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SEP 27 1993

DIVISION OF
BEFORE THE DIVISION OF OIL, GAS AND MINING, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF BOND REVIEW AND) BOND ADJUSTMENT, VALLEY CAMP OF) UTAH, INC. BELINA MINES PERMIT) NO. ACT/007/001)	APPLICATION FOR INFORMAL) CONFERENCE) CAUSE NO. ACT/007/001)
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Applicants, Valley Camp of Utah Company, Inc. ("Valley Camp"), and its successor in interest, White Oak Mining & Construction Co., Inc. ("White Oak"), by and through their respective counsel, hereby petition the Utah Division of Oil, Gas and Mining ("Division") for an informal conference to review the Division's *Finding of Inadequate Bond In Re Valley Camp of Utah, Inc., Belina Mines Complex, ACT/007/001*, received by Valley Camp on September 13, 1993 ("Findings"), attached as Exhibit "A." The Findings constitute an adjustment of bond under Utah Admin. R. 645-301-830.400. Valley Camp and White Oak request an opportunity for informal conference regarding this matter in Salt Lake City, Utah, pursuant to Utah Admin. R. 645-300-123.

I. PAYMENT UNDER PROTEST

The Division's Findings require Valley Camp to provide a reclamation bond in the amount of Five Million, Eight Hundred Ninety-One Thousand Dollars (\$5,891,000.00) within thirty days of receipt. Valley Camp received the Findings on September 13, 1993 during negotiations with White Oak to purchase the Belina Mine Complex. Under the terms of an Asset Purchase Agreement executed on September 16, 1993, Valley Camp represented to White

Oak that it is in material compliance with the requirements of mining and reclamation permit ACT/007/001. Consistent with the terms of the Asset Purchase Agreement, Valley Camp hereby submits the bond rider attached as Exhibit "B" to increase the reclamation bond for ACT/007/001 to \$5,891,000.00. Payment of this bond rider is made to the Division under protest and with the understanding that the reclamation liability may be reduced as a result of these proceedings.

II. PROTEST BY SUCCESSOR IN INTEREST -- WHITE OAK

White Oak has filed an application with the Division for transfer of the Belina Mine Permit No. ACT/007/001 from Valley Camp to White Oak. Pursuant to Utah Code Ann. § 40-10-9(2), a successor in interest may continue operations under the permit so long as a transfer application is submitted timely and the reclamation liability is bonded. White Oak has met these requirements and is participating in these proceedings as Valley Camp's successor in interest under the pending transfer application. Pursuant to R645-300-123.100, any entity "having an interest which is or may be adversely affected" may request an informal conference. As successor in interest to Permit No. ACT/007/001, White Oak joins in this request for informal conference.

III. THE DIVISION'S READJUSTED BOND ESTIMATE IS IMPROPER IN THAT IT EXCEEDS THE PROJECTED COSTS OF RECLAMATION OF THE BELINA MINE COMPLEX

A. The Readjusted Bond Estimate is Invalid Because it is Based Upon Division Policies Which Violate the Utah Rulemaking Act.

The final readjusted bond estimates set forth in the Division's Findings is based on policies set forth in the Division's reclamation guidelines. A copy of these guidelines is attached hereto as Exhibit "C." These policies have not been adopted as rules pursuant to the Utah Administrative Rulemaking Act, Utah Code Ann. § 63-46A-1, et seq. Pursuant to Utah

Code Ann. § 63-46A-3(3), "Rulemaking is required when an agency issues a written interpretation of a state or federal legal mandate." The Division's reclamation bonding policies have not been promulgated as rules in accordance with the Utah Administrative Rulemaking Act and are, therefore, invalid. As a consequence, the Division's bond readjustment estimate which is based on these unpromulgated guidelines is invalid and unenforceable. Finally, to the extent the bond estimate which Valley Camp submitted in conjunction with its pending Mining & Reclamation Plan ("MRP"), is based on these unpromulgated guidelines it is also invalid and unenforceable.

B. The Proposed Readjusted Bond Estimate of Both the Division and Valley Camp Exceed the Cost of Reclamation Liability Proposed by the Successor in Interest.

