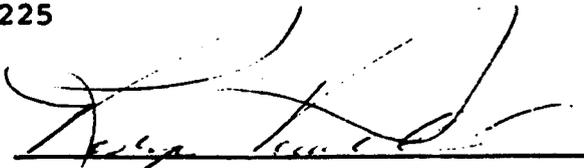
DATED this 7th day of July, 1984.



Ralph L. Jerman
Attorney for Appellant
UTAH POWER & LIGHT COMPANY
1407 West North Temple
Salt Lake City, UT 84116
(801) 535-4253

I certify mailing a true and correct copy of the foregoing Notice of Appeal and Request for Hearing, postage prepaid, this 7th day of July, 1984, to:

Assistant Regional Solicitor
Surface Mining
U. S. Department of the Interior
P. O. Box 25007
Denver Federal Center
Denver, CO 80225



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING

This permit, UT-001, which incorporates Utah Permit ACT/015/019, is issued for the United States of America by the Office of Surface Mining (OSM) to

Utah Power & Light Company
1407 West North Temple Street
P. O. Box 899
Salt Lake City, Utah 84110

for the Wilberg Mine. Utah Power & Light Company is the lessee of Federal coal leases SL-064900, U-1358, SL-070645-U-02292, U-084923, U-084924, U-083066, U-040151, U-044025, U-47978. The permit is not valid until a performance bond is filed with the OSM in the amount of \$1,294,522.00, payable to the United States of America and the State of Utah, and the OSM has received a copy of this permit signed and dated by the permittee.

Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., hereafter referred to as SMCRA, and the Federal coal leases issued pursuant to the Mineral Leasing Act of February 15, 1920, as amended, 30 U.S.C. 181 et seq., the Federal Coal Leasing Amendments Act of 1976, as amended 30 U.S.C. 201 et seq. and in the case of acquired lands, the Mineral Leasing Act for Acquired Lands of September 7, 1947, as amended, 30 U.S.C. 351 et seq. This permit is also subject to all regulations of the Secretary of the Interior including, but not limited to, 30 CFR Chapter VII and 43 CFR Part 3400, and to all regulations of the Secretary of Energy promulgated pursuant to Section 302 of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152, which are now in force or, except as expressly limited herein, hereafter in force, and all such regulations are made a part hereof.

Sec. 2 The permittee is authorized to conduct surface coal mining and reclamation operations on the following described Federal lands (as shown on ownership map) within the permit area at the Wilberg Mine situated in the State of Utah, Emery County, and located:

T. 17 S., R. 6 E., SLM; sec. 1, SE1/4, E1/2SW1/4, S1/2SE1/4NE1/4; sec. 12, E1/2, E1/2W1/2; sec. 13, E1/2, E1/2W1/2; sec. 24, E1/2, E1/2W1/2; sec. 25, NE1/4SE1/4, N1/2NE1/4, SE1/4NE1/4, E1/2SW1/4NE1/4.

T. 17 S., R 7 E., SLM; sec. 6, lots 9, 10, 11, W1/2W1/2SE1/4; sec. 7, lots 1, 2, 3, 4, W1/2NW1/4NE1/4, SW1/4NE1/4, SE1/4; sec. 8, S1/2SW1/4, S1/2NW1/4SW1/4, SW1/4NE1/4SW1/4, S1/2S1/2SE1/4; sec. 9, S1/2S1/2SW1/4, SE1/4SE1/4, S1/2SW1/4SE1/4, NE1/4SW1/4SE1/4, SE1/4NE1/4SE1/4; sec. 10, S1/2SW1/4, S1/2N1/2SW1/4, SW1/4SE1/4, S1/2SE1/4SE1/4; sec. 11, S1/2SW1/4SW1/4; sec. 14, W1/2W1/2NW1/4, W1/2E1/2W1/2NW1/4, W1/2W1/2W1/2SW1/4, All of sections 15, 16, 17, 18, 19, 20, 21, 22; sec. 27, NW1/4, N1/2SW1/4, N1/2NE1/4, SE1/4NE1/4, W1/2W1/2NE1/4SE1/4NE1/4, E1/2E1/2NW1/4SE1/4NE1/4; All of sections 28, 29, 30; sec. 31, E1/2, lot 1; sec. 32 All; sec. 33, N1/2, SW1/4, W1/2SE1/4; sec. 34, S1/2NW1/4, NW1/4NW1/4, E1/2SE1/4NW1/4NE1/4, S1/2SE1/4NE1/4, E1/2NW1/4NE1/4SE1/4, NE1/4NE1/4SE1/4, N1/2SE1/4NE1/4SE1/4; sec. 35, NW1/4SW1/4SW1/4, W1/2NE1/4SW1/4SW1/4, SW1/4NW1/4SW1/4, W1/2NW1/4NW1/4SW1/4;

