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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

August 25, 1997

Wendell Owen
Co-Op Mining Company
P.O. Box 1245
Huntington, Utah 84528

Re: Five-Year Permit Renewal, Co-Op Mining Company, Bear Canyon Mine,
ACT/015/025, Folder #3, Emery County, Utah

Dear Mr. Owen:

Enclosed is a renewed permanent program mining permit with one condition, issued August 25, 1997 and effective November 2, 1995, for the Bear Canyon Mine. This permit renewal is issued upon consideration of an objection by water users, a Board Hearing and Board-Ordered Temporary Relief as well as an informal conference. The Findings, Conclusions and Order associated with the Informal Conference were issued on August 11, 1997 by the Division Director and are included with the State's Decision Document.

The expiration date for this permit is November 2, 2000, five years from the expiration date of your most recent permit. Please sign both copies of the permit and return one to the Division.

Sincerely,

A handwritten signature in cursive script that reads "Lowell P. Braxton".

Lowell P. Braxton
Acting Director

Enclosures

cc: Ranvir Singh, OSM, WRCC
Jeffrey W. Appel and Benjamin T. Wilson, Collard, Appel & Warlamount
J. Craig Smith and David B. Hartvigsen, Nielsen & Senior

PERMIT RENEWAL

Bear Canyon Mine

Co-Op Mining Company

ACT/015/025

August 25, 1997

(Effective November 2, 1995)

Contents

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- * Board Order Granting Temporary Relief and Remanding for an Informal Conference, dated February 23, 1996
- * Conclusions of Order dated April 18, 1997
- * Division Findings, Conclusion and Order, dated August 11, 1997
- * Determination of Completeness
- * Affidavit of Publication
- * 510 (c) Clearance, memo dated November 2, 1995 and August 25, 1997

PERMIT RENEWAL

Administrative Overview

Bear Canyon Mine

Co-Op Mining Company

ACT/015/025

August 25, 1997

(Effective November 2, 1995)

Background

The Bear Canyon Mine is a mine permitted by Co-Op Mining Company in Huntington Canyon area. Room and pillar mining occurs in the Bear Canyon seam (middle seam) the Hiawatha seam (lower seam) and the recently permitted Tank Seam.

Public Notice and Informal Conference

The applicant published notice for the five-year permit renewal for four consecutive weeks in the Emery County Progress ending on September 12, 1995. A joint objection by Castle Valley Special Service District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company (collectively "Water Users") was filed to the renewal of Co-Op Mining Company's permit and requested an informal conference on October 12, 1995.

On October 19, 1995, notice was sent by the Division that an informal conference was scheduled to be held on November 8, 1995. On October 31, 1995, the objectors (the Water Users) filed a request that the informal conference originally scheduled for November 8, 1995 be postponed for a minimum of ninety days. Since the Bear Canyon Mine permit expired on November 2, 1995, the Division decided to renew the permit on that date, even though the conference had not been held and allow Co-Op Mining Company to continue to operate the Bear Canyon Mine.

The Water User's appealed the decision to the Board on December 4, 1995 and the Board Hearing was held on January 24, 1996. After hearing all arguments, the Board issued an Order on February 23, 1996 that granted temporary relief extending the Bear Canyon Mine permit until such time as the Division issued its final decision following the informal conference requested by the Water User's.

Administrative Overview
Bear Canyon Mine
Permit Renewal
Page 2

This Informal Conference was convened on October 17, 1996 and continued through November 8, 1996 to February 28, 1997. The decision to renew the permit was made on August 11, 1997 in the Division's findings, Conclusion and Order of that date.

Recommendation for Approval

The Division made the initial decision on November 2, 1995 to approve the permit renewal for five years based on the fact that 1) The terms and conditions of the existing permit are being satisfactorily met; 2) The present coal mining and reclamation operations are in compliance with the environmental protection standards of the State Program; 3) The renewal does not substantially jeopardize the operator's continuing ability to comply with the State Program on existing permit areas; 4) The operator has provided evidence of having liability insurance and a performance bond which will be in effect for the operation and will continue in full force and effect.

This decision was reaffirmed by the Division Findings, Conclusions and Order dated August 11, 1997.

PERMIT RENEWAL

Chronology

Bear Canyon Mine

Co-Op Mining Company

ACT/015/025

August 25, 1997

(Effective November 2, 1995)

- June 16, 1995 Co-Op Mining Company submits permit renewal application.
- August 3, 1995 Division issues Determination of Completeness.
- August 22, 29, and
September 5
and 12, 1995 Co-Op Mining Company advertises public notice of permit renewal for four consecutive weeks.
- October 12, 1995 Castle Valley Special Service District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company, (collectively "Water Users") submit joint objections to the renewal of Co-Op Mining Company's permit renewal and request an informal conference.
- October 19, 1995 Notice was sent by the Division than an informal conference would be held on November 8, 1995.
- October 31, 1995 Water Users request that the informal conference originally scheduled for November 8, 1995 be postponed for a minimum of ninety days.
- November 2, 1995 Division renews the Bear Canyon Mine permit with one condition.
- December 4, 1995 Water Users file a joint objection to the Board of Oil, Gas, and Mining about the Bear Canyon Mine permit renewal.

Permitting Chronology

Bear Canyon Mine
Permit Renewal
Page 2

December 21, 1995	A Memorandum in Opposition to the Joint Objection was filed by Co-Op Mining Company.
January 24, 1996	Board Hearing pursuant to the joint objection to the Bear Canyon Mine permit renewal.
February 23, 1996	Board granted temporary relief extending the permit day to day until the Division issues its final decision following the informal conference request by the Objectors.
October 17, 1996 November 8, 1996 February 28, 1997	Informal conference held.
March 25, 1997	Letter from James W. Carter to Co-Op Mining Company and the Water Users in regard to Closing Statements and Arguments for Bear Canyon Mine Permit Renewal.
April 18, 1997	Conclusions of Order dated May 20, 1991 are modified. All requirements of the Order have been met with the exception of Item #27. This item will remain a condition of the permit.
May 9, 1997	Closing Statements and arguments were submitted by Co-Op Mining Company and the Water Users to the Division.
August 11, 1997	Division issues Findings, Conclusions and Order to renew the Bear Canyon Mine permit.
August 25, 1997	Decision Document is issued for the Bear Canyon Mine permit renewal, retroactive to November 2, 1995.

PERMIT RENEWAL FINDINGS

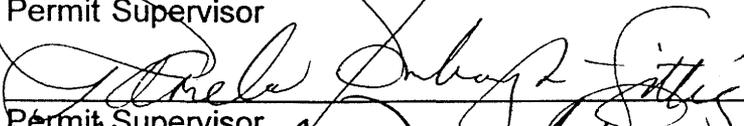
Co-Op Mining Company
Bear Canyon Mine
ACT/015/025

August 25, 1997

1. The permit renewal term will not exceed the original permit term of five years (R645-303-234).
2. The terms and conditions of the existing permit are being satisfactorily met (R645-303-233.110).
3. The present underground coal mining activities are in compliance with the environmental protection standards of the Act and the Utah State Program (R645-303-233.120).
4. The requested renewal will not substantially jeopardize the operator's continuing ability to comply with the Act and the Utah State Program (R645-303-233.130).
5. The Permittee has provided evidence of having liability insurance (Federal Insurance Company, Policy #3710-74-68)(R645-303-233.140).
6. The Operator has posted an irrevocable letter of credit in the required amount and has provided evidence that this surety will remain in full effect for the additional permit period. (Irrevocable Letter of Credit posted with West One Bank, #S557 in the amount of \$525,000)(R645-303-233.150).
7. The Operator has submitted updated information as required by the Division at this time (R645-233.160).



