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DIVISION OF OIL, GAS AND MINING

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
(LEXINGTON DIVISION)

IN RE	:	Chapter 11 Proceeding
	:	
LODESTAR ENERGY, INC.	:	Case Nos. 01-50969 and 01-50972
LODESTAR HOLDINGS, INC.,	:	
	:	Jointly Administered under
Debtors.	:	Case No. 01-50969
	:	
	:	Judge Joseph M. Scott, Jr.
<hr/>		
LODESTAR ENERGY, INC., ET AL.	:	Adv. Proceeding No. 02-5001
	:	
PLAINTIFFS	:	
	:	
vs.	:	
	:	
THE STATE OF UTAH, ET AL.	:	
	:	
DEFENDANTS.	:	

**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTION TO DISMISS
FOR FAILURE TO JOIN INDISPENSABLE PARTIES AND FOR
INSUFFICIENCY OF SERVICE OF PROCESS; TO DISMISS
FOR IMPROPER VENUE; OR, IN THE ALTERNATIVE, FOR STAY
PENDING MANDATORY WITHDRAWAL OF REFERENCE OF JURISDICTION**

Plaintiffs Lodestar Energy, Inc. and Lodestar Holdings, Inc. (hereafter, collectively "Lodestar"), debtors and debtors in possession, respectfully submit this objection (the

“Objection”) to Defendants’ Motion To Dismiss For Failure To Join Indispensable Parties And For Insufficiency Of Service Of Process; To Dismiss For Improper Venue; Or, In The Alternative, For Stay Pending Mandatory Withdrawal Of Reference Of Jurisdiction (the “Dismissal Motion”). In support of this Objection, Lodestar respectfully states as follows:

BACKGROUND

1. On January 2, 2002, Lodestar commenced this adversary proceeding to seek injunctive relief to prevent the Defendants from taking certain actions with respect to the reclamation bonds relating to Lodestar’s coal mining operations in the State of Utah (the “State”).¹ The threatened actions, as set forth in letters to Lodestar from the State (attached as Exhibits N and O of the complaint) (the “Correspondence”), involve requiring Lodestar to replace reclamation bonds obtained and posted with the State prepetition or cease operations at facilities covered by those bonds. The sole authority cited by the State for the threatened actions is the Utah Annotated Code and Utah Administrative Code.

2. On January 3, 2002, the Defendants filed the Dismissal Motion and their Motion for Mandatory Withdrawal of the Reference (the “Withdrawal Motion”).

3. The hearing on Lodestar’s motion for injunctive relief has been continued to January 31, 2002.

ARGUMENT

4. Through the Dismissal Motion, the Defendants argue that this adversary proceeding should be dismissed on the grounds that (i) Lodestar failed to join as defendants the United States and other entities as “indispensable parties” (the “Additional Parties”); and (ii)

¹ Lodestar’s mining operations at issue are its White Oak No. 1 and No. 2 Mines (the “White Oak Mines”) and the Horizon Mine, both located in Utah.

venue is not appropriate in this Court. Additionally, the Defendants contend that the adversary proceeding should be stayed pending the District Court's resolution of the Withdrawal Motion.

I. Joinder of the Additional Parties is Not Required Under Federal Rule of Bankruptcy Procedure 7019

5. Without citing any authority to support their request for relief, the Defendants claim that the United States and certain unidentified parties owning surface rights to certain unidentified portions of the real property upon which Lodestar conducts mining operations (the "Landowners") should be joined in this action pursuant to Bankruptcy Rule 7019. This Rule provides, in pertinent part, "Rule 19 F.R.Civ.P applies in adversary proceedings . . ." with some exceptions that are inapplicable to the relief requested in the Dismissal Motion. Rule 19 of the Federal Rules of Civil Procedure provides, in pertinent part:

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

6. The Defendants do not even identify whether dismissal or joinder should be required under the independent criteria set forth in 19(a)(1), 19(a)(2)(i) or 19(a)(2)(ii), let alone set forth facts to establish that the United States or the Landowners meet those criteria. Rather, in support of their assertion that the United States is an indispensable party, the Defendants state only that their duties include enforcement of both state and federal mining reclamation regulations and that the United States is identified as a joint beneficiary to the bonds in question. Further, the sole basis for Defendants' argument that the Landowners are indispensable parties is

the Defendants' statement that the Landowners have an expectation that "the State of Utah would enforce state and federal surface reclamation bonding obligations." However, the Defendants make no attempt to relate these assertions to the requirements of Rule 19 and offer no legal argument or authority regarding how these assertions might justify the relief requested in the Dismissal Motion.