and to conduct surface and reclamation operations connected with mining on the foregoing described property subject to the conditions of the leases, the approved mining plan, and Utah State permit UT/015/019, to be issued May, 1984, including all conditions, and all other applicable conditions, laws and regulations.

- Sec. 3** This permit is issued for a term of 5 years commencing on the date the permit is signed by the permittee, except that this permit will terminate if the permittee has not begun the surface coal mining and reclamation operations covered herein within 3 years of the date of issuance.
- Sec. 4** The permit rights may not be transferred, assigned, or sold without the approval of the Director, OSM. Request for transfer, assignment, or sale of permit rights must be done in accordance with 30 CFR 740.13(e) and UMC 788.17-.19.
- Sec. 5** The permittee shall allow the authorized representatives of the Secretary, including, but not limited to, inspectors, fee compliance officers, and the Utah Division of Oil, Gas, and Mining without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:
- a. Have the rights of entry provided for in 30 CFR 840.12, UMC 840.12, 30 CFR 842.13 and UMC 842.13 ; and,
 - b. Be accompanied by private persons for the purpose of conducting an inspection in accordance with 30 CFR 842 and UMC 842.12, when the inspection is in response to an alleged violation reported by the private person.

- Sec. 6 The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as within the permit area on the maps submitted in the mining plan and permit application and approved for the term of the permit and which are subject to the performance bond.
- Sec. 7 The permittee shall minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of this permit, including, but not limited to:
- a. Accelerated monitoring to determine the nature and extent of noncompliance and the results of the noncompliance;
 - b. Immediate implementation of measures necessary to comply; and
 - c. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- Sec. 8 The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable State or Federal law.
- Sec. 9 The lessee shall conduct its operations:
- a. In accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and
 - b. Utilizing methods specified as conditions of the permit by Utah Division of Oil, Gas, and Mining and OSM in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program, and the Federal Lands Program.
- Sec. 10 The permittee shall provide the names, addresses, and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.

- Sec. 11 The permittee shall comply with the provisions of the Water Pollution Control Act (33 U.S.C. 1151 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.).
- Sec. 12 Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 13 If during the course of mining operations previously unidentified cultural resources are discovered, the applicant shall ensure that the site(s) is not disturbed and shall notify OSM. The operator shall ensure that the resource(s) is properly evaluated in terms of National Register Eligibility Criteria (36 CFR 60.6). Should a resource be found eligible for listing in consultation with the OSM, the land managing agency (if the site is located on Federal Lands), and the State Historic Preservation Officer (SHPO), the operator shall confer with and obtain the approval of these agencies concerning the development and implementation of mitigation measures.
- Sec. 14 **APPEALS** - The lessee shall have the right to appeal: (a) under 30 CFR 775 from actions or decisions of any official of OSM; (b) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management; (c) under 30 CFR 290 from an action, order, or decision of any official of the Minerals Management Service; or (d) under applicable regulations from any action or decision of any other official of the Department of the Interior arising in connection with this permit.
- Sec. 15 **SPECIAL CONDITIONS** - In addition to the general obligations and of performance set out in the leases, Utah State permit ACT/015/019 and this permit, the permittee shall comply with the special conditions of Utah State permit ACT/015/019 and the conditions appended hereto as Attachment A.

These conditions are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors, and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them. These conditions may be revised or amended, in writing, by the mutual consent of the grantor and the permittee at any time to adjust to changed conditions or to correct an oversight. The grantor may amend these conditions at any time without the consent of the permittee in order to make them consistent with any new Federal or State statutes and any new regulations.

THE UNITED STATES OF AMERICA

By: Allen D Klein

Date: 6/8/84

I certify that I have read and understand the requirements of this permit and any special conditions attached.

