

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

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In the Matter of the Request	)	
for Agency Action of AMAX Coal	)	SETTLEMENT AGREEMENT AND
Company, Petitioner, for	)	STIPULATION FOR ORDER OF
Review of Agency Actions and	)	DISMISSAL
for Hearing on Reasons for	)	
Decisions	)	Docket No. 91-001
	)	Cause No. ACT/007/004

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The Utah Division of Oil, Gas and Mining (the "Division") and AMAX Coal Company ("AMAX"), by and through its attorneys, agree as follows:

RECITALS:

1. This matter involves appeals to the Board of Oil, Gas and Mining (the "Board") from: (a) a portion of the decision of the Division, dated December 19, 1990 (the "Renewal Decision"), approving renewal of Permit Number ACT/007/004 (the "Permit"), required under Utah Code Ann. § 40-10-9; (b) a Division Order and Findings of Permit Deficiency, issued December 18, 1990 (the "1990 Division Order"); and (c) Notice of Violation No. N91-28-2-1, issued July 5, 1991 (the "NOV").

2. AMAX's predecessor, Castle Gate Coal Company ("Castle Gate"), appealed the Renewal Decision and the 1990 Division Order pursuant to a Request for Review of Agency Actions filed January 16, 1991. The NOV was appealed under a Request for

Review of Agency Actions filed December 6, 1991. Those appeals have been consolidated in this matter.

3. The Permit governs AMAX's underground mining and reclamation operations at the Castle Gate Mine, located in Carbon County, Utah. Surface disturbances associated with the mine are located in several distinct areas, including among others Sowbelly, Hardscrabble, Castle Gate and Crandall Canyons.

4. Under Section 15 of the Renewal Decision, the Division required that Castle Gate comply with the terms of the 1990 Division Order as a condition of the renewal of the Permit.

5. Under the 1990 Division Order, the Division required Castle Gate to make certain revisions to its Mining and Reclamation Plan (the "MRP").

6. Under the NOV, the Division alleged that AMAX, as the successor permittee to Castle Gate, was not in compliance with all of the requirements of the 1990 Division Order.

7. On September 19, 1991, the Board issued an Order for Temporary Relief, which stayed enforcement of certain of the abatement measures required under the NOV during the pendency of this review proceeding.

8. By letter dated November 8, 1991, the Division informed AMAX that all abatement requirements imposed under the NOV, except those that were made subject to the Order for Temporary Relief, had been satisfied.

9. Under a Stipulation and Motion dated January 30, 1992, AMAX and the Division agreed that this matter should be continued so that further submittals, reviews and discussions could take place in order for the parties to assess whether this matter could be settled (the "Stipulation").

10. Pursuant to the terms of the Stipulation, the Board issued an Order dated February 5, 1992, granting the continuance agreed to by the parties. Under an Order dated May 4, 1992, the Board granted an additional continuance pursuant to the further stipulation of the parties.

11. Under the Stipulation, the Division agreed that the following requirements of the 1990 Division Order and NOV had been satisfied: a) requirements of the 1990 Division Order not referenced in the NOV; and b) requirements reflected in the Division's November 8, 1991 letter as having been satisfied.

12. The submittals, reviews and discussions contemplated under the Stipulation have taken place, and under a Summary Findings and Division Order, dated August 19, 1994, (the "1994 Division Order") the Division found that AMAX had complied with the terms of the 1990 Division Order. A copy of the 1994 Division Order is attached as Addendum A and incorporated by this reference. Accordingly, the parties agree this matter can be settled on the following terms and conditions.

AGREEMENT:

1. All requirements of Section 15 of the Renewal Decision and the 1990 Division Order and the NOV have been satisfied, and the NOV has been abated.

2. The following principles, which were applied in the 1994 Division Order and the Division's determination that the 1990 Division Order has been satisfied and its renewal of the Permit, are authorized under SMCRA, UCMRA and the regulations promulgated thereunder and will continue to govern in any future modification, review or renewal of the Permit:

(1) Reclamation of highwalls must meet those special provisions for highwalls as found under R645-301-553, except to the extent a variance from those requirements is granted. A highwall is defined to mean "the face of exposed overburden and coal for entry pursuant to underground coal mining operations," which as applied to an underground operation such as that conducted at the Castle Gate Mine, means portal face-up areas.

(2) All disturbed areas other than highwalls, including cutslopes, may be reclaimed under the general provisions of R645-301-553 as they apply.

(3) In determining whether disturbed areas other than highwalls, but including cutslopes, are reclaimed to approximate original contour, approximate original contour means "that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads closely resembles the general surface configuration of the land prior to mining and blends into and compliments the drainage pattern of the surrounding terrain."

(4) The statutory and regulatory requirement to return cutslopes to their approximate original contour does not require the total elimination of all cutslopes and can be satisfied by backfilling and grading the disturbed area to

create a topography that blends into the undisturbed area, creating land forms that resemble features of the surrounding terrain, such as natural cliffs and talus slopes, and that are compatible with the post mining land use.

3. AMAX agrees that this matter may be dismissed and waives any claim as to the underlying validity of the Renewal Decision, 1990 Division Order and NOV, specifically including any claim that the requirements of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and the Utah Coal Mining Reclamation Act of 1979 ("UCMRA") do not apply to land located within the disturbed area boundaries currently reflected in the MRP. Provided, however, that the Division agrees that such dismissal and waiver are subject to the agreement set forth in paragraph 2 above. If the Division at any time departs from those principles or substantially departs from the application of them as reflected in the recent revisions to the MRP and the 1994 Division Order, or if any third party successfully challenges those principles or the Division's application of them, the dismissal of this matter shall be deemed to be without prejudice and AMAX's waiver shall be voided.

4. In the 1994 Division Order, Castle Gate Coal Company, the predecessor of AMAX and the prior permittee under the Permit, was inadvertently referred to as the current permittee. The 1994 Division Order is amended to reflect AMAX as the current permittee and to substitute AMAX for each reference to Castle Gate

in the Division Order and in the Technical Analysis and Findings attached to the order.

5. This Settlement Agreement and Stipulation For Order of Dismissal is subject to the Board's approval.

6. AMAX and the Division agree that the Board may issue an order dismissing AMAX's Requests for Review of Agency Actions, filed January 16, 1991 and December 6, 1991, in accordance with the terms and conditions of this Settlement Agreement and Stipulation For Order of Dismissal.

DATED this 20<sup>th</sup> day of October, 1994.

  
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ORDER

Based upon the Settlement Agreement and Stipulation for Order of Dismissal, dated October 20, 1994, between AMAX Coal Company ("AMAX") and the Utah Division of Oil, Gas and Mining (the "Settlement Agreement"), a copy of which is attached to this Order and a review of the relevant facts and circumstances and good cause appearing therefor, IT IS HEREBY ORDERED, THAT:

1. The Settlement Agreement is approved.
2. AMAX's Requests for Review of Agency Actions, filed January 16, 1991 and December 6, 1991, are dismissed in accordance with the terms and conditions of the Settlement Agreement.

DATED this 26<sup>TH</sup> day of OCTOBER, 1994.

BOARD OF OIL, GAS AND MINING  
STATE OF UTAH



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Dave D. Lauriski, Chairman