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DIV. OF OIL, GAS & MINING

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July 9, 2007

HAND DELIVERED

Ms. Mary Ann Wright
Ms. Pamela Grubaugh-Littig
Department of Natural Resources
Division of Oil, Gas & Mining
1594 West North Temple, #1210
Salt Lake City, Utah 84116

Denise A. Dragoo
4/025/0005

Re: ***Public Participation Prior to a Determination of Administrative
Completeness—Coal Hollow Permit***

Dear Mary Ann and Pam:

We have been requested to contact you on behalf of Alton Coal Development, LLC (“Alton”) who recently submitted its mining and reclamation plan (“MRP”) for the Coal Hollow Mine to the Division of Oil, Gas & Mining (“Division”), for administrative completeness review. During this completeness review, Alton requests the Division not to distribute the draft MRP for public review. Consistent with the Utah Coal Mining and Reclamation Act, public notice of the MRP is only provided “after a complete mining application and reclamation plan . . . is submitted to the division as required by this chapter and the public is notified and given an opportunity for hearing . . .” Utah Code Ann. § 40-10-11(1)(a)(i) (emphasis added). Further, consistent with Utah Code Ann. § 40-10-13, once the MRP is determined complete, notice of the application is advertised and the public is then notified of the location where the MRP may be inspected. Parties then have 30 days from the last date of publication to comment on the MRP and to request an informal conference. Utah Code Ann. § 40-10-13(1)(2); R645-300-120, Public Participation in Permit Planning.

The Government Records Access and Management Act, Title 63, Chapter 2 of the *Utah Code* (“GRAMA”) also does not require the Division to distribute or make public the draft MRP. Utah Code §§ 63-2-104(22)(b)(ii), 63-2-304(22) (2006). Under GRAMA, the Division must allow persons to inspect public records. *Id.* § 63-2-201(1). A “record” does not include “a

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temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working." *Id.* § 63-2-104(22)(b)(ii). If a draft is a record, the Division may limit access to such draft by classifying it as controlled. *Id.* §§ 63-2-201(3), 63-2-304(22). Access to a draft classified as controlled would be prohibited except as provided for in section 63-2-202.

Restricting public access to the draft MRP will enhance the Division's decision making process by protecting open and frank communication involved in creating predecisional drafts. *See Madsen v. United Television, Inc.*, 801 P.2d 912, 915 (Utah 1990); *Dept. of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8-9 (2001) ("The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery . . . and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.").

In addition, Alton objects to the Division's distribution of the MRP to certain selected members of the public prior to completeness review and prior to general public notice of the complete MRP. This practice is contrary to the Utah Coal Act and GRAMA and unfairly allows certain members of the public additional time to review and comment. Distribution of the MRP prior to completeness determination reveals the Division's deliberative process which may include incomplete information or exclude important information that would later be added.

We appreciate your consideration in this matter.

Very truly yours,



Denise A. Drago

DD:jmc:449384

cc: Steve Alder, Esq. (via e-mail)