[Signature]
Authorized Representative of
the Permittee

6-15-84
Date

ATTACHMENT A

Special Conditions

Utah Power & Light Company
Wilberg Mine
Emery County, Utah

1. Within 30 days of permit approval, the permittee shall provide, for regulatory authority approval, a statement of criteria that will ensure riprap stability and adequate energy dissipation in accordance with the requirements of UMC 817.44(b). In addition, the following filter gradation must be incorporated into the filter design for the riprap channel lining:

<u>U.S. Standard Sieve Size</u>	<u>Percent Passing By Weight</u>
3"	90-100
3/4"	20-90
#4	0-20
#200	0-3

2. The permittee shall replace any water demonstrated to have been lost or adversely affected by mining operations with water from an alternate source in sufficient quantity and quality to maintain the rights of present users and current and postmining land uses. The permittee shall describe the measures that will be taken to minimize changes to the prevailing hydrologic balance in all perennial streams within the permit area in the event that subsidence effects reduce the baseflow to these streams. This description must be presented to the regulatory authority for approval within 30 days of permit approval.

[Ref:BLM lease conditions 15 and 19, U-47978; condition 14, U-044025; conditions 14 and 18, U-083066; conditions 14 and 18, U-040151; and in accordance with UMC 784.14(a)(2) and (3), UMC 784.20(c), UMC 817.41(a) and (b); and P.L. 95-87 Sec. 508(a)(13)].

3. The permittee shall conduct portal closure activities for the Newberry Canyon breakout during the period from July 1 to January 31.
4. Within 90 days of permit approval, the permittee shall place sufficient clean backfill material on the horizontal portion of each of the benches above Cottonwood portal so as to effectively cover the exposed rider coal seams.

5. Within 30 days of permit approval, the permittee shall provide, for regulatory authority approval, a map and/or plan for the location of the primary grid system for the subsidence monitoring plan over the permit area. This grid system must be adequate to ensure that the foot-vertical accuracy will be maintained and that sufficient points are established for adequately measuring horizontal displacement. A map showing the location of the primary grid system used in the 1980 aerial survey must be provided within 30 days of permit approval along with a copy of the baseline data. Each succeeding year, an updated copy of the map must be provided showing the location of any additional primary grid points established and the baseline survey data. This information must be included in the annual monitoring report which must be submitted within six months of data collection. This monitoring report must also identify appropriate mitigation measures to be taken if significant subsidence impacts occur.

6. Within 30 days of permit approval, the permittee shall provide, for regulatory authority approval, a plan for continuance of subsidence monitoring in the U. S. Bureau of Mines (USBM) study area in the event that the USBM discontinues this study. Using conventional methods, the permittee shall collect data that will be compatible with USBM collected data for future analysis. In addition, the permittee shall evaluate the USBM data within six months of its collection by USBM, analyze this information with respect to subsidence impacts, and evaluate any mitigation measures that may be required. Plans must be provided showing that the permittee will conduct a ground survey of the site this year and will submit results of the survey by September 1984. Plans for comparison of the conventional survey information with the photogrammetry studies must be made. This information is needed to show compliance with UMC 817.121.

7. In accordance with the Manti-LaSal National Forest's May 7, 1984 letter, the permittee is required to comply with the following conditions:
 - a. Several deficiencies have been noted on Map 2-19 which specifies land uses. The map needs to be updated to include livestock grazing, raptor nests, raptor nesting habitat, deer and elk summer/winter ranges, and commercial timber.
 - b. Prior to Utah Power and Light moving construction equipment on the Forest in Cottonwood Canyon, the jurisdiction of the access road must be determined. A Road Use Permit may be needed.
 - c. Burying any waste, toxic or natural, is prohibited on National Forest System lands.
 - d. Section XVII in the appendices deals with structures that could be affected by subsidence. The following items need to be included in the appendices: fences, roads, stockpounds and associated earth dams, and water troughs.
8. At such time that OSM, in consultation with the Division of Oil, Gas and Mining and the SHPO, determines that subsidence within the permit area may adversely affect known or unrecorded cultural sites, additional cultural resource studies may be required. This determination will be based on new subsidence or cultural resource information and clear justification will be presented to the permittee.
9. If determined necessary by the Endangered Species Office of the U. S. Fish & Wildlife Service, the permittee shall participate in the USFWS study program "Recovery of Endangered Fishes of the Upper Colorado River Basin".