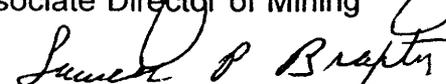
Permit Supervisor



Permit Supervisor



Associate Director of Mining



(acting) Director

NON-FEDERAL

Permit Number ACT/015/025 Issued August 25, 1997
(Effective November 2, 1995)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801
(801) 538-5340

This permit, ACT/015/025, is issued for the state of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

Co-Op Mining Company
P. O. Box 1245
Huntington, Utah 84528
(801) 381-2450

for the Bear Canyon Mine. A collateral bond (Irrevocable Letter of Credit) is filed with the Division in the amount of \$525,000 payable to the State of Utah, Division of Oil, Gas and Mining. The Division must receive a copy of this permit signed and dated by the permittee.

- Sec. 1 STATUTES AND REGULATIONS** - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.
- Sec. 2 PERMIT AREA** - The permittee is authorized to conduct underground coal mining activities on the following described lands within the permit area at the Bear Canyon Mine, situated in the state of Utah, Emery County, and located:

Township 16 South, Range 7 East, SLBM

Section 14: S1/2
Section 23: E1/2, E1/2 NW1/4, E1/2 SW1/4
Section 24: All land West of North-South Trending Bear Canyon Fault
Section 25: All land West of North-South Trending Bear Canyon Fault
Section 26: NE1/4 NE1/4, NW1/4 NE1/4, N1/2 SW1/4 NE1/4 and the access/haul road and topsoil storage area as shown on Plate 2-1 of the Mining and Reclamation Plan

This legal description is for the permit area of the Bear Canyon Mine. The permittee is authorized to conduct underground coal mining activities connected with mining on the foregoing described property subject to the conditions of the leases, the approved mining plan, including all conditions and all other applicable conditions, laws and regulations.

- Sec. 3 COMPLIANCE** - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.
- Sec. 4 PERMIT TERM** - This permit becomes effective on November 2, 1995 and expires on November 2, 2000. (This permit was issued August 25, 1997 pursuant to the Conclusion, Findings, and Order dated August 11, 1997 by the Division Director, James W. Carter.)
- Sec. 5 ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the approval of the Director, DOGM. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13{e} and R645-303.
- Sec. 6 RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the DOGM, including but not limited to inspectors, and representatives of the OSMRE, 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, R645-400-110, 30 CFR 842.13 and R645-400-220;
 - (b) Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-210 and 30 CFR 842, when the inspection is in response to an alleged violation reported to the Division by the private person.
- Sec. 7 SCOPE OF OPERATIONS** - The permittee shall conduct underground coal mining activities only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.
- Sec. 8 ENVIRONMENTAL IMPACTS** - The permittee shall minimize any adverse impact to the environment or public health and safety through but not limited to:
- (a) Any 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. 9 DISPOSAL OF POLLUTANTS - The permittee shall dispose of solids, sludge, filter backwash or pollutants 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. 10 CONDUCT OF OPERATIONS - The permittee 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 DOGM in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 11 EXISTING STRUCTURES - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

Sec. 12 RECLAMATION FEE PAYMENTS - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

Sec. 13 AUTHORIZED AGENT - 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. 14 COMPLIANCE WITH OTHER LAWS - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq), and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.

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Non-Federal Permit
Effective November 2, 1995
Issued August 25, 1997

Sec. 15 PERMIT RENEWAL - 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. 16 CULTURAL RESOURCES - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the DOGM. DOGM, after coordination with OSMRE, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by DOGM within the time frame specified by DOGM.

Sec. 17 APPEALS - The permittee shall have the right to appeal as provided for under R645-300.

Sec. 18 SPECIAL CONDITIONS - There are special conditions associated with this permitting action, as described in Attachment A.

The above conditions (Secs. 1-18) 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 DOGM and the permittee at any time to adjust to changed conditions or to correct an oversight. DOGM may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

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ACT/015/025
Non-Federal Permit
Effective November 2, 1995
Issued August 25, 1997

THE STATE OF UTAH

By: Lowell P. Brantley

Date: 8/27/97

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

Authorized Representative of the Permittee

Date: _____

ATTACHMENT A
Special Conditions

1. Division Order, Informal Hearing, Cause No. ACT/015/025, Dated May 20, 1991, as Modified on April 18, 1997

“Drainage or pumping of in-mine water to the old mine working north of the Big Bear and Birch Spring will be controlled and monitored as stipulated by the Division with revision of that procedure only as directed by the Division and with the prior approval of the Division.”

JEFFREY W. APPEL (3630)
BENJAMIN T. WILSON (5823)
COLLARD, APPEL & WARLAUMONT, L.C.
1100 Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 532-1252

Attorneys for Castle Valley
Special Service District

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OCT 12 1995
DIV. OF OIL, GAS & MINING

J. CRAIG SMITH (4143)
DAVID B. HARTVIGSEN (5390)
NIELSEN & SENIOR, P.C.
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 532-1900

Attorneys for North Emery Water Users Association
and Huntington-Cleveland Irrigation Company

IN AND BEFORE THE UTAH STATE DIVISION
OF OIL, GAS, AND MINING

)	
)	
IN RE: 5-YEAR PERMIT RENEWAL,)	OBJECTIONS TO
CO-OP MINING COMPANY,)	PERMIT RENEWAL AND
BEAR CANYON MINE,)	REQUEST FOR
EMERY COUNTY, UTAH)	INFORMAL CONFERENCE
)	
)	ACT/015/025
)	

Castle Valley Special Service District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company, (collectively "Water Users") as parties adversely affected by the proposed permit renewal to mine the Bear Canyon Mine (ACT/015/025), by and through counsel, hereby submit their objections to the renewal of Co-Op Mining Company's ("Co-Op's") permit and request an informal conference.

6. Water Users request an inspection of the operations with their experts and a review of all data accumulated by Co-Op, whether submitted to the Division of Oil, Gas and Mining or not.

7. The amount of insurance, letters of credit and performance bonds are insufficient to cover the potential liability of Co-Op for damage to Water Users' water supply and sources.

8. Co-Op's mining operations in the past have had, and if allowed will continue to have, hydrologic consequences outside the permit area by adversely and permanently impacting water quantity and quality flowing from Big Bear Canyon and Birch Springs.

SUMMARY OF ISSUES TO BE RAISED AT INFORMAL CONFERENCE

In addition to the issues raised above, Water Users will discuss the following issues at the conference.

1. Water Users intend to present evidence, including expert testimony, that continued mining operations will adversely impact water quantity and quality in the aquifers supporting Big Bear Canyon and Birch Springs.

2. Water Users intend to present evidence that Co-op Mining has repeatedly violated the terms and conditions of its permit and state program standards and that it has acted with disregard to Water Users' welfare.

3. Water Users intend to argue that the operations of Co-Op have had adverse hydrologic impact, have resulted in a modification of the historic water flow patterns tributary to the water sources and that they have interfered with historic flow patterns. of water sources of Water Users.

4. Water Users intend to argue that the existing permit

contains inadequate safeguards to ensure protection of the water sources after mining has ceased.

5. Water Users intend to argue that pollution of water sources of the Water Users is created by the mining operations of Co-Op and that inadequate safeguards exist to prevent this.

6. Water Users intend to argue Co-Op Mining is not entitled to an automatic five-year renewal or, at a minimum, that the permit must be changed or modified, if it is granted at all.

7. Water Users intend to argue that additional test wells, drill holes and monitoring methodology and equipment should be emplaced to ensure protection of the water sources and compliance with state and federal law and regulation.

8. Water Users intend to argue that if renewal is allowed, that the permit be changed or modified to include adequate provisions for maintenance, testing, exploration, protection and remediation, and include additional terms and conditions designed to protect and provide for immediate replacement of water sources if necessary.

DATED this 12th day of October, 1995.

