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Re: Huntington City/Co-Op Mining Agreement

I have this day met with Darrell Leamaster for an engineer's input into the above matter. It was felt that the following changes should be made in the draft agreement sent to me under your letter of March 7, 1980: ✓ Paragraph 1. should be altered to make inspection plural rather than singular.

? Paragraph 3. should be altered to tie to diminution of flow and not to encounter of water in the mine. Also Paragraph 3. should be altered to deal with quality of water as well as quantity. Further, it was felt that rather than an ambiguous 20 per cent figure on diminution of flow, a set amount of 190 gallons per minute should be the trigger point for the agreement. This is partially based upon the fact that the City has no reliable flow records prior to 1980.

? Paragraph 4. of the agreement gave us the most difficulty. We are having a hard time protecting the City's interests without placing too great a burden upon the Co-Op. It was felt that in order to use a hydrologist or geologist to settle a dispute in the future, it would be necessary to conduct a complete hydrological study now. That could involve a major expense to the Co-Op. For that reason, it was felt that we would leave the option to the Co-Op of conducting a satisfactory hydrological study now at the Co-Op's expense or leaving the old language in the agreement which would leave the triggering of the agreement up to the best judgment of the City engineer. I know that neither of these options is too attractive to the Co-Op, and am open for further suggestions. However, It was felt that either of those options would be something which we could agree upon.

? Paragraph 5. of the agreement is substantially sufficient if it can be tightened up to specify that the Co-Op's burden to establish that another company is the cause must be to the City's satisfaction, and that the Co-Op shall agree to bear the burden of replacement of water during the interim period wherein the Co-Op is showing or proving that another entity is at fault.

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Paragraph 6. is also a difficult issue to resolve because even after cessation of mining activities, caveins could alter the water flow and damage the City's spring rights. It was felt that perhaps extending the agreement 5 years beyond the termination of the Co-Op's mining activities would sufficiently protect the City.

The amount of surety in Paragraph 7. is inadequate to cover the costs which potentially could be incurred by the Co-Op Mining Company. If you would please provide us with costs of sureties, we can take the Co-Op's costs into account in an attempt to arrive at a reasonable amount.

With regard to Paragraph 8., the original instructions from the City Council some weeks ago was to have this paragraph worded as in the original draft. It would be up to the City Council whether your proposed change should be made or not.

The remaining paragraphs appear to substantially protect the City. It was felt that a succession in interest clause should be added to bind the Co-Op's successors in interest.

I hope that this may be of assistance to you in formulating a further draft for our review, and offer myself if I can be of further assistance in this matter.

Scott Johansen  
Attorney at Law

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cc: Darrell Leamaster, City Engineer, Huntington, Utah 84528  
Wendell Owen, Box 300, Huntington, Utah 84528  
Huntington City Council, Huntington City, Huntington, Utah 84528