

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)
SUNNYSIDE COAL COMPANY,) Case No. 94 12794 CEM
) Chapter 11
Debtor.) MC No. JLS-20

NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202
OF JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

TO ALL PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN that the Debtor-in-Possession Sunnyside Coal Company, Carbon County, Utah, and the Official Unsecured Creditors Committee have filed with this Court a Joint Motion to Approve Settlement Agreement, seeking court approval of the attached Settlement Agreement between Debtor-in-Possession Sunnyside Coal Company and Carbon County, Utah. This Settlement Agreement resolves disputes over the amounts of taxes, penalty, and interest due Carbon County, Utah for years through December 31, 1994, and makes a final and irrevocable settlement of amounts paid to settle those taxes, pursuant to the June 3, 1994 Agreement for Use of Cash Collateral, approved by the Court on June 30, 1994, and a final payment of \$86,000 pursuant to the Settlement Agreement. Carbon County had claimed that \$144,976 remained due secured by a first lien; the Debtor believed that only \$36,616 remained due. You are referred to the attached Joint Motion and the Settlement Agreement for a more complete description of the settlement.

Pursuant to Rule 202 of the Local Rules of Bankruptcy Procedure, if you desire to oppose this action, you must file a written objection and request for a hearing with the Court on or before March 2, 1995, and serve a copy thereof on the undersigned counsel for Debtor-in-Possession Sunnyside Coal Company. Objections and requests for a hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the Court may approve or grant the aforementioned application without any further notice to creditors or other interested parties.

Dated: February 7, 1995

HOLLAND AND HART

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)
SUNNYSIDE COAL COMPANY,) Case No. 94 12794 CEM
) Chapter 11
Debtor.) MC No. JLS-20

JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT WITH
CARBON COUNTY

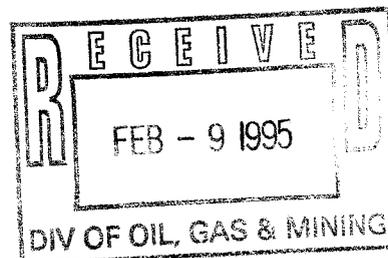
The Debtor-in-Possession, Sunnyside Coal Company ("Debtor"), has entered into a Settlement Agreement (the "Settlement Agreement") with Carbon County, Utah ("Carbon County"). Debtor, Carbon County, and the Official Unsecured Creditors Committee, through their undersigned counsel, request the Court to approve the Settlement Agreement, a copy of which is attached to this Motion.

1. By the terms of this Settlement Agreement, Carbon County and the Debtor have reached a resolution of all claims and disputes between them through December 31, 1994. The Settlement Agreement does not settle claims for taxes arising after that time.

2. The Settlement Agreement calls for the Debtor to make a final payment to Carbon County of \$86,000, in full settlement of all remaining taxes, penalty and interest, due Carbon County, through December 31, 1994. Approval of this Settlement Agreement includes the Court's approval of that payment and also the following payments made pursuant to the June 3, 1994 Agreement for Use of Cash Collateral, approved by the Court by Order Granting Motion for Approval of Agreement for Use of Collateral:

Date	Amount
July 20, 1994	\$ 92,000
September 9, 1994	\$ 15,300
September 20, 1994	\$ 4,905
December 12, 1994	\$310,000

3. This Settlement Agreement is the result of extensive exchange of information, analysis, and negotiation between the parties. After the Debtor paid the amounts listed in paragraph 2 above, Carbon County asserted that the remaining assessment by the Utah State Tax Commission and Carbon County of \$144,976 remained due for real and personal property taxes, interest and penalties. The Debtor disputed the amount of Carbon County's claim, and the December 12, 1994 payment by the Debtor of \$310,000 was paid to the County under protest, preserving Debtor's right to appeal the tax deficiency asserted by Carbon County. Carbon County further asserted that, if the pre-petition settlements with Sunnyside were found to have been breached, that the acceleration provision in the May, 1993 Agreement would result in an additional amount due of approximately



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\$132,000, composed mostly of interest on unpaid pre-1990 taxes. Sunnyside believed that, after all the payment set forth above in paragraph 2 were made, it owed approximately \$36,616.

