

January 20, 1992.

## PRESS RELEASE

The Peter Kiewit Sons' motion to apportion the condemnation award to it and Whitney Benefits was heard in the U.S. Court of Claims on Friday, January 17, 1992. The motion was heard by Chief Judge Loren A. Smith, who decided in the original case that Whitney and Kiewit should recover \$60,296,000.00 for the Whitney coal. Whitney claimed that the Claims Court did not have jurisdiction to decide claims between private parties and that the dispute should be decided in an pending action in the U.S. District Court for Wyoming.

However, Judge Smith ruled that the Claims Court has jurisdiction to decide issues between Kiewit and Whitney, because the United States has not paid the judgment and other issues, namely the amount of attorney fees and interest to be awarded are still to be decided in that Court. Judge Smith scheduled a hearing on the apportionment issue for February 5, 1992 at Washington, D.C.

Kiewit asserts that it is entitled to over 96 per cent of the judgment, i.e., \$58,381,700.00 to Kiewit and \$1,904,300.00 to Whitney. In papers filed in the Claims Court, Whitney asserts that the Kiewit claim is erroneous and unsupported by law and evidence. Whitney maintains that pursuant to agreements between the parties, control and expense of the case has been equally shared and the judgment should be divided equally, or that under legal rules for apportionment, Whitney is entitled to a greater share than Kiewit.

WHITNEY BENEFITS