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NOV 08 1993

SECRETARY, BOARD OF
OIL, GAS & MINING**BEFORE THE BOARD OF OIL, GAS & MINING****DEPARTMENT OF NATURAL RESOURCES****STATE OF UTAH**

IN THE MATTER OF NOTICE OF	)	VALLEY CAMP OF UTAH, INC.,
VIOLATION NO. 93-39-7-1 AND	)	AND WHITE OAK MINING &
CESSATION ORDER NO. C93-39-2-1,	)	CONSTRUCTION COMPANY'S
VALLEY CAMP OF UTAH, INC.,	)	PETITION FOR TEMPORARY
BELINA MINES COMPLEX,	)	RELIEF
PERMIT NO. ACT/007/001	)	CAUSE NO. ACT/007/001
	)	<i>Checked No. 93-040</i>
		<i>- 041</i>

Pursuant to Utah Code Ann. § 40-10-22(3)(c), Applicants Valley Camp of Utah, Inc. ("Valley Camp") and White Oak Mining & Construction Company, Inc. ("White Oak"), by and through their respective counsel, hereby petition the Board of Oil, Gas & Mining ("Board") for temporary relief concerning enforcement of Notice of Violation No. N93-39-7-1 ("NOV") and Cessation Order No. C93-39-2-1 ("CO").

The NOV was issued to Valley Camp on October 8, 1993 for the alleged "failure to conduct all mining and reclamation operation only as described in the approved mining and reclamation application" in violation of R645-303-142. The NOV required the immediate cessation of "all mining and reclamation activities by and through White Oak." Valley Camp abated the NOV on October 8, 1993 and Director Carter authorized resumption of mining activities on this date. Despite abatement of the NOV, a CO was issued by the Division to Valley Camp for the alleged "failure to abate N93-39-7-1 within the required

abatement time." This CO was received by Valley Camp on November 5, 1993. Applicants have appealed the fact of violation regarding both the NOV and the CO for formal Board review by petition dated November 6, 1993, incorporated herein by reference.

Applicants are unsure of the implications of the issuance of the CO. Although the CO itself does not by its own terms require cessation of mining operations, it appears to be issued for the alleged failure to abate the NOV which requires immediate cessation of operations by White Oak. In addition, the CO carries a mandatory \$750/day penalty. Therefore, Applicants request the Board to grant a temporary stay from the NOV and the CO and any enforcement or penalty thereunder pending review of the fact of violation in response to Applicants' Petition for Formal Hearing dated November 6, 1993. Applicants request that temporary relief be granted retroactively to October 8, 1993, the date of abatement of the NOV.

Pursuant to Utah Code Ann. § 40-10-22(c)(3), the Board may grant temporary relief pending completion of the investigation and hearing on the fact of violation. The Board is required to issue an order granting or denying this relief expeditiously and, where the applicant requests relief from an order for cessation of coal mining and reclamation operations, the order or decision on this request must be issued within five (5) days of its receipt. The Board may grant relief under such conditions as it may prescribe if a hearing has been held on the request for temporary relief and the conditions of subsections 40-10-14(4)(a), (b) and (c) are met. Utah Code Ann. § 40-10-14(4)(a)-(c) provides as follows:

Where a hearing is requested pursuant to subsection (3), the board may, under conditions it prescribes, grant temporary relief it deems

appropriate pending final determination of the proceedings if:

(a) all parties to the proceedings have been notified and given an opportunity to be heard on the request for temporary relief;

(b) the person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(c) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

Applicants meet each of these requirements. First, this petition has been served on the Division and therefore serves as notice providing an opportunity to the Division to be heard on the request for temporary relief consistent with Utah Code Ann. § 40-10-14(4)(a). Second, the petition for formal hearing on the fact of violation dated November 6, 1993 establishes that there is a substantial likelihood that the Applicants will prevail on the merits in these proceedings, consistent with Utah Code Ann. § 40-10-14(4)(b).

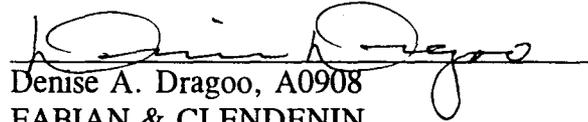
Finally, Applicants meet the requirements of Utah Code Ann. § 40-10-14(4)(c) in that the relief requested will not cause significant environmental harm. As set forth in the November 6, 1993 petition, Applicants have met the requirements under Utah Code Ann. § 40-10-9(2) for continued operation under Permit No. ACT/007/001. White Oak is conducting operations consistent with Valley Camp's approved mining and reclamation plan. An application to transfer the permit from Valley Camp to White Oak has been submitted to the Division and a reclamation bond rider in the amount of \$5.81 million has been posted

with the Division. Therefore, the temporary stay will not adversely affect the public health or cause significant imminent environmental harm.