4. Debtor has considered at length the history of payments to Carbon County and the amounts of assessments of taxes by Carbon County and by the Utah State Tax Commission. The parties have considered the effects of two settlements, the April 12, 1989 Agreement Regarding Payment of Real Property and Personal Property Taxes on the Sunnyside Mine, and the May 19, 1993 Agreement for Deferral of Real and Personal Property Tax. The parties have reviewed the transfer of property associated with that May 16, 1993 Agreement for Deferral of Real and Personal Property Tax. The parties have considered issues that might arise if Debtor were to challenge the amounts of tax assessments that have not yet been paid, and have exchanged information concerning how those assessments might be determined. The parties have reviewed Utah statutes and case law on computation of taxes and of liens and penalties on taxes, and the priority of County tax liens in Utah.

5. The amount of the final payment is less than the total amount claimed by Carbon County to be due, and represents a compromise and settlement, and a reduction of Carbon County's demand.

6. The parties believe that this is a fair settlement, and that this settlement is in the best interests of the estate, and should be approved by the Bankruptcy Court. In reaching a conclusion approving a settlement, the Bankruptcy Court should weigh the probable success of the litigation on the merits, any potential difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of the creditors with deference to their reasonable views. In re Kaiser Steel Corp., 105 B.R. 971, 977 (D. Colo. 1989)

A. **Success on the Merits.** The parties have given great attention to the various issues involved in determining the probability of success if Carbon County and the Debtor were unable to reach agreement. There are numerous issues in this respect, with some uncertainty of result. Those issues include the appropriate valuation of assessed properties, the proper allocation of payments made by the Debtor to various years and between principal and interest and penalty, the terms and effects of the settlement agreements, and the value of real property transferred by the Debtor to Carbon County under the May, 1993 Settlement Agreement, as well as the amount appropriately credited to the Debtor as a result of that transfer.

B. **Collection of a Judgment.** Carbon County would be able to collect whatever was determined to be due to it, because it has a first and prior lien on all assets of the Debtor.

C. **Complexity and Expense of Litigation.** There are numerous issues that could be complex and expensive to try, particularly in contesting the amount of assessments under a variety of possible valuation formulas. This settlement avoids that expense. It also avoids the expense of continuing accrual of fully secured interest, pursuant to Carbon County's statutory rate of 6% over federal discount rate. Utah Code Annotated 59-2-1302(3), 11 U.S.C. § 506(b). U.S. v. Ron Pair Enterprises, Inc., ___ U.S. ___, 109 S.Ct. 1026 (1988).

D. **Interests of Creditors.** This settlement saves the estate substantial tax payments claimed by Carbon County to be due, avoids expenditures in contesting the amounts of assessments and the proper allocation and credits to be given the Debtor for payments and transfers made under the settlement agreements, avoids the continued accrual of interest, and removes uncertainty.

7. The law favors compromise and settlement of disputes among parties. Standbec Corp. v. Jellico, Inc., 464 F.2d 1184 (10th Cir. 1972). The Court has broad latitude and discretion in determining whether to approve a proposed settlement. In re Goldstein, 131 B.R. 367, 370 (Bankr. S.D. Ohio 1991). The settlement proposed by the Debtor-in-possession should be approved by the Court unless it "falls below the lowest point in the range of reasonableness." In re Carson, 82 B.R. 853, quoting Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2nd Cir. 1983), cert. denied, 464 U.S. 822 (1983).

8. This settlement satisfies the requirements for approval pursuant to Bankruptcy Rule 9019 and the applicable case law, it is in the best interests of the bankruptcy estate and the best interest of creditors, and it should be approved.

9. The Official Unsecured Creditor's Committee has consulted with the parties and has monitored and participated to some extent in the discussions and negotiations concerning this settlement. The Official Unsecured Creditor's Committee at a duly noticed meeting has considered this settlement and is fully in favor of this settlement, and joins in requesting the Court to approve this settlement.

WHEREFORE, the Debtor-in-Possession, Sunnyside Coal Company, secured creditor Carbon County, Utah, and the Official Unsecured Creditor's Committee request the Court to approve the attached Settlement Agreement, and enter such other and further relief as may be appropriate.

Dated as of this 6th day of February, 1995.

SHERMAN & HOWARD L.L.C.

HOLLAND AND HART

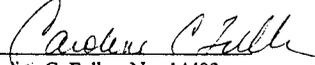
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Creditors Committee

SETTLEMENT AGREEMENT

1. **Parties.** The parties to this Settlement Agreement are Carbon County, Utah, and Sunnyside Coal Company ("Sunnyside"), debtor-in-possession in the voluntary Chapter 11 bankruptcy case commenced on March 25, 1994, Case No. 9412794 CEM in the United States Bankruptcy Court for the District of Colorado. Although not formally parties to this Settlement Agreement, the Creditors Committee, by the signature of its counsel, Caroline Fuller of Fairfield & Woods, has considered this settlement and fully supports it.