The cost of reclamation liability estimated by the Division in its Findings and by Valley Camp in the draft MRP greatly exceed the actual cost of reclaiming the disturbed acreage. Both the MRP and the Division's Findings are based on inaccurate assumptions. For example, the cost of building demolition is based on the incorrect assumption that the mine building foundations are composed of solid concrete, thus grossly inflating the building demolition costs.

The reclamation estimates also reflect earth work and revegetation costs for removal of the access road located within the disturbed area. This assumption is inconsistent with the operator's post-mining land use which proposes to leave the road for private access by surface owners in the area.

The Division has also improperly enlarged the scope of reclamation liability at Belina Mine by applying the "worst case scenario" under Division guidelines. In addition, pursuant to the Division's guidelines, the reclamation estimate fails to credit the operator for cost

of salvage. Finally, the Division has applied Means Cost Data, although this reference does not reflect the local costs of reclamation activities. These unpromulgated policies have inflated the reclamation bond estimate by both Valley Camp and the Division and these unpromulgated policies are not enforceable.

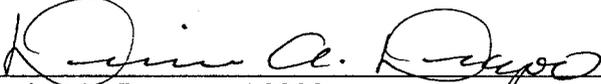
C. **The Division's Bond Estimate Exceeds the Cost of Reclamation Liability Set Forth in Valley Camp's Proposed MRP.**

In the alternative to III.A. and B. above, the Division's bond estimate should be reduced to that set forth in the MRP. The reclamation bond summary prepared on behalf of Valley Camp and submitted with the MRP is attached as Exhibit "D." The Division's Findings estimate a total reclamation cost of \$5,891,000.00 in excess of the MRP bond estimate of \$5,347,000.00. Each item of the MRP Reclamation Cost Summary has been inflated without explanation on the Division's bond estimate. The Division also added an additional 5% in "engineering redesign" which duplicates "contingency and engineering" under the MRP estimate. A new "contract management fee" is also added without explanation. The Division's inflation rate is calculated in 1995 Dollars rather than in 1993 Dollars. The Division's Findings fails to provide any explanation for increasing the reclamation liability beyond that set forth in the MRP and is therefore arbitrary, capricious and an abuse of discretion.

For the above-stated reasons, Valley Camp and White Oak request an informal conference regarding the reclamation bond estimate for the Belina Mine Complex.

Respectfully submitted this 27th day of September, 1993.

FABIAN & CLENDENIN, a Professional
Corporation


Denise A. Drago, A0908
Attorneys for White Oak Mining & Construction
Company, Inc.
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900
Facsimile: (801) 596-2814

STOEL RIVES BOLEY JONES & GREY


John S. Kirkham #1831
Attorneys for Valley Camp of Utah, Inc.
201 South Main, #1100
Salt Lake City, Utah 84111
Telephone: (801) 578-6956
Telecopier: (801) 578-6999

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 1993, I caused to be hand delivered a true and correct copy of the foregoing APPLICATION FOR INFORMAL CONFERENCE, to:

James Carter, Director
Utah Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180



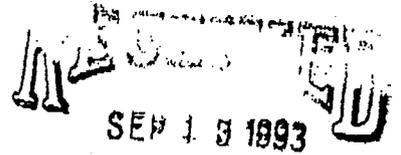
EXHIBIT A



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-358-3840 (Fax)
801-538-5319 (TDD)



August 30, 1993 VALLEY CAMP OF UTAH, INC.

CERTIFIED RETURN RECEIPT
P 074 978 361

Mr. James L. Litman
President & Chief Operating Officer
Valley Camp of Utah, Inc.
Scofield Route
Helper, Utah 84526

Re: Finding of Inadequate Bond, Valley Camp of Utah, Inc., Bellna Mine,
ACT/007/001, Folder #3, Carbon County, Utah

Dear Mr. Litman:

The Division's technical staff has completed a review of the bond estimate information submitted as part of the recently submitted Mining and Reclamation Plan for the Bellna Mine. It has been determined that the current reclamation bond is inadequate. Enclosed you will find the Division's Finding of Inadequate Bond which details the requirements Valley Camp must meet to ensure an adequate bond. Also enclosed is the Division's detailed cost estimate upon which the reclamation bond amount has been based.

Please read the Finding of Inadequate Bond to be sure you understand the requirements and submit a timely response as appropriate. If you have any questions, don't hesitate to call.