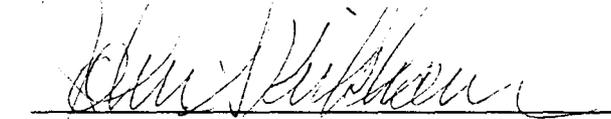
In addition, a federal cessation order filed against White Oak in this matter by the Office of Surface Mining Reclamation and Enforcement ("OSMRE"), was recently vacated on this basis by federal Administrative Law Judge Rampton. In proceedings regarding White Oak's temporary relief petition, ALJ Rampton specifically found that White Oak's activities do not "adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources." Draft Order effective October 18, 1993, attached as Exhibit A. Consistent with this finding, ALJ Rampton vacated OSMRE's cessation order, finding that White Oak is operating pursuant to Valley Camp's Permit No. ACT/007/001, and has submitted an application to transfer the mine permit. It is also of note that pending the hearing before ALJ Rampton, the United States Federal District Court for the District of Utah issued a temporary restraining order on Friday, October 15, 1993 preventing OSMRE from enforcing the CO or implementing or acting upon it in any way. A copy of the temporary restraining order issued by United States District Court Judge Sam in Docket No. 93-C-916S is attached hereto as Exhibit B.

Therefore, for the above-stated reasons, Applicants request that the Board enter an order granting temporary relief from enforcement of the NOV or CO effective from October 8, 1993 until the Board enters its written determination regarding the fact of the violation. Applicants request a telephonic hearing on this matter in Salt Lake City, Utah.

RESPECTFULLY SUBMITTED this 8th day of November, 1993.



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 1993, I caused a true and correct copy of the foregoing VALLEY CAMP OF UTAH, INC. AND WHITE OAK MINING & CONSTRUCTION COMPANY'S PETITION TEMPORARY RELIEF, to be hand delivered to:

James W. Carter, Director
Utah Division of Oil, Gas & Mining
355 West North Temple, Suite 350
Salt Lake City, Utah 84180-1203

Jan Brown
Utah Board of Oil, Gas & Mining
355 West North Temple, Suite 350
Salt Lake City, Utah 84180-1203

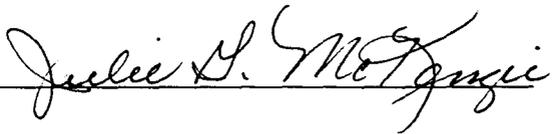


EXHIBIT A

October 18, 1993

ORDER

WHITE OAK MINING & CONSTRUCTION	:	Docket No. DV 94-1-R
COMPANY, INC.,	:	
	:	
Applicant,	:	Cessation Order No.
	:	93-020-244-1
v.	:	
OFFICE OF SURFACE MINING	:	Permit No. ACT/007/001
RECLAMATION AND ENFORCEMENT	:	
(OSMRE),	:	Belina Mine
	:	Carbon County, Utah
Respondent.	:	

Cessation Order Vacated

On October 14, 1993, White Oak Mining & Construction Company, Inc. ("White Oak") filed an Application for Review, Petition for Temporary Relief and Request for Expedited Hearing from the enforcement of Cessation Order No. 93-020-244-1 issued by OSMRE pursuant to § 521(a) of the federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and § 40-10-22(1) of the Utah Coal Mining & Reclamation Act

"UCMRA"). The Cessation Order ("CO") was issued at 10:00 a.m. on Thursday, October 14, 1993, to White Oak as designated operator of Valley Camp of Utah, Inc.'s ("Valley Camp's") Belina Mine Permit No. ACT/007/001, Carbon County, Utah. The CO was issued by OSMRE for White Oak's alleged "failure to obtain a permit issued by the regulatory authority prior to engaging in coal mining operations." Cessation of mining operations was required immediately upon issuance of the CO. On Friday, October 15, 1993, White Oak obtained a temporary restraining order in the United States District Court for the District of Utah, Central Division, Docket No. 93-C-916S ("TRO"). The TRO prevented OSMRE from enforcing, implementing or acting upon in any way the CO. The TRO was set to expire on Monday, October 18, 1993 at 5:00 p.m.

