



STATE OF UTAH

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DIVISION OF
OIL, GAS & MINING

September 25, 1990

Lowell Braxton
Associate Director, Mining
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

RE: Johnell Foreclosure

Dear Mr. Braxton:

Enclosed find copy of the Trustee's Deed transferring ownership of the Johnell property to the State of Utah.

By way of background I will outline the basis for the State's interest in the property, and its rights against Johnell and Summit Minerals. On June 4, 1986, Summit Minerals and Johnell executed a collateral bonding and indemnity agreement under which those parties agreed to do reclamation. By terms of the agreement, if they defaulted on the agreement and failed to conduct the required reclamation, the Board would seek forfeiture of the bond "and begin foreclosure proceedings to sell the collateral hereunder to cover the cost of reclamation". The agreement also includes the following term:

"It is expressly agreed by the parties hereto that in the event the proceeds from sale of the collateral appear to be insufficient to pay the expense of reclamation, the Division will seek to collect from Summit any deficiency between the proceeds from the sale of the collateral and the amount of this Bond."

The agreement is the bond. The property just sold at the trustee's sale is collateral securing the bond. The property was appraised at \$15,000. By bidding in \$15,000 at the Trustee's

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sale, the Division obtains property worth \$15,000, leaving the difference between \$15,000 and \$120,300 (the amount of the bond) still owing by Summit and Johnell. That is a sum of \$105,300.

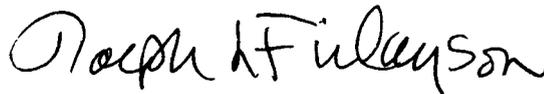
By the agreement, the Board can proceed against Summit only to the extent of the reclamation cost. Thus if the reclamation cost were \$50,000 and the property were sold for \$15,000, \$35,000 would still be owed by Summit under the agreement.

It is not clear to me, under the hypothetical assumptions stated in the prior paragraph, whether Johnell's remaining obligation would be \$35,000 or \$105,300, since the agreement does not limit the Board's right of recovery against Johnell to the reclamation costs. However, the purpose of the statute appears to warrant limiting recovery by the Board to the amount of the reclamation cost. In any event, Oil, Gas and Mining has not lost \$15,000 by bidding in that amount. There is a total obligation in favor of the State of \$120,300, which is represented by the land worth \$15,000 now owned by the State, plus the legal right to recover up to an additional amount of \$105,300 as necessary to complete financing of the reclamation.

As a practical matter, I understand the obligors are judgment proof and the State is probably limited to the land as a resource for reclamation costs. The State owns the land and may sell it for whatever it can get to cover reclamation costs.

I hope this summary is helpful. Let me know if you have any comment or question.

Very truly yours,



RALPH L. FINLAYSON
Assistant Attorney General

RLF:pb

Enclosure

cc: Thomas A. Mitchell, Esq.