COLLARD, APPEL & WARLAUMONT

NIELSEN & SENIOR


Jeffrey W. Appel
Benjamin T. Wilson
Attorneys for Castle Valley
Special Service District


J. Craig Smith
David B. Hartvigsen
Attorneys for North Emery
Water Users Association
and Huntington-Cleveland
Irrigation Company

OBJECTIONS

The grounds for objection are as follows:

1. Water Users have a vested right to use the water of springs located in close proximity to Co-Op's mining operations, including Big Bear Canyon and Birch Springs, for culinary and irrigation purposes.

2. Co-Op has failed to fully comply with the terms and conditions of its permit and the standards provided in the state program. For instance, over the past five years, Co-Op has been cited for violations of requirements dealing with mine openings, subsidence, runoff containment, waste removal, and water monitoring. Such omissions and failures endanger the water sources of Water Users.

3. Co-Op's current permit does not include measures, terms and conditions adequate to protect water sources in the Bear Canyon Mine area and to remediate whatever harm to these water sources it may cause. Renewal, if allowed by the Division of Oil, Gas and Mining, must provide for adequate maintenance, testing, exploration, protection and remediation, and must include additional terms and conditions designed to protect and provide for immediate replacement of these sources if necessary.

4. The Division of Oil, Gas and Mining has authority to require additional information under R645-303-232.250.

5. Co-Op must provide and the Division of Oil, Gas and Mining should require more specific information regarding Co-Op's mining operations, actual hydrologic consequences of mining, and in-mine activities over the past five years.

State : UT	Permit No : ACT015025	Appl No : ACT015025
Applicant : 089059(CO OP MINING CO)		Seqno : 0

SYSTEM RECOMMENDATION IS BASED ON ENTITY OFT		
SYSTEM RECOMMENDATION	: ISSUE	11/02/95
PREVIOUS SYSTEM RECOMMENDATION	: ISSUE	

RCM_MNT(F7) PERMIT/APPL(F8)
PRV_SCR(F3) EVOFT(F5) REPORTS(F9) CHOICES(F10)
■ avsdg

17:04



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

1594 West North Temple, Suite 1210

Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

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801-538-7223 (TDD)

April 18, 1997

Wendell Owen
Co-Op Mining Company
P.O. Box 1245
Huntington, UT 84528

Re: Conclusions of Order dated May 20, 1991, Co-Op Mining Company, Bear Canyon Mine, ACT/015/025, Folder #3, Emery County, Utah

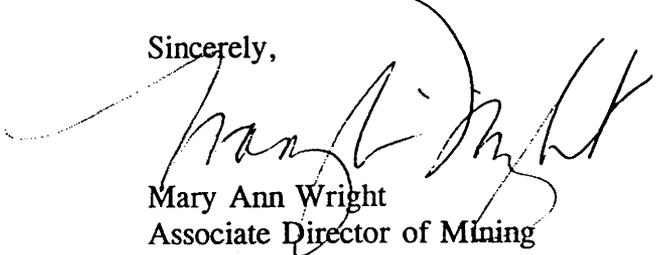
Dear Mr. Owen:

Requirements of the Order by the Division dated May 20, 1991 have been met with the exception of Item #27. The requirement for Item #27 stated: "Drainage or pumping of in-mine water to the old mine workings north of the Big Bear and Birch Springs will be controlled and monitored as stipulated by the Division with revision of that procedure only as directed by the Division and with the prior approval of the Division."

Currently the permit, which has not been renewed to date but is under administrative delay by the Board, includes all of the Order as a condition to the permit. This permit has been changed to include only Item #27, see attached.

If you have any questions, please call me.

Sincerely,


Mary Ann Wright
Associate Director of Mining

Enclosure

O:\015025.BCN\FINAL\ORDER.WPD

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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IN THE MATTER OF THE	:	ORDER
PERMIT RENEWAL FOR THE	:	
CO-OP MINING COMPANY'S	:	INFORMAL HEARING
BEAR CANYON MINE,	:	CAUSE NO. ACT/015/025
EMERY COUNTY, UTAH	:	

---oo0oo---

On February 5, 1991, the Division held an Informal Hearing regarding the above-captioned matter in Castle Dale, Utah. The hearing was transcribed. The following individuals were present and participated in the informal hearing.

Presiding: Dianne R. Nielson, Director
Division of Oil, Gas and Mining

For the Protestants: Darrel Leamaster, District Manager
Castle Valley Special Service District

Menco Copinga, President
North Emery Water Users Association

Jeffrey Appel, Esq.
Haley and Stolebarger
Attorney for North Emery Water
Users Association

Mrs. Varden Willson
(on behalf of Varden Willson)
Huntington-Cleveland Irrigation
Company

Scott Johansen, Esq.
Attorney for Huntington City

S. Bryce Montgomery
Consultant for Castle Valley Special
Service District

For the Respondent: Kimberley C. Mangum
Consultant for Co-op Mining Company
Bill Stoddard
Co-op Mining Company
Carl E. Kingston, Esq.
Attorney for Company
Wendell Owen
Co-op Mining Company

For the Division of
Oil, Gas and Mining: Thomas A. Mitchell, Esq.
Assistant Attorney General
Pamela Grubaugh-Littig
Permit Supervisor
Thomas Munson
Reclamation Hydrologist

Other Appearances: Grant Wilson
Huntington City

In accordance with arrangements made by the Protestants following the hearing, Jeffrey W. Appel was designated the representative of all the Protestants for the purposes of notice and response regarding this matter.

NOW THEREFORE, the Division of Oil, Gas and Mining (Division) having fully considered the protests and responses of the parties, as filed prior to and as part of the hearing, and the supplements to the record, as well as the actions of the Division as represented in Division records, now makes and enters its Order as follows:

FINDINGS OF FACT

1. The Informal Hearing was properly scheduled and noticed

in accordance with the Utah Administrative Procedures Act (Utah Code Ann. § 63-46b-1 et seq.) and the Utah Coal Mining and Reclamation Act (Utah Code Ann. § 40-10-1 et seq.).

2. Additional extensions provided for the purpose of supplementing the record in the Informal Hearing were properly noticed and granted.

3. Inspection and enforcement records for the duration of mining operations at the Bear Canyon Mine indicate that Co-op Mining Company (Co-op) has been cited with Notices of Violation (NOV), Cessation Orders (CO), and Failure to Abate Cessation Orders (FTA CO). However, Co-op Mining Company has abated or is within the designated timeframes for abating enforcement actions. Co-op Mining Company has not established a pattern of willful and knowing violations. Co-op Mining Company is not subject to permit revocation or denial at this time.

4. Geologic and hydrologic evidence provided by the parties suggests that the potentiometric surface of the Blackhawk-Star Point aquifer is below the level of current mining in the Bear Canyon Mine.

5. The necessary information is available for evaluation of the hydrology within the existing Bear Canyon Mine workings.

6. There is no evidence that mining within the presently permitted coal seam in the Bear Canyon Mine will impact the potentiometric surface of the Blackhawk-Star Point aquifer. There is evidence that piping of water, as described below in Paragraph 7, may have influenced the quantity of flow from

outcroppings at or near Big Bear or Birch Springs in the recent past.

7. Within the Bear Canyon Mine, water has been piped from a seep at the north end of the mine workings to the mine entrance, where it discharged in accordance with the permit. However, in the past, excess flow in that line was pumped or allowed to flow into abandoned mine workings located at the south end of the mine, directly north of Big Bear Spring and Birch Spring. Co-op has replaced a portion of that pipe with larger diameter pipe to enable the line to better accommodate flow from the mine. Co-op has also installed a meter on the line which will measure any overflow into the abandoned workings. There is some evidence that this past diversion of flow into the old workings may have influenced the quantity of water seeping from outcrops above Big Bear and Birch Springs.

8. There is insufficient geologic and hydrologic evidence available to determine the impacts of mining, in the proposed Bear Canyon Lease Extension (Lease Extension) to the north of the existing Bear Canyon Mine, on the quantity and quality of water in Big Bear Spring and Birch Spring.

