Central File

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PACIFICORP, Plaintiff, vs. BRUCE BABBITT, Secretary of the United States Department of Interior and UNITED STATES DEPARTMENT OF THE INTERIOR Defendant.	)	AFFIDAVIT OF LOWELL BRAXTON Civil No. _____

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

DATED this 16th day of September, 1994.

Lowell Braxton, being duly sworn, deposes and states as follows:

1. I am a resident of Salt Lake County, State of Utah.

2. I am the Associate Director of Mining with the State of Utah Department of Natural Resources, Division of Oil, Gas and Mining. I have knowledge of the facts contained in this Affidavit and would so testify.

3. I am aware of PacifiCorp's Hunter Coal Preparation Plant in Emery County, Utah and I am aware of the issue that has arisen as to whether the

facility must be permitted under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 *et. seq.*) ("SMCRA").

4. The permitting requirements under SMCRA are administered by the State of Utah's Department of Natural Resources and its Division of Oil, Gas and Mining ("DOGM"), under a grant of primacy by the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement ("OSM").

5. Under SMCRA, Utah has been charged with primary responsibility (primacy) to apply and enforce the law under the OSM-approved state program. 43 CFR §§ 732, 733, 944 (1993).

6. Utah's regulatory program under SMCRA is currently in good standing and our state regulations are "no less stringent than" federal regulations. 43 CFR § 730.5.

7. DOGM has made a determination in 1991 that the Hunter Coal Preparation Plant did not need to be permitted. *See* attached DOGM memorandum from Pamela Grubaugh-Littig, DOGM Permit Supervisor, confirming that the Hunter Coal Preparation Plant was exempt from regulation under Utah R614-302-261, exempting coal processing plants from permitting when "located at the site of ultimate coal use."

8. On August 29, 1994 I sent a letter to Blake Webster, Permitting Administrator, Interwest Mining Company (a subsidiary of PacifiCorp) regarding "Hunter Power Plant Coal Preparation Activities" and requested response to questions regarding the "permitting status of coal preparation facilities located at the Hunter Power Plant."

9. On September 14, 1994 DOGM certified receipt of a hand-delivered response from Blake Webster which answered the 29 August questions, and stated that the coal preparation facility is exempt from permitting under R614-302-261, as a coal processing plant "located at the site of ultimate coal use." The response included the attached 1991 DOGM memorandum from Ms. Grubagh-Littig outlining the permit exemption for the Hunter Coal Preparation Plant based on the plant's location at the "site of ultimate coal use."

10. On September 15, 1994 I was made aware of an OSM Cessation Order issued against the Hunter Coal Preparation Plant. OSM failed to give the state of Utah ten-day notice, thereby not allowing the state to take appropriate action regarding a potential violation. 30 CFR § 843.12(a). The OSM action violates the state-federal cooperative agreement and the statutory guarantee of primacy in SMCRA, and defeats the purpose of avoiding duplicative regulation.

DATED this 16th day of September, 1994.

By Lowell Braxton

Lowell Braxton

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

SUBSCRIBED AND SWORN to me this 16th day of September, 1994, by Lowell Braxton.

JANICE L. BROWN
Notary Public
STATE OF UTAH
My Comm. Expires AUG 3, 1998
356 W NO TEMPLE #350 SALT LAKE CITY UT 84180

Janice L. Brown

NOTARY PUBLIC

My Commission Expires:

August 3, 1998

Residing At:

Sandy, Utah