Pursuant to a Notice of Hearing issued on October 15, 1993, and faxed and mailed to the parties, a hearing was held on Monday, October 18, 1993 in Salt Lake City, Utah. Denise A. Dragoo, Esq., and Michele Mitchell, Esq., Salt Lake City, Utah, appeared for the Applicant, and John Retrum, Esq., Office of the Field Solicitor, Department of the Interior, Denver, Colorado, appeared for the Respondent.

After testimony and evidence was received, an oral decision on the record was issued vacating the CO effective at 5:00 p.m. on Monday October 18, 1993. The following restates and clarifies that order. It was found that White Oak is operating pursuant to Valley

Camp's Mine Permit No. ACT/007/001 and has submitted an application to transfer the mine permit. Valley Camp was found to be the permittee of the mine permit. White Oak's activities were found to not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources. Consequently, OSMRE should have provided a written notice to the State of Utah, giving its reasons for believing that the State's action was not appropriate and culminating in a Ten-Day Notice ("TDN") to the State and the permittee before proceeding with enforcement action. It was found that OSMRE failed to provide the State and the permittee with a TDN before taking enforcement action. Therefore, the CO was vacated.

John R. Rampton, Jr.
District Chief
Administrative Law Judge

Appeal Information

Any party adversely affected by this decision has the right of appeal to the Interior Board of Land Appeals. The appeal must comply strictly with the regulations in 43 CFR Part 4 (see enclosed information pertaining to appeals procedures).

Distribution:

By Certified Mail:

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United States Department of the Interior
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Denver, Colorado 80225

Surface Mining Law Summary
Attention: Marcia Smith
P.O. Box 281
Corbin, Kentucky 40701

By Regular Mail:

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Branch of Inspection & Enforcement
U.S. Department of the Interior
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Director
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John Heider
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Stephen Roth, Esq.
United States Department of Justice
350 South Main Street, Room 476
Salt Lake City, Utah 84101

EXHIBIT B

RECEIVED CLERK

OCT 15 1993

U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

WHITE OAK MINING &)
CONSTRUCTION COMPANY, INC.,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF THE)
INTERIOR, OFFICE OF SURFACE)
MINING RECLAMATION AND)
ENFORCEMENT,)
)
Defendants.)
_____)

TEMPORARY RESTRAINING ORDER

No. 93-C-915 §

Judge _____

Based upon the Motion of Plaintiff White Oak Mining & Construction Company, Inc., the Affidavit of in support thereof, the arguments of counsel, and good cause appearing before,

IT IS HEREBY ORDERED:

1. The Defendants are prevented from enforcing, implementing or acting upon in any way Cessation Order No. C93-020-244-1, issued by the Defendants on October 14, 1993. No civil or other penalty of any kind will accrue as a result of plaintiff's noncompliance with the Cessation Order.

2. This Temporary Restraining Order is issued on the basis of a finding of the Court that irreparable injury will be sustained by White Oak if the Defendant's Cessation Order is enforced. White Oak will lose \$28,000.00 a day. Additionally, 20 employees will

be laid-off. Furthermore, White Oak will be unable to comply with the terms of its supply contracts. The injury is irreparable because, absent a showing of bad faith, money damages are unavailable to make White Oak whole for injuries suffered due to the Cessation Order.

3. The Court further finds that the harm to defendants is minimal. There is a reclamation bond in place and White Oak has timely applied for approval of transfer of the mine permit. White Oak's operations are an integral continuation of White Oak's predecessor in interest.

4. The Court further finds that a stay in the enforcement will not adversely affect the public health and that there is a substantial likelihood of success on the merits.

5. It is further ordered that the reclamation bond already in place is sufficient security to protect defendants in the event this temporary restraining order is improvidently issued.

6. This Order shall expire on Monday, the 18th day of October, 1993, at the hour of 5:00 P.m.

7. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants be and appear before this Court on _____, the ____ day of March, 1993, at the hour of _____ .m., before the Honorable _____, Judge, and then and there show cause, if any they have, why a

preliminary injunction should not be issued, incorporating the terms of this Restraining Order during the pendency of this action.

ENTERED this 18th day of October, 1993 at the hour of 8:31 a.m.

BY THE COURT:

Judge Blair L. ...