9. There is insufficient evidence to know the location of the potentiometric surface of the Blackhawk-Star Point aquifer to the north of the existing Bear Canyon Mine workings.

10. There are other mining operations on the northern extensions of the fracture and fault systems which may control surface water and groundwater flow from the springs below the

permit area. However, evidence to determine specific impacts of those operations on groundwater feeding these springs is inconclusive.

11. In order to evaluate the current probable hydrologic impact of mining adjacent to and in the proposed Lease Extension to the north of the currently permitted Bear Canyon Mine, additional monitoring wells must be drilled and sampled to evaluate the location, quantity, and quality of the Blackhawk-Star Point aquifer.

12. Sampling of Big Bear Spring and Birch Spring is necessary to evaluate the current probable hydrologic impact of mining adjacent to and in the proposed Lease Extension north of the presently permitted Bear Canyon Mine, as well as to provide complete monitoring data from existing operations in the Bear Canyon Mine. Sampling should include both quantity and quality of spring flow including sampling at times when the spring is not overflowing the lock box. This will necessitate establishing arrangements to allow Co-op Mining Company or a third party to unlock the box at regular intervals for sampling purposes.

13. Evidence concerning the increased sulfate content in Big Bear Spring does not indicate the cause of the increase.

14. Evidence of the impact of drought conditions over the last five years, as well as the impacts of earthquakes in the vicinity of the Bear Canyon Mine, have not been fully evaluated by the parties in terms of the potential effect on the past and current quantity of water from Big Bear and Birch Springs.

15. Technical information and arguments support the extension of geologic structures which may control groundwater flow north of and within the Bear Canyon Mine. However, the hydrologic evidence is conflicting and insufficient to support the "reasonable likelihood" of adverse impacts of mining on water quantity and quality at Big Bear and Birch Springs.

CONCLUSIONS OF LAW

EXISTING PERMIT AREA

16. Pursuant to Utah Admin. R. 614-300-154, as to those lands specifically designated as the permit area within the permittee's original permit application, and approved in accordance with R. 614-300-151, the permittee has a right of successive renewal.

17. The right to successive renewal is granted pursuant to Utah Code Ann. § 40-10-9(4)(a). The terms of this statutory right are included and made a part of R. 614-303-230.

18. Both by statute and by rule the burden of proof rests upon the opponent to permit renewal to demonstrate the specific exceptions set forth by statute and rule for denying permit renewal.

19. Protestants have set forth factual contentions to support their allegations that four of the five statutory exemptions to renewal are present. The Division concludes that protestants have failed to support these allegations.

NEW PERMIT AREA

20. Pursuant to Utah Code Ann. § 40-10-9(4)(b) an extension of a permit area as a portion of the application for renewal of a valid permit is subject to the full standards applicable to new applications under the statute. Pursuant to Utah Code Ann. § 40-10-11(1) the applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the code.

21. The Division concludes that Co-op has not met its burden of proof with regard to demonstrating the probable hydrological impact of any extension beyond its present permit boundaries.

ORDER

22. The Permit for Co-op Mining Company's existing mining operation at the Bear Canyon Mine (ACT/015/025) is hereby renewed for a period of five years from the date of expiration of the prior permit. This permit renewal provides for operations of the Bear Canyon Mine to continue to the extent that those operations are conducted within the existing permit area and the disturbed areas as they existed under the prior permit. These operations will be in accordance with the statute and rules, and subject to orders or other actions of the Division governing the operations under this permit.

23. The proposed permit application to enter and mine an adjacent Federal Coal lease to the north of the existing mine

(Lease Extension) is denied.

24. No additional coal mining and reclamation operations at the Bear Canyon Mine beyond those currently approved in the permit will be considered for approval by the Division until the Probable Hydrologic Impact (PHC) analysis has been revised, based on additional drilling and monitoring of groundwater and surface water flow, quantity, and quality. This limitation in terms of mining and reclamation operations includes but is not limited to any mining in coal seams above or below the currently-approved mine workings within the permit area, as well as any mining outside the current permit area.

25. Any future proposal to mine beyond the existing permit area or in coal seams above and below the current workings will be treated as a request for permit revision, with the opportunity for public comment.

26. The requirements for additional drilling and monitoring of the surface and subsurface hydrology will be determined by the Division. At a minimum, this will include drilling and monitoring 3 wells, located within and adjacent to the current permit area, for the purpose of evaluating the hydrologic gradient and water quality. Drilling of monitoring wells will be the requirement of and at the expense of Co-op Mining Company. The existing monitoring program for Big Bear and Birch Springs will be revised to include water quantity and quality measurements from lock boxes. Data will be provided to the Division and the appropriate water user associations. Such

monitoring will be at the expense of Co-op Mining Company and may be conducted by Co-op or by a third party, as agreed upon by the Protestants and Co-op Mining Company, in order to ensure access to the lock boxes at the Big Bear and Birch Springs.

27. Drainage or pumping of in-mine water to the old mine working north of the Big Bear and Birch Springs will be controlled and monitored as stipulated by the Division, with revisions of that procedure only as directed by the Division and with the prior approval of the Division.

28. The requirements of this Order which are applicable to the present permit are included and made a part of the permit terms at issuance of the renewed permit for the Bear Canyon Mine.

29. Prior to any approval of coal mining and reclamation operations beyond the existing authorized operations, Co-op Mining Company must demonstrate and the Division must find that said operations have been designed to prevent material damage to the hydrologic balance outside of the permit area, in accordance with Utah Code Ann. § 40-10-10(2)(c) and Utah Admin. R. 614-300-133.400.

ORDERED and issued this 20th day of May, 1991.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



Dianne R. Nielson
Director

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing ORDER to be mailed first class, postage prepaid, this 20th day of May, 1991, to the following:

Mr. Darrel V. Leamaster
Castle Valley Special Service District
P.O. Box 877
Castle Dale, Utah 84513

Mr. Menco Coppinga
North Emery Water Users Association
Box 418
Elmo, Utah 84521

Mr. Varden Willson
Huntington-Cleveland Irrigation Company
55 North Main
Huntington, Utah 84528

Mr. Carl Kingston, Esq.
53 West Angelo Avenue
P.O. Box 15809
Salt Lake City, Utah 84115

Mr. Scott Johansen, Esq.
Huntington City Attorney
P.O. Box 1099
Castle Dale, Utah 84513

Mr. Jeffrey Appel, Esq.
Haley & Stolebarger
10th Floor Walker Center
175 South Main
Salt Lake City, Utah 84111-1956


Lynda Jensen

Mining, Department of Natural Resources, State of Utah (the "Division") did not file a Memorandum in Opposition to the Joint Objection, but the Division did oppose the Joint Objection at the hearing described below.

Pursuant to notice, the Joint Objection came on for hearing at a regularly scheduled meeting of the Board held on January 24, 1996, at 10:00 a.m. in the Board's hearing room at 3 Triad Center, 355 West North Temple, Suite 520, Salt Lake City, Utah. Attorney Jeffrey W. Appel appeared on behalf of the Service District. Attorney J. Craig Smith appeared on behalf of the Water Association and the Irrigation Company. Assistant Utah Attorney General Thomas A. Mitchell appeared on behalf of the Division. Attorney F. Mark Hansen appeared on behalf of the Mining Company. No other persons entered appearances. Assistant Utah Attorney General Patrick J. O'Hara acted as legal counsel to the Board.

Order

After hearing all the arguments of the above counsel, and after reviewing the respective filings by the above parties, the Board hereby finds and rules as follows:

1. The Division issued a Permit to the Mining Company on the Bear Canyon Mine October 30, 1985, which Permit was renewed by the Division for five years on May 20, 1991. The first renewal term on the Permit was to expire on or about November 2, 1995.
2. On or about June 16, 1995, the Mining Company

filed a permit renewal application with the Division asking the Division to grant the Mining Company a second five-year renewal on the Permit for the Bear Canyon Mine.

