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May 24, 1994

TO: Dave Donnelly, Senior Reclamation Specialist

FROM: William R. Richards, Assistant Attorney General

Re: Summit/Blackhawk Mine ACT/043/008; Questions Regarding the Sale of Property Obtained Through Bond Forfeiture

This memorandum is in response to your inquiry concerning the ability of the Division of Oil, Gas and Mining (the "Division") to sell the Blackhawk Mine property which served as collateral for the operator's reclamation liability. You were particularly concerned about whether the Division may sell the property in its own right, or whether the Division must turn over the property to the Division of State Surplus.

The real estate which the Division acquired through foreclosure is not surplus property. From my vague understanding of facts in this matter, the operator of the Blackhawk Mine posted the property as collateral for its reclamation liability under Utah's coal act. The Division acquired its interest in the property through a consensual lien granted by the operator. I do not know whether the Division received a mortgage or a trust deed.¹ When the operator failed to meet its

¹ For purposes of this memorandum, the form of the security is not particularly relevant. The form of the instrument, and by what procedure the lien was foreclosed, may become relevant if the Division attempts to seek a deficiency judgment against the mine operator. We may want to obtain the file on the foreclosure proceeding in order to discover more information about the foreclosure.

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reclamation obligations, the Division forfeited the bond and foreclosed on the property. The Division apparently acquired the property at the foreclosure sale.²

Since the Division now owns the property, the Division is free to liquidate the property to raise funds for reclamation. It is important to realize, however, that funds received from the sale of the property secure only the operator's reclamation performance. If the property is not sold for an amount sufficient to reclaim the site, the Division may be required to pursue the permittee, operator, or other parties to obtain additional money to reclaim the site. If the property is sold for more than the amount necessary to reclaim the site, the landowner may be entitled to a return of some of the sale proceeds.

I am aware of no statute under the coal act that would require the Division to sell the property at auction by competitive bidding. Under general state law, however, the sale should be commercially reasonable and be for the fair market value of the land. Failure to sell the land for its fair market value may hinder the Division's ability to seek a deficiency judgment against the permittee or operator. Naturally, it is in the Division's best interest to obtain the highest value possible for the land.

If you desire to hire a real estate agent, the Division should follow the same procedures it uses when hiring any contractor or agent to perform work for the Division.

Let me know if I can be of further help.

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² We should determine exactly how the Division obtained its interest and what amount the Division bid at the sale. For purposes of this memorandum, I am assuming that the Division credit bid the estimated reclamation liability at the time of the sale.