7. For example, the Defendants do not argue, nor could they argue, that complete relief cannot be granted in the absence of the Additional Parties. This adversary proceeding addresses the *State's* demand, based solely upon the *State's* regulations, asserted in the Correspondence, that Lodestar replace its existing reclamation bonds. No other parties are needed for the Court to determine that the *State* should be enjoined from requiring Lodestar to replace the bonds or cease operations. *See Becker v. County of Sacramento (In re Hackney)*, 83 B.R. 20, 23 (Bankr. N.D.Cal. 1988) ("There is no indication that complete relief as to the matters at issue in this adversary proceeding cannot be accorded to the Trustee and to the County."). Therefore, the Additional Parties are not necessary under Rule 19(a)(1) for the adjudication of this adversary proceeding.

8. Moreover, as statements made in the Defendants' own Dismissal Motion indicate, participation of the Additional Parties is not required pursuant to Rule 19(a)(2). With respect to the United States, the Defendants declare in the Dismissal Motion that the "State of Utah Division of Oil, Gas and Mining is the administrative and enforcement agency not only for the Utah Coal Mining and Reclamation Act, Utah Code Ann. 40-10-1 *et seq.* (Supp. 2001), but also for the Federal Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C.A. §1200 *et seq.*" With respect to the Landowners, the Defendants state that such owners "granted coal

leases to the Debtor on the reasonable expectation that the State of Utah would enforce state and federal surface reclamation bonding issues.”

9. These statements clearly and unequivocally demonstrate that dismissal or joinder under Rule 19(a)(2)(i) is inappropriate. Rule 19(a)(2)(i) requires the joinder of a party if that party claims an interest in a matter and is so situated that its absence may “as a practical matter impair or impede the person’s ability to protect that interest.” In the case at hand, the Additional Parties are not so situated. As stated by the Defendants, the Additional Parties’ interests are represented by the State as it enforces its own reclamation bonding regulations. The Defendants’ claim that these parties are helpless in the face of Lodestar’s action flies in the face of reason when their interests are, as admitted by the Defendants, represented by the State. Furthermore, if the Additional Parties deem their interests not sufficiently protected, they may seek leave to intervene in this proceeding.

10. Even if the Court determines that the interest of the United States must be taken into account, such interest is directly represented by the State pursuant to the Cooperative Agreement entered into by United States Secretary for the Department of the Interior and the Governor of the State of Utah. The Cooperative Agreement, attached hereto as Exhibit A, appears at 30 CFR §944. Pursuant to the Cooperative Agreement, “the laws, regulations, terms and conditions” of the Utah Code Annotated and the Utah State Program dealing with reclamation (the “Program”) “are applicable to Federal lands in Utah.” *See* 30 CFR §944.30 (Art. IV). DOGM is also granted explicit “primary enforcement authority” under SMCRA, the Cooperative Agreement and the Program. *See* 30 CFR §944.30 (Art. VIII). From this regulatory scheme, it is abundantly clear that the United States has explicitly delegated its interest in this

matter to the State and the United States is not an indispensable party to the resolution of this adversary proceeding.

11. Finally, the Defendants have not even argued, let alone established, that under Rule 19(a)(2)(ii), they will be subject to double, multiple or otherwise inconsistent obligations by reason of the claimed interest of the Additional Parties.²

12. Civil Rule 19, as incorporated by Bankruptcy Rule 7019, provides specific criteria for the joinder of additional parties to an adversary proceeding. The Defendants have failed to identify the criteria and to demonstrate how the joinder of the Additional Parties might be required pursuant to that criteria. Therefore, Lodestar respectfully requests that the Court deny the Dismissal Motion with respect to the joinder of the Additional Parties.

II. Venue is Appropriate in This District

13. The Defendants' objection to venue is based on the fact that a revision to the White Oak Mine permit was issued on October 26, 2001, after the Petition Date.³ The Defendants declare, without citing the language of the appropriate statute or any authority thereunder, that this adversary proceeding "is based on a claim arising after the order for relief from the operation of the business of the Debtor." However, this proceeding has nothing to do with the revision of a mining permit. The sole claim brought by Lodestar is to enjoin the

² Apparently in an effort to address Rule 19(a)(2)(ii), Defendant Lowell P. Braxton, in the Affidavit of Lowell P. Braxton (the "Braxton Affidavit"), declares, without factual or legal support, that he is "reasonably apprehensive" that the State will be saddled with inconsistent obligations vis-a-vis the Additional Parties. The Plaintiffs have objected to this portion of the Affidavit on the grounds that, *inter alia*, it lacks foundation and expresses a legal conclusion.

