



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
REGIONAL OFFICE, SOUTHWEST REGION
P.O. BOX 3156
TULSA, OKLAHOMA 74101

Blackhawk
MA-043/001

REFERENCE NO.
OSM.SW.0201

September 26, 1984

RECEIVED-OSM

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ALBUQUERQUE FIELD OFFICE

MEMORANDUM

TO: Robert Hagen, Director
OSM Field Office, Albuquerque, NM

FROM: Gerald A. Thornton, Attorney *GAJ*
Southwest Region (Tulsa)

SUBJECT: Blackhawk Mine, Utah; Identification of Responsible Party

In response to your memo dated September 6, 1984, I have analyzed the information you provided to determine what entity is responsible for reclamation at the Blackhawk Mine. I have also discussed the matter with an attorney for Bennett Leasing Company, Mark Swan, and with Tom Ehmett of your staff.

I conclude that OSM must look to Utah Coal & Energy Company (UCE), a Nevada corporation, as the legal entity responsible for reclamation. UCE is the entity that owned and operated the mine under SMCRA. At the time of operation the majority of UCE's stock was owned by company founder Clem Cafarelli. C. T. Takahashi of Seattle, Washington, owned some 15%, other Seattle investors owned some 20%, and members of Cafarelli's family allegedly owned the remainder. Takahashi was identified by Mr. Swan as the "money man" behind the mine, but Cafarelli controlled the corporation's activities. As you know, Mr. Cafarelli is dead.

Bennett Leasing Company, a subsidiary of Bennett Industries, now claims it owns 55% of the stock of UCE through foreclosure on a stock pledge Mr. Cafarelli made as collateral on debts to Bennett. Bennett controls UCE and, with Mr. Takahashi, is trying to sell Blackhawk Mine at a profit (or, at least, to cut its losses). The major assets of UCE are leases for the Blackhawk Mine. However, before Cafarelli's death, UCE transferred the leases to Blackhawk Coal Company, Inc. (BCC), a Nevada corporation set up by Cafarelli. Bennett is challenging BCC's ownership of the leases under various legal theories and has a good chance of having the leases returned to UCE. If successful, UCE probably has substantial assets and should be able to perform its reclamation obligations.

At this point, I see no basis for holding Bennett directly responsible for UCE's obligations. But, as controlling stockholder and defacto management, Bennett is responsible for using UCE's corporate assets to meet corporate obligations. If UCE should sell the leases or other assets, any proceeds would have to go to payment of corporate obligations, including reclamation. If Bennett simply sells

its shares in UCE, this would presuppose that the buyer found UCE to have substantial assets, but OSM should examine any such transaction carefully to determine whether it is a paper-shuffle to get Bennett out of the picture. Since Bennett did not, so far as I know, control the actions of UCE when it was operating, OSM could not easily hold it responsible for reclamation unless it raids the till now in violation of its management obligations.

I advised Mr. Swan that OSM would pay close attention to any bulk-sale of UCE's Blackhawk Mine to a new company, and suggested that Bennett seek concurrence on any deal from OSM and the state of Utah. Concurrence would be based on the buying entity assuming all reclamation obligations and having the financial ability to perform. This could be guaranteed by the buyer posting an appropriate reclamation bond with the state, which would have to be done by any entity intending to reopen the mine under a permanent program permit. Without government concurrence, I suggested that UCE and its shareholders would not be relieved of existing reclamation obligations.

If you have any questions on this matter, call me at FTS 745-6243.

Gerald A. Thornton

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cc:

David Jones, Acting Assistant Solicitor for Enforcement and Collections