FILED

NOV 08 1993

**SECRETARY, BOARD OF
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS & MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF NOTICE OF	)	VALLEY CAMP OF UTAH, INC.,
VIOLATION NO. 93-39-7-1 AND	)	AND WHITE OAK MINING &
CESSATION ORDER NO. C93-39-2-1,	)	CONSTRUCTION COMPANY'S
VALLEY CAMP OF UTAH, INC.,	)	PETITION FOR FORMAL
BELINA MINES COMPLEX,	)	HEARING -- FACT OF VIOLATION
PERMIT NO. ACT/007/001	)	CAUSE NO. ACT/007/001
	)	<i>Docket No. 93-070</i>
		<i>- 0411</i>

Applicant Valley Camp of Utah, Inc. ("Valley Camp") and White Oak Mining & Construction Company, Inc. ("White Oak"), by and through their respective counsel, hereby petition the Board of Oil, Gas & Mining ("Board") for an formal hearing to review the fact of violation of Notice of Violation No. N93-39-7-1 ("NOV") and Cessation Order No. C93-39-2-1 ("FTACO").

The NOV was issued to Valley Camp for the alleged "failure to conduct all mining and reclamation operation only as described in the approved mining and reclamation application" in violation of R645-303-142. The NOV required the immediate cessation of "all mining and reclamation activities by and through White Oak." No penalty assessment has yet been proposed for the NOV. The FTACO was issued to Valley Camp for the alleged "failure to abate N93-39-7-1 within the required abatement time." No penalty assessment has yet been proposed for the FTACO.

Valley Camp and White Oak hereby challenge the fact of violation and petition the Board for formal hearing of this matter.

STATEMENT OF FACTS

1. On Friday, October 8, 1993 between 11:00 a.m. and 11:30 a.m., the Division inspected the Belina Mine. NOV N93-39-7-1, a true and correct copy of which is attached as Exhibit A.

2. At approximately 11:30 a.m., on October 8, 1993, Division Inspector Steven J. Demczak issued NOV N93-39-7-1 to Valley Camp and served the same on White Oak. The NOV alleged violation of R645-300-142 for "failure to conduct all mining and reclamation operations only as described in the approved mining and reclamation application." The NOV applied to "all mining and reclamation by and through White Oak" and required White Oak to immediately cease "all mining and reclamation activities."

3. Immediately upon service of the NOV, White Oak ceased all mining operations.

4. Immediately after service of the NOV, White Oak, through its counsel of record, contacted Division Director James M. Carter regarding the NOV and determined that neither Director Carter nor Assistant Attorney General Thomas A. Mitchell were aware that the NOV had issued.

5. White Oak's counsel faxed a copy of the NOV to the Division in Salt Lake City, Utah, and Director Carter indicated that the NOV could be abated by submission of a letter clarifying that Valley Camp had designated White Oak as operator of the Belina Mine Permit No. ACT/007/001.

6. Valley Camp faxed a letter dated October 8, 1993 to Director James M. Carter at approximately 3:00 p.m. on October 8, 1993. This letter provides that, consistent with Utah Code Ann. § 40-10-9(2) and pursuant to the terms of an Asset Purchase Agreement dated September 16, 1993 (the "Agreement"), between Kanawha and Hocking Coal and Coke Company, Inc. and Valley Camp, Sellers, and White Oak, Buyer, Valley Camp has designated White Oak as operator of Permit No. ACT/007/001 pending approval of the application to transfer the permit to White Oak. Letter dated October 8, 1993, attached hereto as Exhibit B.

7. White Oak's counsel confirmed the Division's receipt of this letter in a telephone conversation with Director Carter at approximately 3:00 p.m. on October 8, 1993. Director Carter stated that the letter from Valley Camp abated the NOV and further stated that the operator could resume mining activities.

8. Despite Director Carter's representations that the NOV had been abated, the Division issued Cessation Order No. C93-39-2-1, dated November 28, 1993 and received by Valley Camp on Friday, November 5, 1993, alleging failure to abate NOV 93-39-7-1 within the required abatement time ("FTACO"). The FTACO did not require cessation of mining operations. A true and correct copy of one FTACO is attached as Exhibit C.

9. NOV N93-39-7-1 and the FTACO were issued notwithstanding the Division's issuance of N93-39-6-1 to Valley Camp for the alleged "failure to obtain prior written approval in accordance with R645-303-300 before transferring, assigning or the sale of permit rights granted by a permit." NOV N93-39-6-1 was issued on September 29, 1993

and has been appealed to the Board for formal review. A true and correct copy of NOV N93-39-6-1 is attached as Exhibit D.

10. NOV N93-39-6-1 and the FTACO were issued notwithstanding the fact that White Oak had previously filed an application to transfer Permit No. ACT/007/001 on Wednesday, September 27, 1993. A true and correct copy of the application is attached as Exhibit E.