3. The Objectors, in their jointly filed "Objections to Permit Renewal and Request for Informal Conference" dated and filed October 12, 1995, timely asked the Division to hold an informal conference to allow the Objectors to present their objections to the requested Permit renewal.
4. For various reasons (explained at length at the January 24, 1996, Board hearing but which need not be re-stated here), it is an undisputed fact that the Division did not hold the informal conference requested by the Objectors prior to the Division making a decision on November 2, 1995, which purported to renew the Mining Company's Permit for another five-year term.
5. The Division's purported decision of November 2, 1995, to renew the Permit is hereby reversed because the Board holds that the Division must first hold the informal conference requested by the Objectors before the Division can make a final decision on the requested Permit renewal.
6. The Division shall hold the informal conference requested by the Objectors, and the Division shall

consider all of the objections presented at the informal conference before the Division makes a final decision as to the requested five-year Permit renewal. The informal conference shall be at a date, time and place to be announced by the Director of the Division.

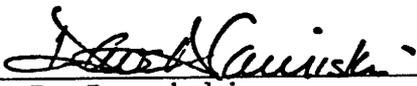
7. The Board does not express any opinion at this time as to the merits, if any, of the Objectors' various contentions, or as to legal issues raised by the Mining Company in its Memorandum in Opposition concerning the alleged res judicata and/or collateral estoppel effect of any prior ruling by the Board concerning the Bear Canyon Mine. Likewise, the Board does not express any opinion at this time as to the discovery issues raised by the Objectors at the January 24, 1996, hearing. All of the foregoing issues shall be considered in the first instance by the Division, if they are raised at the informal conference requested by the Objectors, so they are not yet ripe for Board review and/or action.
8. The Board is mindful that the Objectors carry the burden of proof on their objections to the requested Permit renewal, and that the Mining Company shall not be forced to stop or change permitted mining activities unless and until the

Division has first found that the Objectors have carried that burden of proof. Accordingly, the Board, acting pursuant to Utah Code Ann. § 40-10-6(9) (1953, as amended) and Utah Administrative Code R645-300-200.240, hereby enters an order of temporary relief extending the Mining Company's Permit on the Bear Canyon Mine retroactive to November 2, 1995, and continuing from day to day from and after that date until such time as the Division shall issue its final decision following the informal conference requested by the Objectors.

9. This matter is remanded to the Division for further administrative proceedings consistent with this Order.

ISSUED AND SIGNED this 23rd day of February 1996.

STATE OF UTAH, BOARD OF OIL,
GAS AND MINING

By 
Dave D. Lauriski
Chairperson

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "ORDER GRANTING TEMPORARY RELIEF AND REMANDING FOR AN INFORMAL CONFERENCE" in Docket No. 95-025, Cause No. ACT/015/025, to be mailed certified mail, on the 23rd day of February, 1996, to the following:

J. Craig Smith, Esq.
David B. Hartvigsen, Esq.
Nielsen & Senior
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Huntington-Cleveland Irrigation Company
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Salt Lake City, Utah 84111

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Benjamin T. Wilson, Esq.
Collard, Appel & Warlaumont
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Carl E. Kingston, Esq.
Attorney for Co-Op Mining Company
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Salt Lake City, Utah 84115

F. Mark Hansen, Esq.
Attorney for Co-Op Mining Company
624 North 300 West, #5078
Salt Lake City, Utah 84103

and hand-delivered the same date noted above to:

Thomas A. Mitchell, Esq.
Assistant Attorney General
Attorney for the Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 475
Salt Lake City, Utah 84180



DAM

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE FIVE-YEAR PERMIT RENEWAL, CO-OP MINING COMPANY, BEAR CANYON MINE, EMERY COUNTY, UTAH.	: : :	DIVISION FINDINGS, CONCLUSIONS AND ORDER DOCKET NO. 95-025 CAUSE NO. ACT/015/025
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NATURE OF THE CASE

On October 12, 1995, the Castle Valley Special Service District, the North Emery Water Users Association and the Huntington-Cleveland Irrigation Company (collectively, the "Water Users") filed a Joint Objection to Renewal, Appeal, and Request for Hearing (the "Objection") with regard to the impending renewal of coal permit held by C.W. Mining Company, dba Co-Op Mining Company ("Co-op") for its Bear Canyon Mine. The renewal was granted by the Division of Oil, Gas and Mining (the "Division") on November 2, 1995. The Water Users appealed the Division's decision to the Board of Oil, Gas and Mining (the "Board"). This matter is now before the Division on remand from the Board pursuant to the Board's Order Granting Temporary Relief and Remanding for an Informal Conference, dated February 23, 1996 (the "Order").

The Division convened this Informal Conference on October 17, 1996, and it was continued through November 8, 1996 to February 28, 1997. Appearances for the parties were as follows:

- For the Division: James W. Carter, Director
- For the Water Users: Jeffrey W. Appel, Appel & Warlaumont
J. Craig Smith, Nielsen & Senior
- For Co-op: F. Mark Hansen
Carl E. Kingston

ISSUES RAISED

The question at hand is whether Co-op is entitled to renewal of its Bear Canyon Mine permit pursuant to the permit renewal provisions of the Utah coal regulatory program. Those requirements are found at R645-303-230, et. seq. The criteria for approval, set forth at R645-303-233.100 require the Division to approve permit renewal unless the Division makes one or more of the findings set forth there. The Water Users allege that Co-op is not entitled to renewal because two of the factors which would prevent renewal are present, 1) that the terms and conditions of the existing permit are not being satisfactorily met and, 2) that the present coal mining and reclamation operations are not in compliance with the environmental protection standards of the state program. The specifics of Water Users' allegations are set forth in their Joint Post-Informal Conference Memorandum and Closing Argument as follows:

1. The hydrologic information upon which the permit was originally issued is erroneous, and that the underlying permit is therefore defective and should not be renewed.
2. The mining activities are intercepting and re-diverting water that would otherwise provide flow to the Water Users' springs and are therefore not in compliance with the environmental protection standards of the Utah regulatory program.
3. The Probable Hydrologic Consequences document (the "PHC") makes false and inaccurate statements and lacks adequate baseline information to support the permit.
4. The Cumulative Hydrologic Impact Assessment document (the "CHIA") fails to adequately address the cumulative hydrologic impacts of mining because it does not include an assessment of the impacts of mining on water availability in the downstream service areas of the Water Users.
5. The CHIA is insufficient to determine whether the proposed operations have been designed to prevent material damage to the hydrologic balance outside the permit area.
6. Material damage to the hydrologic balance outside the permit area is occurring.
7. Mining operations at the Bear canyon mine have contaminated, diminished and/or interrupted state-appropriated water owned by the Water Users, entitling them to replacement.

Co-op's arguments are as follows:

1. The claims and assertions made by the Water Users in this proceeding are barred by the doctrine of collateral estoppel and the decision of the Utah Supreme Court in

Castle Valley Special Service District, et al v. Utah Board of Oil, Gas and Mining, et al filed on December 31, 1996.

2. The Water Users have not met the burden of proof to overcome Co-op's entitlement to permit renewal as set forth in R645-303-230 and UCA Sec. 40-10-9(4)(a).
3. That Co-op's permit and operations are in compliance with the requirements of the Utah coal regulatory program.

Based upon the evidence in the Division's files, the record of this Informal Conference and the testimony and argument received, the Division makes the following Findings of Fact, Conclusions of Law and Order:

BACKGROUND FINDINGS OF FACT

1. The core of this dispute is whether coal mining in the Tank and/or Blind Canyon Seams is adversely affecting, or will adversely affect, springs in the area which constitute major water supplies for the Water Users. The Division issued a permit to Co-op for the Bear Canyon Mine on October 30, 1985, which permit was renewed on May 20, 1991. Mining began in the Blind Canyon Seam. Before December of 1989, no significant water was encountered in or discharged from the Bear Canyon Mine. Water inflow was small and often insufficient to meet the operational needs of the mine. In 1991 Co-op first began discharging approximately 60 gallons per minute from the mine.