2. Background.

A. The Sunnyside Mine was acquired by its current owner from Kaiser Coal et al, debtor-in-possession on March 9, 1989. On April 12, 1989, Sunnyside Reclamation & Salvage, Inc. (subsequently renamed Sunnyside Coal Company, its current name) entered into an Agreement Regarding Payment of Real Property and Personal Property Taxes on the Sunnyside Mine to deal with Kaiser Coal Company's past due taxes for 1986 through 1988, with a principal amount of \$1,018,140.80 (subject to adjustment by the Utah State Tax Commission), providing for periodic payments and abatement of penalty and interest, all as more fully set forth in that April 12, 1989 Agreement.

B. A second agreement was entered into between Carbon County and Sunnyside Coal Company dated May 19, 1993, entitled Agreement for Deferral of Real and Personal Property Tax, by which \$126,543 was paid in full satisfaction of taxes for tax years 1986, 1987, 1988 and 1989, certain parcels of real property were deeded to Carbon County in satisfaction of a portion of the remaining tax delinquency, and a payment schedule was agreed upon to pay taxes for years after 1989, all as more fully set forth in that Agreement.

C. Sunnyside Coal Company filed its voluntary Chapter 11 bankruptcy petition on March 25, 1994. On June 3, 1994, Debtor, Carbon County, and BXG, Inc. entered into an Agreement for Use of Cash Collateral (the "Cash Collateral Agreement"), which was approved by the Court by the June 30, 1994 Order Granting Motion for Approval of Agreement for Use of Cash Collateral (the "Cash Collateral Order"), after due notice to creditors and interested parties.

D. Pursuant to the Cash Collateral Agreement and the Cash Collateral Order the Debtor made the following payments to Carbon County:

<u>Date</u>	<u>Amount</u>
July 20, 1994	\$ 92,000
September 9, 1994	\$ 15,300
September 20, 1994	\$ 4,905
December 12, 1994	\$310,000

During the pendency of the bankruptcy Carbon County has allowed the Debtor to use its cash collateral, pursuant to the Cash Collateral Agreement and the Cash Collateral Order.

E. After the Debtor paid the amounts listed in paragraph D above, Carbon County asserted that the remaining assessment by the Utah State Tax Commission of \$144,976 remained due for real and personal property taxes, interest and penalties. The Debtor disputed the amount of Carbon County's claim, and the December 12, 1994 payment by the Debtor of \$310,000 was paid to the County under protest, preserving Debtor's right to appeal the tax deficiency asserted by Carbon County. Carbon County further asserted that, if the pre-petition settlements with Sunnyside were found to have been breached, that the acceleration provision in the May, 1993 Agreement would result in an additional amount due of approximately \$132,000, composed mostly of interest on unpaid pre-1990 taxes. Sunnyside believed that, after all the payment set forth above in paragraph D were made, it owed approximately \$36,616.

3. **Intent and Scope of Agreement.** It is the intent of the parties to this Settlement Agreement to make a final and irrevocable settlement of all claims Carbon County may have against Debtor, and the bankruptcy estate being administered in Sunnyside's bankruptcy proceeding, Case No. 94 12794 CEM in the Bankruptcy Court for the District of Colorado, through December 31, 1994, and to make a final and irrevocable settlement of all claims the Debtor may have against Carbon County through December 31, 1994. Taxes for tax year 1995 are not included within the scope of this Agreement, but it is the intent of the parties finally and irrevocably to resolve and settle all other matters between them, through December 31, 1994.

4. **Consideration.** The consideration for this Settlement Agreement, acknowledged by the parties to be valid and sufficient consideration for the mutual exchange, is as follows:

A. **Debtor Payment of \$86,000.** The Debtor will pay to Carbon County Eighty-Six Thousand Dollars (\$86,000) within 10 days of the entry of a final and nonappealable order approving this Settlement Agreement.