11. NOV N93-39-6-1 and the FTACO were issued notwithstanding that on September 27, 1993, the Division was provided with Valley Camp's reclamation bond and rider in the total amount of \$5,891,000 to secure reclamation liability for Permit No. ACT/007/001. A true and correct copy of the reclamation bond and rider is attached as Exhibit F.

12. Pursuant to Utah Code Ann. § 40-10-9(2), White Oak may continue operations under Permit No. ACT/007/001 so long as an application for transfer of the permit has been submitted to the Division and reclamation bond coverage is provided.

13. On August 26, 1993, before proceeding with the purchase of the Belina Mine, representatives of White Oak and Valley Camp met with Director Carter to confirm Division policy regarding transfer of the mine permit, continued operations of the mine pending transfer of the permit and the amount of the reclamation bond proposed under Valley Camp's pending mining and reclamation plan ("MRP").

14. At this meeting, Director Carter agreed that the parties could proceed with the sale of the mine so long as Valley Camp provided reclamation bond coverage and so

long as White Oak submitted an application for transfer consistent with Utah Code Ann. § 40-10-9(2).

15. At this meeting, Director Carter agreed to the continued operation of the Belina Mine Complex during the permit transfer approval process so long as White Oak was designated as Valley Camp's operator consistent with Utah Code Ann. § 40-10-9(2).

16. On Friday, September 3, 1993, representatives from White Oak met with Director Carter and reconfirmed that the sale of the Belina Mine could proceed as long as the requirements of Utah Code Ann. § 40-10-9(2) were met. At that time, White Oak also requested the Division to delay approval of the MRP pending submission of a revised bond estimate.

17. Based on Director Carter's statements, White Oak and Valley Camp entered into an Asset Purchase Agreement which provided that White Oak would submit an application for transfer of permit ACT/007/001 to the Division within 30 days of closing.

18. On September 13, 1993, Valley Camp received a findings document from the Division requiring Valley Camp to provide a reclamation bond in the amount of \$5,891,000 for Permit No. ACT/007/001.

19. White Oak and Valley Camp closed the Asset Purchase Agreement on September 16, 1993.

20. On September 27, 1993, White Oak submitted an application for transfer and Valley Camp's bond rider in the amount of \$5,891,000 along with a joint request for informal hearing to review the amount of the bond. The informal hearing has

been indefinitely postponed to allow White Oak to amend the reclamation bond estimate under the MRP.

21. White Oak's operations at the Belina Mine are an integral, uninterrupted extension of the operations at the Belina Mine permitted by Valley Camp under Permit No. ACT/007/001.

22. On Thursday, October 14, 1993, the federal Office of Surface Mining ("OSM") issued a cessation order ("CO") to White Oak for "failure to obtain a permit issued by the regulatory authority prior to engaging in coal mining operations" under R645-300-112.900. This CO was vacated by the Office of Hearings and Appeals, U.S. Department of the Interior by Order of Administrative Law Judge John R. Rampton, Jr., dated October 18, 1993. A true and correct copy of the proposed Order Vacating Cessation Order is attached as Exhibit G.

ARGUMENT

I. WHITE OAK IS MINING CONSISTENT WITH VALLEY CAMP'S MINING AND RECLAMATION PLAN

Contrary to the allegations set forth in the NOV, White Oak is mining under Valley Camp's approved mining and reclamation plan. Pursuant to the terms of an Asset Purchase Agreement dated September 16, 1993 (the "Agreement"), between Kanawha and Hocking Coal and Coke Company, Inc. and Valley Camp, Sellers, and White Oak, Buyer, Valley Camp has designated White Oak as operator of Permit No. ACT/007/001 pending approval of the application to transfer the permit to White Oak. Letter dated October 8, 1993 attached hereto as Exhibit B.

Pursuant to Utah Code Ann. § 40-10-9(2), White Oak may continue operations under Permit No. ACT/007/001 so long as an application for transfer of permit has been submitted to the Division and reclamation bond coverage is provided.

White Oak has filed an application to transfer Permit No. ACT/007/001. This application states that the MRP will be amended once the transfer is approved by the Division.

Valley Camp has provided a reclamation bond and rider in the total amount of \$5,891,000 to secure reclamation liability for Permit No. ACT/007/001.

Therefore, the Division has failed to establish a prima facie case in support of the NOV and the NOV and FTACO must be vacated.