2. In 1993, Co-op applied for a permit revision to allow mining of the Tank Seam at the Bear Canyon Mine, which seam is located topographically and geologically above the Blind Canyon Seam. The application included Appendix J-7, "Probable Hydrologic Consequences of Mining at Bear Canyon Mine, Emery County, Utah," and Appendix 7-N, "Revised Hydrogeologic Evaluation of the Bear Canyon Mine Permit and Proposed Expansion Areas." The Water Users objected to the permit revision, and on December 9, 1993 the Division conducted an informal conference on the objection. On July 20, 1994 the Division issued a Technical Analysis which incorporated the finding in the Division's revised Cumulative Hydrologic Impact Assessment ("CHIA") for the Gentry Mountain area that:

"The review of water source information, the graphical tracking of precipitation versus flow, the testing of the spring water and mine water quality for tritium dating, analysis of water quality chemical data using Stiff and Piper diagrams, and the known presence of three separate piezometric surfaces ... leads to a conclusion of no significant material damage to the Hydrologic Balance outside the permit area."

The Division then approved Co-op's permit revision.

3. The Water Users appealed the approved revision to the Board, which held a formal evidentiary hearing. The Water Users presented evidence and argued that mining of the Tank Seam would adversely affect the springs because the permit area and springs were within the same regional aquifer and were in hydrologic connection, and that Co-op's mining operation had intercepted the aquifer which supplied the springs. Co-op presented evidence to support its claim that mining the Tank seam would not adversely affect the springs because the permit area is hydrologically isolated from the aquifer feeding the springs.

4. On June 13, 1995, the Board affirmed the Division approval of the permit revision and rejected the Water Users' arguments, finding that the mined areas were hydrologically separate from the Water Users' springs and that the mining was not adversely affecting the springs. The Water Users appealed to the Utah Supreme Court, which in a December 31, 1996 Opinion affirmed the Board's Order.

5. On June 16, 1995, Co-op filed a permit renewal application for the Bear Canyon Mine. On October 12, 1995, the Water Users filed Objections to Permit Renewal and Request for Informal Conference. The Objections asserted that continued mining in the Tank and Blind canyon seams would adversely affect the Water User's springs. On November 2, 1995, the Division approved the permit renewal application, which approval was appealed to the Board. On February 23, 1996, the Board reversed the Division's renewal of the permit, and remanded the Water Users' Objections to the Division to conduct the requested Informal Conference. Co-op appeared during the Board's review of the Water Users' Objections and argued that the matter had been resolved by the previous proceedings and was therefore res judicata.

6. On remand, the Division convened this Informal Conference, directing that the parties introduce all new information and analyses of existing information which would provide a basis for revising or reversing the findings and conclusions the Division had made in support its June 20, 1994 determination that the mining was causing no material damage to the hydrologic balance outside the permit area. In addition, the Division solicited argument and evidence from the parties on the Water Users' assertion that the recently passed water replacement requirements of Utah Code Section 40-10-18(15) applied and that the Division should find that state appropriated water owned by the Water Users was being contaminated, diminished or interrupted.

GEOLOGIC AND HYDROLOGIC FINDINGS OF FACT

7. The Water Users argue that the water issuing from their springs passes through the area being mined on its way to the springs and is adversely affected by the mining activity, and that the mining has upset the recharge system which historically supplied their springs. Co-op argues, and the Board and Division have previously found, that the area which is being mined is effectively hydro logically isolated from the Water Users' springs.

8. Co-op has mined the Tank, Blind Canyon and Hiawatha seams, all located in the Blackhawk formation, which extends laterally to the north and south of the permit area. The Blackhawk formation lies conformably on the Star Point formation, which also extends outside the permit area. The Star Point formation contains three sandstone layers -- the Spring Canyon, Storrs and Panther members from top to bottom -- which are separated by layers of Mancos shale 50 to 80 feet thick. The Mancos shale layers are understood to be laterally continuous within the permit area. The Blackhawk formation also contains many layers of shale as well as the coal seams. The strata in the permit and adjacent areas dip to the south at approximately five degrees. The Water Users' springs issue from the sandstone members of the Star point formation, both topographically and geologically below the coal seams being mined in the Blackhawk formation, and to the south, downdip from the mined area. The parties agree that recharge of the groundwater found in the permit and adjacent areas is from the surface of the land and is generally moving from north to south, downdip.

9. Some USGS studies have assumed that a single "regional aquifer" exists in the permit and adjacent areas. This assumption was not based on site-specific information, and is incorrect, at least in and around Co-op's permit area. The hydraulic conductivity of the Mancos shale layers in the mine area is calculated at 10^{-11} to 10^{-12} cm/sec., a million times less than the sandstone layers, and 10,000 times lower than clay liners used in hazardous waste landfills. The Mancos shale layers therefore act as confining barriers for water in the Star Point formation, greatly inhibiting vertical movement of water between the sandstone layers. Each of the three sandstone layers of the Star Point Formation contains water and has a separate potentiometric surface, indicating three separate aquifers which are not hydrologically connected. In the mine area, the potentiometric surface for each aquifer is above the top of the sandstone member it is contained in, indicating that the aquifers are confined in the mine area. The uppermost aquifer is in the Spring Canyon sandstone, well below the Blind Canyon and Tank Seams where the coal is being mined. No water was encountered in test holes drilled through the Blind Canyon and Tank seams. Water was encountered when the test holes reached the Spring Canyon member of the Star Point formation, and the water level rose in the wellbores above the top of the sandstone layer.

10. The Water Users argue that the permit and adjacent areas are "shattered" by fracturing and faulting, which provides vertical conduits for water flow through the low-permeability shale and coal layers. Co-op's mining activity is bounded on the west by Blind Canyon Fault, and on the east by Bear Canyon fault. The Blind Canyon Fault is visibly dry, and is filled with gouge, which if exposed to water would either cement, chemically replace or wash away, further indicating the fault has always been dry. The Blind Canyon Fault is a barrier to water flow, not a conduit for water, and is not transmitting water. There is no water coming into the mine at the Bear Canyon fault. Although fractures are evident in the permit and adjacent areas, the shale units are plastic compared to the more brittle sandstones. Shale tends to deform under pressure to seal internal fractures. These factors, taken together with the containment of the water in the underlying sandstone and the primary impermeability of the shales, lead to the conclusion that the overall vertical permeability of the stratigraphic section in the permit and adjacent areas is orders of magnitude lower than

the horizontal permeability in the area. As a result, virtually all of the water in the Star Point sandstone flows horizontally, not vertically, until it reaches the surface. Likewise, the water in the overlying strata moves not downward, but laterally downdip (generally southward) to the outcrop, where it evaporates. Observations during the October 17, 1996 mine site visit confirmed the presence of moisture at the exposed sandstone faces, showing the water in the upper aquifers indeed flows not vertically, but horizontally until it discharges by seeping out and evaporating at the outcrop.

MINE WATER FINDINGS OF FACT

11. The Tank seam in the mine area has been completely dry throughout. The Blind Canyon seam was dry until December of 1989, when Co-op intercepted water at the north end of its permit area. The intercepted water is in the Blackhawk formation, not the underlying Star Point formation. Except for the north end of the permit area, what few fractures exist in the mine are dry and show no signs of water ever having moved through them. The water Co-op encountered in the Blind Canyon seam comes down from the mine roof, not up from the floor.

12. Co-op has not intercepted water in the mine from the Star Point aquifers. The water in the mine appears to come from a perched aquifer in a sandstone channel above the Blind Canyon seam. The channel enters the mine from the roof, not the floor. The channel does not interrupt or dip below the Blind Canyon seam, but does spill out in a "flood plain" lip over the top of the seam. As mining proceeded northward, the Blind Canyon seam was dry until the channel was encountered. The water Co-op first intercepted in late 1989 appears to have come from the channel's flood plain lip. Co-op did not mine into the channel itself until April of 1993.