Sincerely,

Daron R. Haddock
Permit Supervisor

Enclosure
cc: J. Smith
W. Western
BONDADJU.BEL



BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---ooOoo---

IN THE MATTER OF BOND REVIEW	:	FINDING OF INADEQUATE BOND
AND BOND ADJUSTMENT,	:	IN RE: VALLEY CAMP OF UTAH,
VALLEY CAMP OF UTAH	:	INC., BELINA MINES COMPLEX,
BELINA MINES PERMIT	:	ACT/007/001

---ooOoo---

In the above entitled matter, the Division makes the following written Findings and Conclusions of Law concerning the adequacy of the reclamation bond posted by Valley Camp of Utah, Inc. (the "Permittee").

FINDINGS OF FACT

1. As part of renewal process for permit ACT/007/001, Valley Camp of Utah was required to submit revised mine plan information in accordance with a schedule outlined in the August 25, 1989 permit.
2. Valley Camp of Utah made various submittals to comply with the permit requirements, each of which were reviewed by the Division until on August 5, 1993, a completed Mining and Reclamation Plan was submitted and accepted by the Division. Included in the Mining and Reclamation Plan as Appendix R3 was a revised Reclamation Bond Estimate.
3. The Division has completed a review of the materials submitted by Valley Camp and has prepared a revised Reclamation Bond Estimate based on the information provided. The amount determined by the Division which must be posted as a reclamation bond is \$5,891,000.00.

4. Valley Camp's current bond is in the amount of \$2,300,000.00.

CONCLUSIONS OF LAW

1. The bond currently in place is in an amount less than that determined by the Division as necessary to ensure completion of the reclamation plan, if the work must be completed by the Division in the event of forfeiture.

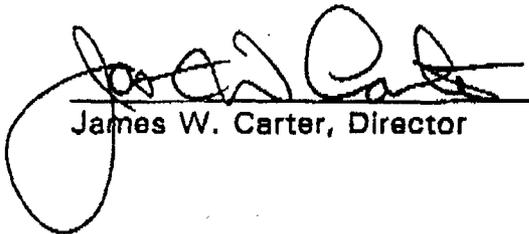
2. The Permittee is operating a coal mining and reclamation operation pursuant to a permit, a condition of which requires a bond sufficient to allow the Division to finalize reclamation under the bond in the event of forfeiture. This condition has not been met. The amount necessary to meet the requirement of the law which must be posted as a performance bond is determined to be \$5,891,000.

3. If these Findings and Conclusions constitute an adjustment of the amount of bond pursuant to Utah Admin. R. 645-301-830.400, then the Permittee must be granted an opportunity for an informal conference. If a conference is desired, a written request must be received by the Division within 15 days of receipt of this Finding of Inadequate Bond.

4. Valley Camp of Utah, Inc. must provide a reclamation bond in the amount of \$5,891,000 within 30 days of receipt of this Finding of Inadequate Bond.

SIGNED this 9th ^{September} day of ~~August~~ 1993.

STATE OF UTAH
DIVISION OF OIL, GAS, AND MINING



James W. Carter, Director

**RECLAMATION BOND ESTIMATE
BOND SUMMARY
BELINA COMPLEX
VALLEY CAMP OF UTAH
ACT/007/034
AUGUST, 1993 - WHW**

Building Demolition (1.00)		\$725,739
Facilities (2.00)		\$1,221,364
Earthwork (3.00)		\$982,793
Revegetation (4.00)		\$1,398,553
Subtotal Direct Costs		\$4,328,449
Maintenance & Monitoring Cost	10.00%	\$432,845
Contingency	10.00%	\$432,845
Engineering Redesign	5.00%	\$216,422
Contract Management Fee	5.00%	\$216,422
Mobilization & Demobilization	2.50%	\$108,211
Inflation 1.42% for 2.5 Years (1995)	3.60%	\$155,824
Total Reclamation Cost		\$5,891,018
Reclamation Cost Rounded to nearest \$1,000		\$5,891,000

EXHIBIT B



Permit Number: UT0013
and
UT0049

INCREASE RIDER

To be attached to and form part of Bond No. 25 S 100723365 on behalf of VALLEY CAMP OF UTAH, INC., in favor of the STATE OF UTAH DIVISION OF OIL, GAS AND MINING (DIVISION) AND THE. U.S. DEPARTMENT OF INTERIOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSM) effective DECEMBER 7, 1991 in the amount of TWO MILLION, THREE HUNDRED THOUSAND AND NO/100--(\$2,300,000.00)-- DOLLARS.