Furthermore, the Division may not assert that the NOV was issued for failure to submit a "complete, approved and accurate" application. Because the law specifically provides that a successor in interest has 30 days to file the application, the Division's NOV was premature. No violation had yet occurred on October 8, 1993, because the 30-day time period for filing had not yet expired. Therefore, the Board should vacate the NOV and the FTACO.

II. THE DIVISION'S APPLICATION OF R645-300-142 IS CONTRARY TO UTAH CODE ANN. § 40-10-9(2)

The NOV was issued for "failure to conduct all mining and reclamation operations only as described in the approved mining and reclamation plan" under R645-300-142. These regulatory requirements must be applied in a manner consistent § 40-10-9(2) of the Utah Coal Mining and Reclamation Act. Under Utah Code Ann. § 40-10-9(2), "A

successor in interest . . . may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied." Section 40-10-9(2) allows White Oak, as successor in interest, to continue operations under the original permittee's mining and reclamation plan. The Division's NOV improperly interprets R645-300-142 to disallow the very operations allowed by the Utah Coal Mining and Reclamation Act. Therefore, the NOV and the FTACO must be vacated.

III. THE DIVISION HAS FAILED TO ESTABLISH THAT WHITE OAK'S OPERATIONS CAUSE SIGNIFICANT IMMINENT ENVIRONMENTAL HARM

White Oak is operating pursuant to Valley Camp's Mine Permit No. ACT/007/001 and has submitted an application to transfer the mine permit consistent with Utah Code Ann. 40-10-9(2). The Division's NOV requires cessation of coal mining and reclamation operations. Pursuant to R645-400-300, the Division may only order the cessation of operations if it finds the operator is causing significant imminent environmental harm. The Division's NOV is directly contrary to the October 18, 1993 ruling of ALJ Rampton finding that White Oak's operations do not constitute significant imminent environmental harm. Exhibit G.

On Thursday, October 14, 1993, ("OSM") issued a cessation order to White Oak as designated operator of Valley Camp's Belina Mine Permit No. ACT/007/001 for alleged failure to obtain a permit. After reviewing the circumstances of this case, Administrative Law Judge Rampton vacated the CO, finding that White Oak is operating pursuant to Valley Camp's mine Permit No. ACT/007/001 and has submitted an application

to transfer the mine permit. White Oak's activities were specifically found "to not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources." Therefore, consistent with ALJ Rampton's ruling in this case, it is clear that the Division was in error in ordering the cessation of mining operations and the NOV and FTACO must be vacated.

IV. THE ALLEGED VIOLATION WAS ABATED BEFORE THE DIVISION ISSUED THE NOV AND THE FTACO

The Division issued the NOV by mail on October 9, 1993. On Monday, September 27, 1993, White Oak filed a permit transfer application and Valley Camp's \$ 5.891 million reclamation bond rider with the Division. On that date, White Oak met the requirements of Utah Code Ann. 40-10-9(2) necessary to allow for continued operations under the MRP. Therefore, even if there was a violation, which there clearly was not, it was abated before the Division issued the NOV. Therefore, issuance of the NOV was improper and the NOV and FTACO should be vacated.

In addition, the NOV was abated on October 8, 1993 by Valley Camp's submission of a letter to Director Carter which clarified that Valley Camp had designated White Oak as operator of Permit No. ACT/007/001 under the terms of the Asset Purchase Agreement pending approval of the application to transfer the permit to White Oak. Exhibit B. The FTACO was improperly issued after the Division Director had accepted the October 8, 1993 letter to abate the NOV and allowed operations to resume. Indeed, as set forth at Argument V and VI, Director Carter's acceptance of the October 8th letter estops the Division from issuance of the FTACO. Therefore the FTACO must be vacated.

V. THE NOV IS INCONSISTENT WITH DIRECTOR CARTER'S PRIOR APPROVAL OF THE SALE

In order to assure that the sale of the Belina Mines by Valley Camp to White Oak satisfied the Division's requirements, representatives of White Oak and Valley Camp met with Director Carter on August 26, 1993. During that meeting, White Oak and Valley Camp believed that Director Carter approved the sale of the mine so long as Valley Camp provided reclamation bond coverage and so long as White Oak submitted an application for transfer consistent with Utah Code Ann. § 40-10-9(2). This understanding was once again confirmed during a meeting on September 3, 1993, between White Oak and Director Carter.

In reliance on Director Carter's statements, White Oak and Valley Camp drafted an Asset Purchase Agreement to provide that White Oak would submit an application for transfer of the mine permit within 30 days of closing and proceed with closing on September 16, 1993.