13. Radioisotope dating establishes the channel water's age at about 1,500 years. Water in the Star Point aquifers beneath the permit area is about 950 years old, hundreds of years younger than the higher elevation channel water. Water on the west side of the Blind Canyon fault is roughly 5,500 years old, thousands of years older than the channel water. Tritium tests show that Big Bear spring water is modern age. Mixing of water of various ages can produce water which tests at an intermediate age. The age of Big Bear Spring water, however, suggests that either no older mine water is contributing to the flow of Big Bear Spring, or that any mine water flow is so small as to be undetectable. Chemical testing also shows that the water flowing from Birch Spring is dissimilar from mine water and is therefore not coming from or through the mining area.

14. Calculations using the age of the water encountered in the sandstone channel and intra-mine flow suggest the pre-mining rate of flow through the channel is on the order of 1.2 g.p.m., a minuscule flow rate considering the volume of water contained in the sandstone channel. Before mining, the water may have been discharging to a spring in the permit area, to a creek, or to evaporation at the outcrop. If the Water Users' springs were fed from the

sandstone channel, they would have dewatered the channel ages ago. The fact that the channel still contains a great deal of water indicates the channel is not the source of the springs' water.

SPRING QUALITY AND FLOW FINDINGS OF FACT

15. Big Bear Spring and Birch Spring both issue from joints in the base of the Panther member of the Star Point formation. Comparisons of spring flow and precipitation data show the flow at Big Bear Spring responds to precipitation. According to the Water Users' own data, Big Bear Spring's flow rate began declining as early as 1984, as did precipitation, five or more years before Co-op first began intercepting water in its mining operation. As the area has recovered from a ten-year drought, Big Bear Spring's flow rate has also recovered, from a low of 76 g.p.m. in mid-1995 to 148 g.p.m. in late 1996. Present flow rates are well within the range of the spring's flow rate data for 1978-79, before the local drought and before Co-op began mining.

16. Birch Spring is approximately 800 feet to the west of Co-op's permit area and is physically separated from the permit area by two major faults, including Blind Canyon fault, which acts as a barrier to water flow. Birch Spring flow is also precipitation-related. Its flow rate began to decline in mid-1988, about one and one-half years before Co-op first began intercepting water in the mine. Birch Spring's flow in recent years is near the upper range of the historical flow data for 1978-79.

17. Although Little Bear Spring has been found to not be useful as a control, the Water Users' data show Little Bear and Upper Tie Fork Springs declined in flow from the mid-to-late 1980's to the mid-1990's, and began increasing in flow in early 1995. This pattern is similar to that shown in the precipitation data, and the flow rates for Big Bear and Birch Springs as well as Huntington Creek. The spring hydrographs show that declines in flow at the springs were immediately preceded by sharp flow increases or "spikes" in mid-1988. At that time Co-op had not encountered or begun discharging water from the mine. The Water Users' expert testified the spikes were likely caused by an earthquake known to have occurred in the area just prior to the spikes and the subsequent decline in spring flow.

18. The Water Users allege that the springs have been, and will continue to be, contaminated by mining activities, pointing to events of anomalous flow and pollution in the springs. The Water Users argue that "the interconnection between Birch Spring and the mine was demonstrated by the spike flow out of the spring when the mine water was being discharged out of the portals." Even if the pumping caused the spike, which was not demonstrated, the pumping of water out of the mine into a surface drainage above Birch Spring does not demonstrate the hydrologic connection of water in the mine to Birch Spring absent pumping, an activity which is not now being performed and which is not allowed by the mine permit. Whether Co-op has, in the past, discharged water from the mine in violation of its permit is outside the scope of this proceeding.

19. Co-op's mining operations have been, and are now being, conducted to minimize disturbance to the hydrologic balance within the permit area and to prevent material damage to the hydrologic balance outside the permit area. Co-op's mining operations have not been shown to have caused contamination, diminution or interruption of Water Users' state-appropriated water.

THE PHC, THE CHIA AND THE PERMIT

20. The Water Users argue that the baseline data contained in Co-op's original permit application is erroneous, that Co-op's PHC contains false and inaccurate statements, that the CHIA is therefore also flawed, and that the CHIA fails to assess the impact of mining on water availability in the Water Users' service areas, thereby rendering the original permit flawed and incapable of being renewed. The baseline data, the PHC and the CHIA of which the Water Users complain were is existence at the time the permit was issued in 1985, at the time of the first permit renewal in 1991 and at the time of the Water Users' appeal of that renewal. The Water Users did not attack the adequacy of the permit baseline information, the PHC or the CHIA in their appeal of the 1991 permit renewal.

CONCLUSIONS OF LAW

1. Co-op's coal mining operations are in compliance with their permit and with the environmental protection standards of the state program.

ORDER

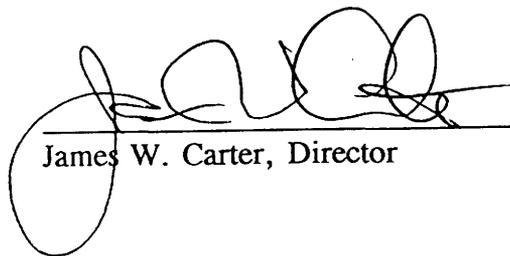
This informal conference is the second hard look the Division has taken at the allegations by the Water Users that Co-op's mining operations are adversely affecting their spring sources in the vicinity of the mine. Mining has progressed since the last hard look during the 1991 permit renewal and subsequent appeal. Additional information has been developed over the course of the mining in that time, which information has shed new light on the hydrology of the mine permit and surrounding areas. That new information is argued by the Water Users to demonstrate that the information the Division relied upon in making its permitting and renewal decisions was wrong, and that the permit is therefore flawed. The purpose of monitoring information is to test the assumptions and conclusions made at the time of permit issuance, and to decide whether mid-course adjustments in mining operations are necessary to keep the mine in compliance with its permit and the state regulatory program. While the PHC is the operator's best prediction of the "probable" hydrologic consequences based on a snapshot in time, the Division's CHIA is a dynamic document that accommodates new information and changes as our understanding increases.

The Water Users are convinced that mining activity so close to their water sources must be having an adverse effect on those sources, pointing to fluctuations in flow and water quality. In the same sense that everything in the universe is connected, the water in the hydrosphere is all part of a global system and the water in Huntington Canyon is all part of a

regional system. The Water Users have failed, however, to produce any evidence upon which the Division could make a finding that a causal relationship exists between Co-op's permitted mining activities and the injuries the Water Users allege. The Division believes that the new information and analyses made available through the efforts of both the Water Users and Co-op lends additional support to, rather than undermines, the Division's earlier conclusion that there is no effective hydrologic connection between the mine and the Water Users' springs, and that the mining activities are not causing material damage to the hydrologic balance outside the permit area. Co-op's mining permit is therefore renewed.

SO DETERMINED AND ORDERED this 11th day of August, 1997.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



James W. Carter, Director

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION FINDINGS, CONCLUSIONS AND ORDER for Docket No. 95-025, Cause No. ACT/015/025 to be mailed by certified mail, postage prepaid, this 12th day of August, 1997, to the following:

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Attorney for Co-op Mining Company



First-Class Mail, Postage Prepaid on the
12th day of August, 1997, to the following:

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Carl E. Kingston
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State of Utah
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DIVISION OF OIL, GAS AND MINING

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801-359-3940 (Fax)
801-538-5319 (TDD)

August 3, 1995

FIELD(1)

Re: Determination of Completeness, Five Year Permit Renewal, Co-Op Mining Company, Bear Canyon Mine, ACT/015/025, Folder #3, Emery County, Utah

Dear Mr. **FIELD(2)**:

The Utah Division of Oil, Gas and Mining (Division) has determined the five-year permit renewal application for the Bear Canyon Mine to be administratively complete. Notice is hereby given to all appropriate agencies in accordance with R645-300-121.300 of the Utah Coal Mining Reclamation Act of this permit renewal.