The condition of this obligation is such that this bond is hereby increased from \$2,300,000.00 to \$5,891,000.00 effective as of September 13, 1993.

It is understood and agreed that the aggregate liability under this bond is FIVE MILLION, EIGHT HUNDRED NINETY ONE THOUSAND AND NO/100--(\$5,891,000.00)-- DOLLARS.

WITNESS:

VALLEY CAMP OF UTAH, INC.

Nancy J. Reiskner

By David E. [Signature]
Secretary/Treasurer

WITNESS:

THE AETNA CASUALTY AND SURETY COMPANY

[Signature]

By [Signature]
Richard C. Charles, Attorney-In-Fact



POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint

*John E. Schneider, Richard C. Charles, Stephen M. Bynum, Robert L. Raney
John G. Emerick, Jr., Daniel A. Conti, Catherine B. Hoffman
Julie Mastrandrea, Jeffrey L. Gaines, Julie H. Coleman, Denese B. Artis **
of *Charlotte, NC*

, its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated, the following instrument(s):
by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incidents thereto

and to bind THE AETNA CASUALTY AND SURETY COMPANY, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of THE AETNA CASUALTY AND SURETY COMPANY, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Company, which Resolutions are now in full force and effect:

VOTED: That each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Group Executive, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him or her.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Group Executive, a Senior Vice President, a Vice President, an Assistant Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Standing Resolution voted by the Board of Directors of THE AETNA CASUALTY AND SURETY COMPANY which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Group Executive, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, THE AETNA CASUALTY AND SURETY COMPANY has caused this instrument to be signed by its Assistant Vice President, and its corporate seal to be hereto affixed this *6th* day of *August*, 19 *93*

State of Connecticut }
County of Hartford } ss. Hartford



THE AETNA CASUALTY AND SURETY COMPANY
By *George W. Thompson*
George W. Thompson
Assistant Vice President

On this *6th* day of *August*, 19 *93*, before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Assistant Vice President of THE AETNA CASUALTY AND SURETY COMPANY, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that he/she executed the said instrument on behalf of the corporation by authority of his/her office under the Standing Resolutions thereof.



Dorothy L. Marti
My commission expires August 31, 1998 Notary Public
Dorothy L. Marti

CERTIFICATE

I, the undersigned, Secretary of THE AETNA CASUALTY AND SURETY COMPANY, a stock corporation of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Board of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this *13TH* day of *SEPTEMBER*, 19 *93*



By *William T. DiRoberts*
William T. DiRoberts
Secretary

EXHIBIT C

GUIDELINES FOR RECLAMATION COST ESTIMATION

Detailed cost estimates are required to determine third party reclamation costs for mining properties. (Per acre bonding costs without detailed support calculations are not acceptable.) Each cost estimate that determines the amount of the reclamation bond must be computed using the production capabilities of equipment per unit time in relation to the volume of materials needed to be moved (Productivity). This system will be used for most items estimated.

1. The condition assumed for forfeiture is that the operator ceases operations with site conditions in the maximum allowable disturbance as indicated in the Mining Plan (worst case scenario). The estimator determines the most probable worst case situation, and details that worst case.

Detailed maps, drawings and/or sketches showing location and quantity requirements for each area assists both the estimator and the reviewer in the calculations. The estimator may develop several cross sections of excavations and backfilling areas to compute the volume of material to be moved. Mass balance calculations also are needed to determine how much material will need to be wasted or borrowed when earthwork is performed. This is especially important in determining topsoil requirements for borrow, stockpiling and distribution.

An outline of the calculations or a check sheet is helpful in keeping track of all the parts of the cost estimate.

2. Reference materials used by the Division in bond cost estimating are the "RENTAL RATE BLUE BOOK," the "MEANS SITE WORK COST DATA" and "CATERPILLAR PERFORMANCE HANDBOOK." These documents will be the source of data for finalizing cost estimates.

The Cat Book gives the productivity rates for each size of equipment manufactured by Caterpillar. The Cat Book also gives a selection of operational factors that affect machine production. Each of these adjustment factors must be considered for use in the final calculations.