³ The Defendants state that Lodestar's permit on its White Oak Mine was issued on October 26, 2001, after the Petition Date. In so doing, the Defendants erroneously characterize the status of the permit for the White Oak Mine. That permit, like the Horizon Mine permit, was issued to Lodestar in 1999. A permit *revision* was issued on October 26, 2001.

Defendants' actions to require Lodestar to replace reclamation bonds. The Defendants commenced these actions well before the Relief Date, and merely continue them postpetition.

14. The threatened actions by the Defendants giving rise to this proceeding are the culmination of conduct between the parties that commenced well before the Relief Date. On or about June 5, 2000, the State sent a letter, attached hereto as Exhibit B, to Lodestar requiring Lodestar to replace its reclamation bonds with Frontier Insurance Company ("Frontier") due to the financial condition of Frontier. In response, Lodestar sent letters dated June 22, 2000, September 6, 2000 and January 15, 2001, attached hereto as Exhibits C, D and E, regarding its inability to replace the Frontier bonds. Thus, the controversy over replacing Lodestar's reclamation bonds with Frontier arose nearly a year prior to the Petition Date.

15. Courts have routinely found that 28 U.S.C. § 1409(d) is not applicable when a debtor's claim arises from a postpetition event that is the culmination of a prepetition relationship with the defendant. *See Nutri/System, Inc. v. Carma, Inc. et al. (In re Nutri/System, Inc.)*, 159 B.R. 725, 727 (E.D.Pa. 1993). In *Nutri/System*, the district court upheld the bankruptcy court's refusal to dismiss or transfer under Section 1409(d) where "because this adversary proceeding involves allegations of postpetition breaches of a prepetition contract, venue is proper in this district pursuant to 28 U.S.C. § 1409(a), and therefore section 1409(d) and section 1391(b) are inapplicable." *Id.*; *see also Transicoil, Inc. v. Blue Dove Development Assoc.'s L.P. (In re Eagle-Picher Ind., Inc.)*, 162 B.R. 140, 142 (Bankr. S.D. Ohio 1993) ("It cannot fairly be said that at hand is a claim arising after the commencement of the case. There was a continuum in dealing between the parties beginning long prior to the filing of the bankruptcy petition when the lease was initially entered into, and so it cannot fairly be said that

the matters raised in the complaint are purely postpetition matters.”). Here, the initial demand for replacement of the Frontier bonds was made nearly a year prior to the Petition Date.

16. While the Defendants’ most recent demand for replacement of the Frontier bonds occurred after the Petition Date, it is clear that these events are merely part of the same course and pattern of dealings between the parties and that Lodestar’s claim for relief is rooted in prepetition events and its prepetition relationship with the Defendants. Therefore, Section 1409(d) is inapplicable and venue for this adversary proceeding is appropriate in this District under 11 U.S.C. §1409(a).

III. The Withdrawal Motion Has Been Withdrawn, Making the Request for a Stay Moot.

17. On January 3, 2002, the Defendants filed their Withdrawal Motion, in which they sought the withdrawal of the District Court’s reference of this adversary proceeding to this Court. As part of the parties’ agreement to attempt to negotiate a settlement of the issues presented herein, the Defendants withdrew the Withdrawal Motion, without prejudice. Therefore, the request for a stay of this adversary proceeding pending resolution of the Withdrawal Motion in the District Court is moot.

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY L.L.P.

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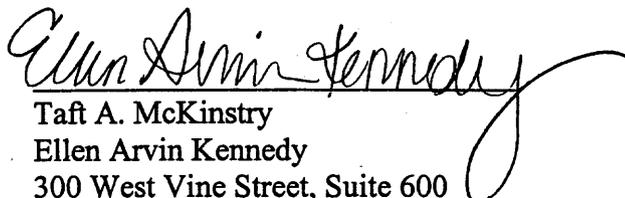
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**COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via First-Class U.S. Mail, postage pre-paid, upon those parties listed below, on this the 28th day of January, 2002:

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1 of 1 DOCUMENT

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*** THIS SECTION IS CURRENT THROUGH THE JANUARY 17, 2002 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 30 -- MINERAL RESOURCES

CHAPTER VII -- OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,
DEPARTMENT OF THE INTERIOR

SUBCHAPTER T -- PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN
EACH STATE

PART 944 -- UTAH

30 CFR 944.30

@ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

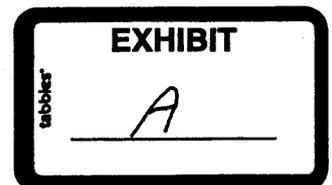
A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary of the Interior under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3480 through 3487, and surface coal mining and reclamation operations and activities in Utah on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and the Utah Code Annotated (State Act) governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR part 3480, Subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Utah in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas, and Mining (DOG M) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the Federal Register as a final rule.



This agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA 30 CFR parts 700, 701 and 740, the Program, including the State Act, and the rules and regulations promulgated pursuant to that Act, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Utah except as otherwise stated in this Agreement, SMCRA 30 CFR 740.4, 740.11(a) and 745.13, and other applicable Federal laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM has and will continue to have the authority under State law to carry out this Agreement

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted area costs for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Field Operations office will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands on-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or

30 CFR 944.30

cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40-10-6(5), Utah Code Annotated 1953 as amended and UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees and civil penalty fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalty fines will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees collected during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package: DOGM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) in an appropriate number of copies to DOGM. DOGM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOGM and will include any supplemental information

30 CFR 944.30

required by OSMRE and the Federal land management agency. Where section 522(e)(3) of SMCRA applies, DOGM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or historic property included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for DOGM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where There is No Leased Federal Coal Involved: 1. DOGM will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4 (c)(2), DOGM will be responsible for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request such Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 calendar days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOGM under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOGM will review the PAP for compliance with the Program and State Act and regulations. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his non-delegable determinations under SMCRA, some of which have been delegated to OSMRE.

4. OSMRE and DOGM will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE may provide assistance to DOGM in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. OSMRE will send to DOGM copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA.

5. DOGM will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the National Park System (NPS), DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impact as set forth under Article X of this agreement.

(b) The permit will include terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over a publicly owned park or historic property included in the NRHP which would be affected by a design under section 522(e)(3) of SMCRA. A copy of the permit and written findings will be submitted to OSMRE if requested.

C. Review Procedures Where Leased Federal Coal is Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to DOGM under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE, and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3847, the Bureau of Land Management (BLM) will be the primary contact with the applicant. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a

30 CFR 944.30

matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

BLM will inform DOGM of its actions and provide DOGM with a copy of documentation on all decisions. DOGM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

DOGM will to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c) (2) and (3), respectively. DOGM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request all Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request of DOGM.

3. DOGM will be responsible for approval and release of performance bonds under 30 CFR 740.4(c) (4), and for review and approval of exploration operations not subject to 43 CFR part 3480, under 30 CFR 740.4(c) (6).

DOGM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c) (7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c) (7) (i)-(vii).

OSMRE will assist DOGM in carrying out DOGM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOGM and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSMRE is assisting DOGM in reviewing the PAP, furnishing to DOGM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and DOGM.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection board requirement.

4. Review of the PAP: (a) OSMRE and DOGM will coordinate with each other during the review process as needed. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives

30 CFR 944.30

which has a bearing on decisions regarding the PAP is promptly sent to DOGM.

(b) DOGM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP, for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and DOGM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and DOGM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish DOGM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOGM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) DOGM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOGM and OSMRE.

(f) DOGM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOGM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOGM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this agreement.

(i) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic property included in the NRHP affected by a decision under section 522(e)(3) of SMCRA. A copy of the written findings and the permit will also be submitted to OSMRE.

5. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. OSMRE will have access to DOGM files concerning

operations on Federal lands.

D. Review Procedures for Permit Revisions, Amendments, or Renewals: 1. Any permit revision, amendment, or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOGM after consultation with OSMRE on whether such revision, amendment, or renewal constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a copy of a proposed revision, amendment, or renewal, whether the permit revision, amendment, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

2. OSMRE may establish criteria to determine which permit revisions, amendments, and renewals clearly do not constitute mining plan modifications.

3. Permit revisions, amendments, or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.5. of this Article.

Article VII: Inspections

A. DOGM will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOGM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

C. DOGM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSMRE will ordinarily give DOGM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOGM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger of significant, imminent environmental harm will be referred to DOGM for action. The Secretary reserves the right to conduct inspections without prior notice to DOGM to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DOGM will have primary enforcement authority under SMCRA concerning

30 CFR 944.30

compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and DOGM, DOGM will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOGM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where DOGM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

D. DOGM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOGM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DOGM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOGM will advise OSMRE or annual adjustments to the performance bond, pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, DOGM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid

Existing Rights and Compatibility Determinations

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either DOGM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSMRE will determine whether VER exists for such areas.