Because White Oak and Valley Camp intentionally sought the Director's guidance on how to proceed, and because White Oak and Valley Camp consummated the sale based on the Director's approval, the Division should be estopped from issuing the NOV. The NOV penalizes Valley Camp and White Oak for actions that were specifically reviewed in advance with the Director.

The elements of estoppel are "(1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and (3) injury to such party resulting from allowing the first

party to contradict or repudiate such admission, statement, or act." *Plateau Mining Co. v. Utah Division of State Lands*, 802 P.2d 720, 728 (Utah 1990).

In this case, the first element of estoppel is met because the Director led White Oak and Valley Camp to believe that he approved of their actions with respect to the transfer. The Division has acted inconsistently with Director Carter's original statements by issuing this NOV.

The second element of estoppel is met because White Oak and Valley Camp acted in reliance on Director Carter's statements to proceed with closing of the Asset Purchase Agreement.

Finally, the third element of estoppel is met because Valley Camp and White Oak are injured by the Division's contradictory policy. White Oak has been required to cease operations on two occasions in response to the NOV and OSM's CO. As a result, White Oak has lost revenues and potential coal sales and has suffered the layoff of its employees. Valley Camp and White Oak are both subject to enforcement action due to reversal of the Division's policy.

Estoppel is especially appropriate in this case because injustice has and will result from the Division's actions and there will be no substantial adverse affect on public policy. There is no substantial adverse affect on the public because a reclamation bond of \$5.891 million is in place and White Oak has submitted an application for transfer consistent with Utah Code Ann. § 40-10-9(2). Therefore, the Division is estopped from issuing the NOV in a manner inconsistent with Director Carter's statements.

VI. THE DIVISION'S NOV IS INCONSISTENT WITH ITS PRIOR PERMIT TRANSFER POLICY AND THE DIVISION IS ESTOPPED FROM ISSUING THE NOV

The Division has consistently interpreted its regulations regarding the transfer, assignment and sale of permit rights in a manner consistent with Utah Code Ann. § 40-10-9(2) to allow submission of a transfer application within 30 days of change in operator and to allow continued operations by the successor operator. In PacifiCorp v. OSM, Docket No. DV 91-5-5, the State intervened before the Office of Hearings & Appeals on behalf of the operator to challenge a federal notice of violation issued for failure to obtain prior written approval. Petition for Intervention, dated March 21, 1991, filed by Assistant Attorney General Thomas A. Mitchell on behalf of the Division, attached as Exhibit H. Therein, the Division defended its interpretation of the prior written approval requirements. Utah Admin. Rule 614-303-300 was read by the Division to allow the operator to submit a transfer application within 30 days of the change in operator. Petition, p.2. The Division relies on Utah Code Ann. § 40-10-9(2) as the basis for the Division's determination that an application filed within 30 days after the transfer was timely. Furthermore, the Division argues that R614-303-300 must be interpreted in light of the enabling statute:

The Division's determination that the application for a new permit by an operator was timely is based upon the above-quoted language of the state statute [Utah Code Ann. § 40-10-9(2)]. Utah Admin. R614-303-310 must be interpreted in light of the enabling statute Inasmuch as the rules do not address timeliness of application for transfer, and cannot be construed to conflict with the enabling legislation, the standard for determining whether or not PacifiCorp's application was timely must be tied to the 30-day period granted by § 506(b) of the Surface Mining Control & Reclamation Act of 1977 and Utah Code Ann. § 40-10-9(2).

Division Petition p.6. Utah Admin. R. 614-303-300 was recently recodified as Utah Admin. R. 645-303-300. Therefore, the Division's NOV is a clear reversal of former Division policy of applying Utah Code Ann. § 40-10-9(2) to allow the new operator 30 days in which to submit an application for permit transfer and to allow operations during this period. As set forth above, the Division is estopped from denying its policy after leading Valley Camp and White Oak to believe that the policy was still in effect. Therefore the NOV and FTACO must be vacated.

