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STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
Dr. G. A. (Jim) Shirazi, Division Director

4241 State Office Building • Salt Lake City, UT 84114 • 801-533-5771

February 2, 1984

Mr. Dee C. Hansen
State Engineer
Division of Water Rights
1636 West North Temple
Salt Lake City, Utah 84116

RE: Request for An Opinion
Water Right Replacement
Deer Creek - ACT/015/018
Wilberg - ACT/015/019
Folder Nos. 2 and 6
Emery County, Utah

Dear Mr. Hansen:

The Division of Oil, Gas and Mining and the Federal Office of Surface Mining (OSM) are in the process of making a finding as to the completeness of the permit applications for Utah Power & Light Company's (UP&L) Deer Creek and Wilberg underground coal mining operations under the permanent coal regulatory program.

In the development of the required findings document, a determination must be made regarding the potential mining impacts to the hydrologic balance within and directly adjacent to the mine plan area. State and Federal coal regulations require that an operator provide an alternative water source if contamination, diminution or interruption of an underground or surface water source used for domestic, agricultural, industrial or other legitimate use may occur (SMC/UMC 783.17 and 817.54). This alternative source must be identified and made part of the permit application to mine.

Unfortunately, the Federal regulation was challenged and the district court (Judge Flannery) held that by virtue of the Federal statutory language, the law was only applicable to surface coal mining operations. Consequently, the regulation was remanded by OSM with regard to underground coal mining operations.

This same regulatory language change was also adopted by the Board of Oil, Gas and Mining at a later date. Presently, this change is in a state of "limbo" since the Secretary of the Interior has not officially approved the Board's action as an amendment to Utah's State Coal Regulatory Program. In summary, the requirement for alternative replacement of an impacted water right is questionable and UP&L is not convinced that they are required to supply said information.

This Division and the OSM have been contacted on numerous occasions by a private landowner who owns property and an appropriated water right overlying a certain portion of the UP&L underground mine operation. His contention is that the mine operation could, or may already, be impacting his water right and he wants assurance that his vested interests will be protected by the State or Federal statute.

The OSM has requested that the Division formally contact the State Engineer's Office and the State Department of Health to solicit an opinion in this matter with respect to each agency's statutory authority to require replacement water of like quantity and quality for an impacted appropriated water source.

This request is directed to you with the hope that an expeditious response can be provided to avoid an unnecessary delay in the permitting process, or potential denial of the permit application due to a finding of incompleteness.

It is the opinion of the Division and OSM that the Utah Division of Water Rights and State Department of Health have sufficient statutory authority to require replacement of water to an impacted water user. However, without written confirmation from your agency this opinion is not sufficient for permitting purposes.

Your cooperation is greatly appreciated. If any questions please don't hesitate to contact me or D. Wayne Hedberg.

Sincerely,

James W. Smith, Jr.
Coordinator of Mined
Land Development

JWS/DWH:btb

cc: Allen D. Klein, OSM
Chris Shingleton, UP&L
Barbara Roberts, Attorney General's Office
D. Nielson, DOGM
R. Daniels, DOGM
M. Boucek, DOGM
D. Wayne Hedberg, DOGM