For non-Federal lands within section 522(e)(1) areas DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determination.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOGM, with the consultation and concurrence of OSMRE, will determine whether any proposed operation will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. For such operations adversely affecting units of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, DOGM will determine whether any proposed operation will adversely affect all publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation

30 CFR 944.30

Officer, places listed in the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, DOGM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of SMCRA. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where a proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by DOGM and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOGM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOGM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOGM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any

changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations, including but not limited to those listed in Appendix A.

Dated:

Signed of Utah

Dated:

Signed of the Interior

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 et seq., and implementing regulations, including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., and implementing regulations, including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 et seq.
10. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection.
12. Executive Order 11990 (May 24, 1977), for wetlands protection.
13. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 et seq., and

implementing regulations.

14. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 et seq.
15. The Constitution of the United States.
16. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.
17. 30 CFR Chapter VII.
18. The Constitution of the State of Utah.
19. Utah Code Annotated 40-10-1 et seq.
20. Utah Code Annotated 40-8-1 et seq.
21. Utah Coal Mining and Reclamation Permanent Program, Chapters I and II, Final Rules of the Board of Oil, Gas and Mining, UMC/SMC 700 et seq.

HISTORY: [52 FR 7850, Mar. 13, 1987]

AUTHORITY: 30 U.S.C. 1201 et seq.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Bureau of Land Management, Department of the Interior, regulations with respect to mineral lands: 43 CFR, chapter II, subchapter C.

Federal Energy Regulatory Commission, Department of Energy: 18 CFR chapter I.

Foreign Trade Statistics, Bureau of the Census, Department of Commerce: 15 CFR part 30.

Forest Service regulations relating to mineral developments and mining in national forests: 36 CFR part 251.

General Services Administration regulations for stockpiling of strategic and critical materials: 41 CFR subtitle C, subchapter C.

Geological Survey: 30 CFR chapter II.

Interstate Commerce Commission: 49 CFR chapter X.

Bureau of Indian Affairs, Department of the Interior, mining regulations: 25 CFR chapter I, subchapter I.

EDITORIAL NOTE: Other regulations issued by the Department of the Interior appear in title 25, chapters I and II; title 36, chapter I; title 41, chapter 114, title 43; and title 50, chapters I and IV.

5914 words



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

Michael O. Lawrence
Commissioner
Kathleen Guidle
Executive Director
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Deputy Director
1804 West North Temple, Suite 1270
PO Box 165801
Salt Lake City, Utah 84111-4681
801-424-4242
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801-424-7229 (TDD)

June 5, 2000

cc: SCWH
NSD
6/8/00
KLD
RECEIVED JUN 08 2000

CERTIFIED
P 074 978 604

Dave Miller, Resident Agent
Lodestar Energy, Inc.
HC 35 Box 370
Helper, Utah 84526

Re: Replacement of Sureties Requested, Lodestar Energy, Inc., White Oak Mine, ACT0007A001, Horizon Mine, ACT0007020, Queuing File

Dear Mr. Miller:

White Oak Mine is currently mining federal coal and Horizon Mine is seeking a permit to mine federal coal, but has runned through the BLM right-of-way. Federal agencies and bonds with federal obligations may only be accepted if they are written by a surety listed in the Department of Treasury Circular 570. It has recently come to the attention of the Division that Frontier Insurance Company is no longer an acceptable surety on federal bonds, see Department of Treasury listing dated June 1, 2000 (attached). Additionally, the A.M. Best Rating Guide currently rated this company at C++ (attached). Due to the fact that the bonds are no longer acceptable for federal bond, these bonds need to be replaced.

Therefore, pursuant to the requirements of R645-301-670, please replace surety bonds # 143718 in the amount of \$4,292,000 for White Oak Mine and #125427 in the amount of \$711,000 for the Horizon Mine, both issued by Frontier Insurance Company by July 15, 2000.

If you have any questions, please call me.