B. **Mutual Release.** The parties enter into mutual releases, as follows:

(1) **Carbon County's Release of Debtor.** Except for the performance of all terms, conditions, duties and obligations contained in this Settlement Agreement, Carbon County, for itself, its predecessors, successors and assigns, their subsidiaries and affiliates, their employees, county commissioners, agents, attorneys, and citizens, hereby finally and irrevocably releases, remises and forever discharges Sunnyside Coal Company from any and all taxes, penalties, interest, liens, secured claims, liabilities, acts, actions, causes of action, suits, proceedings, debts, dues, sums of money, accounts, accountings, pending seizures and sales, refunds, adjustments, reckonings, bonds, bills, covenants, contracts, controversies, conveyances, leases,

assignments, agreements, promises, representations, trespasses, damages, judgments, executions, defenses, offsets, counterclaims, claims and demands, or any combination of the same, of any nature, whether at law or in equity, arising through December 31, 1994, but taxes for tax year 1995, due November, 1995, or years thereafter, are not released.

(2) **Debtor's Release of Carbon County.** Except for the performance of all terms, conditions, duties and obligations contained in this Settlement Agreement, Sunnyside Coal Company, debtor-in-possession in its voluntary Chapter 11 bankruptcy proceeding, for itself, its predecessors, its successors, including any bankruptcy trustee who may be appointed in the pending Chapter 11 or in a Chapter 7 bankruptcy proceeding for Sunnyside Coal Company should the pending Chapter 11 proceeding be converted, and for its creditors, interest holders, employees, agents, attorneys, the Chapter 11 estate, and all other parties in interest in the Chapter 11 estate, hereby finally and irrevocably releases, remises and forever discharges Carbon County from any and all liabilities, acts, actions, causes of action, suits, proceedings, debts, dues, sums of money, accounts, accountings, refunds, adjustments, reckonings, bonds, bills, covenants, contracts, controversies, conveyances, leases, assignments, agreements, promises, representations, trespasses, damages, judgments, executions, defenses, offsets, counterclaims, claims and demands, avoidance actions, recovery of transfers, lien claims, or any combination of the same, of any nature, through the date of this Settlement Agreement. Debtor has made at least one of its payments to Carbon County under protest. Debtor now releases and waives any right to appeal, reconsider, or in any other fashion recover that payment. Debtor further agrees and acknowledges that all payments received by Carbon County since the Bankruptcy Petition have been authorized by the Court through the Cash Collateral Order, the Cash Collateral Agreement, this Settlement Agreement, and the Court's approval of this Settlement Agreement, and those payments may not be avoided or otherwise recovered from Carbon County.

5. **Court Approval.** The parties hereby agree that Bankruptcy Court approval of this Settlement Agreement and the payments under the Cash Collateral Agreement and under this Settlement Agreement is a condition precedent to the effectiveness of this Settlement Agreement.

6. **Successors and Assigns.** This Settlement Agreement is binding not only on the parties hereto, but also upon any successors or assigns, including any successors entitled to any distribution from the parties' property, and including any trustees, whether under Chapter 11 or Chapter 7, that may be appointed with respect to Sunnyside Coal Company and including all of Sunnyside Coal Company's creditors and parties in interest.

7. **Complete Integration.** This Settlement Agreement is a fully integrated agreement containing the entire agreement between the parties. It may be supplemented, altered, amended, modified or revoked by writing only, signed by all parties or their successors in existence at the time of such action.

8. **Construction of Agreement.** This Settlement Agreement shall be liberally construed to effectuate the intention of the parties. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Settlement Agreement, neither this Settlement Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party (including the party primarily responsible for the drafting and preparation of this Settlement Agreement), under any rule of construction or otherwise, it being expressed, understood and agreed that each of the parties has at all times been independently advised by its own attorney and the parties have had equal opportunity to participate in the drafting of this Settlement Agreement.

9. **Authorization.** Each individual executing this Settlement Agreement on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this settlement agreement on behalf of such party and this settlement agreement is binding on such party in accordance with its terms.

10. **Counterparts and Facsimile.** This Settlement Agreement may be signed in counterpart, and by signature transmitted by facsimile, and such counterparts shall be treated as originals of this Settlement Agreement.

CARBON COUNTY

SUNNYSIDE COAL COMPANY

By: /s/ Mike Milovich
Mike Milovich

By: /s/ Robert Burnham
Robert Burnham
President

By: /s/ Neil Breinholt
Neil Breinholt

By: /s/ William Krompel
William Krompel
COMMISSIONERS

APPROVED AS TO FORM AND SUBSTANCE:

OFFICIAL UNSECURED CREDITORS COMMITTEE

By: Its Counsel Fairfield & Woods

By: Caroline Fuller
Caroline Fuller
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