VII. ISSUANCE OF THE NOV AND FTACO IS INCONSISTENT WITH NOV N93-39-6-1

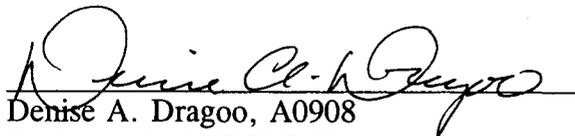
NOV N93-39-6-1 was issued to Valley Camp for the alleged "failure to obtain prior written approval in accordance with R645-303-300 before transferring, assigning or the sale of rights granted by a permit." NOV N93-39-6-1 requires Valley Camp to abate the NOV by submitting a complete and approved application for the transfer of permit rights under ACT/007/001 by December 27, 1993. The Division's issuance of NOV 93-39-7-1 requiring immediate cessation of White Oak's operations is inconsistent with the abatement period set by N93-39-6-1. Under NOV N93-39-6-1, the operator is allowed ninety days in which to obtain a "complete, approved and accurate application for the transfer of rights under ACT/007/001." Pursuant to Utah Code Ann. § 40-10-9(2), the successor operator may continue to operate pending review and approval of the permit transfer application. NOV 93-39-7-1 is inconsistent with NOV 93-39-6-1 because it requires immediate cessation of operations which are specifically allowed to proceed under Utah Code Ann. § 40-10-9(2). Therefore the NOV and the FTACO must be vacated.

CONCLUSION

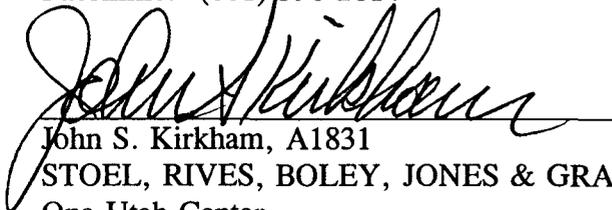
Utah Code Ann. § 40-10-9(2) allows White Oak to continue operations under Valley Camp's mining and reclamation plan so long as an application for transfer is submitted and reclamation liability is secured by a bond. Valley Camp and White Oak have complied with this requirement. The Division's NOV and FTACO are issued contrary to Utah Code Ann. § 40-10-9(2) for a violation which did not occur. Therefore, the NOV and FTACO must be vacated.

White Oak requests formal hearing before the Board regarding the fact of violation of the NOV and the FTACO.

RESPECTFULLY SUBMITTED this 6th day of November, 1993.



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 1993, I caused a true and correct copy of the foregoing VALLEY CAMP OF UTAH, INC. AND WHITE OAK MINING & CONSTRUCTION COMPANY'S PETITION FOR FORMAL HEARING -- FACT OF VIOLATION, to be mailed via certified mail, return receipt requested, to:

James W. Carter, Director
Utah Division of Oil, Gas & Mining
355 West North Temple, Suite 350
Salt Lake City, Utah 84180-1203

Jan Brown
Utah Board of Oil, Gas & Mining
355 West North Temple, Suite 350
Salt Lake City, Utah 84180-1203

Maurice A. Beubeck

EXHIBIT A



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

NO. N 93-39-7-1

notice of violation

To the following Permittee or Operator:

Name Valley Camp of Utah Inc.
 Mine Bellevue Complex Surface Underground Other
 County Carbon State Utah Telephone 801-448-9413
 Mailing Address Starfield Route Helper Utah 84526
 State Permit No. ACT/007/001
 Ownership Category State Federal Fee Mixed
 Date of inspection 10-8-93, 19 93
 Time of inspection 11:00 a.m. p.m. to 11:50 a.m. p.m.
 Operator Name (other than Permittee) _____
 Mailing Address _____

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/ mailing 10-9-93 Time of service/ mailing 11:30 a.m. p.m.

Permittee/Operator representative _____

Title _____

Signature _____

Stephen J DEACBAK
Division of Oil, Gas & Mining representative

Title _____

Signature Stephen J Deacbak

Identification Number #39

SEE REVERSE SIDE

WHITE-DOGMA YELLOW-OSM P.NK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

DOGMA/NOV-1

an equal opportunity employer

11/85

Post-It™ brand fax transmittal memo 7671 # of pages 1

To <u>Denise D</u>	From <u>T. KISGADEN</u>
Co. _____	Co. <u>WHITE OAK</u>
Dept. _____	Phone # _____
Fax # _____	Fax # _____



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

NOTICE OF VIOLATION NO. N 93-39-7-1

Violation No. 1 of 1

Nature of violation

Failure to conduct all mining and reclamation
operation only as described in the approved mining
and reclamation application

Provisions of act, regulations or permit violated

R-645-300-142

Portion of operation to which notice applies

All mining and reclamation by and through White Oak.

Remedial action required (including any interim steps)

To cease all mining and reclamation activities by
and through White Oak.

Abatement time (including interim steps)

Immediately

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

DOGM/NOV.2

an equal opportunity employer

11/85

EXHIBIT B