Sincerely,

Pamela Grubbaugh-Little
Permit Supervisor

ps/ma
cc:
Mary Ann Wright
Pilot Field Office
0:007001.WO@OND.epl.state.ut.us

tabbles
EXHIBIT
B

Received Time Jun. 8. 2:56PM Print Time Jun. 8. 2:59PM



Lodestar Energy, Inc.
Mountain Operations
White Oak Mines, Horizon Mine and Grand Valley Mines
HC 35 Box 370
Helper, Utah 84526

June 22, 2000

Ms. Pamela Grubaugh-Littig
State Of Utah
Dept. of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Box 14501
Salt Lake City, Utah 84114-5801

Dear Ms. Grubaugh-Littig:

This letter is in response to your letter of June 5, 2000 concerning the replacement of sureties we currently have for the White Oak and Horizon Mines by July 15, 2000.

This letter is to assure you that we are currently pursuing the replacement of these bonds. However, we will not be able to replace these bonds by the deadline date set in your letter.

The issue with Frontier Insurance Company has put us in a bind corporate-wide since they not only provide our reclamation bonding in several states but also our worker's compensation bonding. Their down grading has come at the time when we are restructuring our corporate debt. The replacement of our bonding program with Frontier will be completed in conjunction with the restructuring.

Our corporate office has assured me that this process should be completed by the end of August this year. I am requesting an extension of 45 days from your deadline date of July 15, 2000 to have bonds #143718 for \$4,292,000 and #125427 for \$711,000 replaced with surety bonds from an approved company.

Sincerely,

David B. Miller
Business Manager

Cc: R. Eberley Davis - Corporate Counsel
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Lodestar Energy, Inc.
Mountain Operations
White Oak Mines, Horizon Mine and Grand Valley Mines
HC 35 Box 370
Helper, Utah 84526

September 6, 2000

Ms. Pamela Grubaugh-Littig
Utah Coal Program
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801

Dear Ms. Grubaugh-Littig:

This letter is an update on the replacement of sureties for the White Oak Mines Permit No. ACT/007/001 and the Horizon Mine Permit No. ACT/007/020 by September 15, 2000.

We requested the original extension based on our assertion that Lodestar is in the midst of a financial restructuring, and the replacement of the Frontier Insurance Company bonding program would be part of that restructuring. Unfortunately, the reorganization of Lodestar's finances has not proceeded as quickly as we had hoped and expected. However, the restructuring is proceeding and due to deadlines associated with certain of Lodestar's financial commitments, the restructuring must be completed before the end of the year. We are requesting a further extension until December 31, 2000.

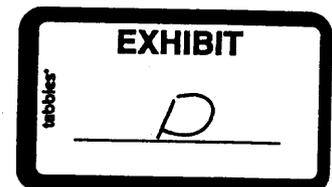
We would appreciate your consideration in allowing us until December 31st to replace these sureties.

If you have any questions concerning this issue, feel free to contact myself at (435)637-9200 or Eberley Davis - Lodestar General Counsel at (606)255-4006.

Sincerely,

David B. Miller
Business Manager

Cc: R. Eberley Davis - General Counsel
File: \\Mydocuments\DOGM000906.doc





Lodestar Energy, Inc.
Mountain Operations
White Oak, Horizon, and Grand Valley Mines
HC35 Box 370
Helper, Utah 84526

January 16, 2001

Ms. Pamela Grubaugh-Littig
 Utah Coal Program
 Utah Division of Oil, Gas and Mining
 1594 West North Temple, Suite 1210
 Salt Lake City, Utah 84114-5801

Dear Ms. Grubaugh-Littig:

This letter is an update on the replacement of the sureties for the White Oak Mines Permit No. C/007/001 and the Horizon Mine Permit No. C/007/020 by December 31, 2000.

We are requesting to extend the date to have the replacement bonds in place. It is difficult to give the exact date that the current financial situation at Lodestar will be rectified. Lodestar is negotiating the restructuring of our Senior Notes, as well as investigating investments from strategic investors. However, the Securities and Exchange Commission rules prohibit us from disclosing any more detail about the efforts to restructure the debt, at this time. As soon as we have more information that we can share, we will provide that to you.

To date, none of our lenders have taken any action to restrict Lodestar from operating in the normal course of business.

However, due to Lodestar's current financial situation, it does not have access to surety markets to satisfy its bonding requirements in the normal course of business, and therefore is required to meet its bonding requirements with cash. Current cash availability is not great enough to replace the Utah bonds with cash or Letters of Credit.

If you know of any alternatives that the State is willing to discuss during this period of waiting, please feel free to contact Eberley Davis - Lodestar (Lexington) (859)255-4006 or myself at (435)448-9454.

Sincerely,

David B. Miller
 Business Manager

Cc: Eberley Davis - Lodestar (Lexington)