The Blue Book presents the cost of renting various pieces of equipment used in the mining industry, particularly those used for earthwork in reclamation activities. These costs range from hourly to monthly costs. In addition, the hourly operation costs must be included to account for fuel consumption and maintenance costs. The Blue Book costs do not include operator costs.

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The Means Book is used to determine labor and operator costs. As with the Blue Book rental rates for equipment, labor costs must also be estimated at subcontractor rates with overhead and profit included. The Means Book provides labor rates with these factors included.

Inflation factors for bond estimates are derived from Means Historical Cost Data. Inflation rates for construction during the previous three years are averaged and applied to the cost estimate as an inflation factor. The Division revises the inflation rate in February of each year.

3. Activities included in the reclamation plan such as demolition of structures and buildings (removal of foundations), clearing and grubbing, and debris and rubbish removal, Means Cost Data may be used. Other costs such as seed mixtures, revegetation equipment costs and fertilization costs are obtained from regional suppliers and operators.

Salvage value of equipment or structures is not included in the cost estimate. For mine reclamation, all facilities are to be considered as a liability requiring a cost to the regulatory authority to remove them from the mine permit area and, therefore, no salvage value will be considered.

4. Replacement of topsoil should be calculated on a cubic yard basis. The exact depth of the topsoil to be replaced should be noted in the reclamation plan and on the maps where applicable (mass balance). In replacing the topsoil, the estimator should consider haul distances, replacement depths, compaction and loss of topsoil during handling. Seeded preparation, fertilization and mulching costs can be calculated on a cost per acre basis and involve typical farming practices. Irrigation, if used, should be cost on a unit basis.

The application rates listed in the reclamation plan for seeding, fertilization and mulching should be used by the estimator. Costs for shrubs or tree plantings should also be included.

5. Maintenance costs for areas not successfully revegetated the first time should be included and are based on the probability of success determined by a qualified revegetation specialist knowledgeable of the environmental constraints at each mine. This is usually determined by considering at least a 20 percent revegetation rate.

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6. Miscellaneous structures such as sedimentation ponds and diversion ditches need special calculations for bonding purposes. Removal of these special structures needs to be calculated on an individual unit cost basis.
7. Junk piles consisting of old or used or abandoned equipment, trash, rubble and debris may be estimated by computing the cost trips to the approved landfill (or disposal site).
8. A supervision cost must be added to the reclamation estimate. A 10 percent contingency will be added to the estimate.
9. The Act and regulations include a requirement to periodically review and adjust the bond amount to reflect the current reclamation costs. Therefore, it will be required to tie the cost estimate for bonding purposes into an index reflecting the changes in mining and reclamation costs. At present the Division has allowed for indexing by incorporating cost index into the estimate. This cost index is calculated as mentioned previously in Item 2.
10. Opportunities for adjustment occur several times throughout the permit term of a typical mine. At a minimum, bonds are to be reviewed during the mid-term (two and one-half year) review and the five year review. If needed, bonds can be refigured at any time and the Division may incorporate an annual review of all bonds for adjustment.

DEFINITIONS:

RECLAMATION COST ESTIMATES - refers to the process of calculating the cost of performing specific reclamation tasks.

ESTIMATOR - refers to the person computing the cost estimate.

PERFORMANCE BONDING - refers to a guarantee by the obligees under the bond to perform the specific tasks to complete mine reclamation in accordance with the approved permit. The performance bond represents a quantifiable amount of work from a disturbed area to the finished post-mining reclamation condition. Bonding requirements consist of a certification that the funds will be available to contract for completion of all operator reclamation liability should the operator be found unable or unwilling to do the required work.

As outlined below, the following criteria shall be contained within the reclamation plan to complete the requirements for bonding:

EXHIBIT D

TABLE R-4.
RECLAMATION COST SUMMARY

ITEM	COST
Buildings	\$718,700.00
Facilities	\$1,012,480.00
Earthwork	\$1,132,636.00
Revegetation	\$1,392,094.00
Reclamation Cost Subtotal:	\$4,255,910.00
Maintenance & Monitoring (10%)	\$425,591.00
Contingency & Engineering (10%)	\$425,591.00
Mobilization & Demobilization (2.5%)	\$106,398.00
Subtotal:	\$5,213,490.00
1993 Dollars (2.5% Inflation, Rounded):	\$5,346,746.00
TOTAL:	\$5,347,000.00