The permit area (approximately 1,500 acres) is located in Emery County, Utah and is described as follows:

Township 16 South, Range 7 East, SLBM

- Section 14: SW1/4, SE1/4
- Section 23: E1/2, E1/2, W1/2
- Section 24: All West of North-South Fault
- Section 25: All West of North-South Fault
- Section 26: NE1/4 NE1/4, NW1/4 NE1/4, N1/2 SW1/4 NE1/4 and the access/haul road and topsoil storage area as shown on Plate 2-1.

No decision will be made by the Director for a minimum period of 30 days after submission of this Notice of Availability to the appropriate agencies. This plan is available for public review at the Division of Oil, Gas and Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah 84180-1203. If no adverse comments are received, the Division will successively renew this mining permit.



Comments on this plan may be addressed to the Director of this office:

James W. Carter, Director
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

For further information, please contact Lowell P. Braxton or Pamela Grubaugh-Littig at the above address.

Sincerely,

LPB

Lowell P. Braxton
Associate Director, Mining

mbm

cc: P. Grubaugh-Littig
BEAR.DOC

James Fulton, Chief
Denver Field Division
Office of Surface Mining
Reclamation and Enforcement
1999 Broadway Ste 3320
Denver, CO 80202-5733

Art Abbs, Acting Director
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, NM 87102

Mark Bailey, Area Manager
Price River Resource Area
Bureau of Land Management
900 North 700 East
P.O. Box AB
Price, UT 84501

Alan Rabinoff, Chief
Mining Law and Solid Minerals
Bureau of Land Management
324 South State Street
P.O. Box 45155
Salt Lake City, UT 84145-0155

**Robert D. Williams, Assistant Field
Supervisor**
U.S. Fish and Wildlife Services
Ecological Services
Lincoln Plaza
145 E. 1300 South Ste 404
Salt Lake City, UT 84115

Janette S. Kaiser, Forest Supervisor
(2 Copies)
U.S. Forest Service
Manti-LaSal National Forest
599 West Price River Road
Price, UT 84501

Mark Page, Regional Engineer
Utah Division of Water Rights
Southeastern Regional Office
453 South Carbon Avenue
P. O. Box 718
Price, UT 84501-0718
(Carbon and Emery County Mines)

Brent Bradford, Deputy Director
Office of the Executive Director
Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Max J. Evans, Director
Utah Division of State History
300 Rio Grande
Salt Lake City, UT 84101

Scott Hirschi, Director
School and Institutional Trust Lands
Administration
3 Triad Center, Suite 400
355 West North Temple
Salt Lake City, UT 84180-1204

Bryant Anderson
Emery County Planning and Zoning
P.O. Box 297
Castle Dale, UT 84513

William P. Yellowtail, Jr.
Regional Administrator
Environmental Protection Agency
999 18th Street
Denver Place, Ste. 500
Denver, CO 80202-2405

Carolyn B. Wright, Research Analyst
Governor's office of Planning and
Budget
Government Relations Dept
State Planning Coordinator Office
116 State Capitor
Salt Lake City, Ut 84114

Joseph Jenkins, Executive Director
Dept of Community and Economic
Development
324 South State Street, Ste 500
Salt Lake City, UT 84111

Mike Schwinn, District Engineer
U.S. Army Corps of Engineers
1403 South 600 West
Bountiful, UT 84010

AFFIDAVIT OF PUBLICATION

STATE OF UTAH)

SS.

County of Emery,)

I, Kevin Ashby, on oath, say that I am the Publisher of the Emery County Progress, a weekly newspaper of general circulation, published at Castle Dale, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for 4 (Four) consecutive issues, and that the first publication was on the 22nd day of August, 1995 and that the last publication of such notice was in the issue of such newspaper dated the 12th day of September, 1995.



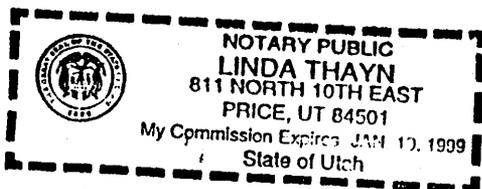
Kevin Ashby - Publisher

Subscribed and sworn to before me this 12th day of September, 1995.



Notary Public My commission expires January 10, 1999 Residing at Price, Utah

Publication fee, \$96.00



NOTICE

Co-Op Mining Company, P.O. Box 1245, Huntington, Utah, 84528 hereby announces its intent to renew its coal mine and reclamation permit for coal mining activities at the Bear Canyon Mine, Permit No. ACT/015/025, issued Nov. 1, 1985. The Bear Canyon Mine is located in Bear Canyon, approximately 12 road miles west of Huntington, Utah. The permit area, found on the USGS Hiawatha Quadrangle map, is described as follows: T16S, R7E, SLBM, SW1/4, SE1/4, Sec. 14, E1/2, E1/2, W1/2, Sec. 23, All Sec. 24 West of N-S Fault, All Sec. 25 West of N-S Fault, NE1/4, NE1/4, NW1/4, NE1/4, N1/2 SW1/4, NE1/4 and access/haul road and topsoil storage area, Sec. 26, as shown on Plate 2-1 of the Mining and Reclamation Plan. Written comments, objections, or requests for informal conferences should be directed to the Utah Division of Oil, Gas & Mining, 3 Triad Center, Suite 350, Salt Lake City, Utah, 84180-1203. Copies of the renewal application are available for public inspection at the office of the Utah Division of Oil, Gas & Mining, Salt Lake City and at the Emery County Recorder's office, Emery County Courthouse, Castle Dale, Utah, 84513.

Published in the Emery County Progress August 22, 29, September 5 and 12, 1995.



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

August 25, 1997

TO: File

FROM: Pamela Grubaugh-Littig, Permit Supervisor *pgl*

RE: AVS Recommendation, 510 (c) Clearance, Co-Op Mining Company,
Bear Canyon Mine, Folder #5, Emery County, Utah

As of the writing of this memo, there is an "issue" recommendation for the Bear Canyon Mine. There are no outstanding violations or cessation orders for Co-Op Mining, nor any outstanding fines or bond forfeitures or a patterns of violations associated with Co-Op Mining Company.

Applicant Evaluation

Applicant Violator System

25-Aug-1997 10:42:23

State : UT Permit No : ACT015025
Applicant : 089059(CO OP MINING CO)

Appl No : ACT015025
Seqno : 0

SYSTEM RECOMMENDATION IS BASED ON ENTITY OFT

SYSTEM RECOMMENDATION	: ISSUE	08/25/1997
PREVIOUS SYSTEM RECOMMENDATION	: ISSUE	11/03/1995

RCM_MNT(F7) PERMIT/APPL(F8)
PRV_SCR(F3) EVOFT(F5) REPORTS(F9) CHOICES(F10)

■ avsdg

10 43

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■ avsdg

10:43



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

November 2, 1995

TO: File

FROM: Pamela Grubaugh-Littig, Permit Supervisor *pgl*

RE: AVS Recommendation, 510 (c) Clearance, Co-Op Mining Company,
Bear Canyon Mine, Folder #5, Emery County, Utah

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Applicant : 089059(CO OP MINING CO)	Seqno : 0

SYSTEM RECOMMENDATION IS BASED ON ENTITY OFT		
SYSTEM RECOMMENDATION	: ISSUE	11/02/95
PREVIOUS SYSTEM RECOMMENDATION	: ISSUE	

RCM_MNT(F7) PERMIT/APPL(F8)
PRV_SCR(F3) EVOFT(F5) REPORTS(F9) CHOICES(F10)
▪ avsdg