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DIV OF OIL, GAS & MINING

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

ACT/007/002 #2
Bankruptcy File

In re: SUNNYSIDE COAL COMPANY, Debtor.	CASE NO. 94-12794 CEM Chapter 7

NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202 OF MOTION FOR APPROVAL OF TRUSTEE'S MOTION FOR APPROVAL OF TRANSFER OF PROPERTY FREE AND CLEAR OF CLAIMS ENCUMBRANCES AND INTERESTS PURSUANT TO CLOSING OF WATER SALE AGREEMENTS

TO ALL CREDITORS AND PARTIES IN INTEREST

The Trustee has filed a Motion for Approval of Transfer of Property Free and Clear of Claims, Encumbrances and Interests Pursuant to the Closing of a Water Sale Agreement ("Motion"). A copy of the Motion is served herewith in reduced form. Exhibits not attached in the reduced copy attached hereto are available for inspection in the Bankruptcy Court Clerk's Office, 721 - 19th Street, First Floor, Denver Colorado, 80202, or upon request from one of the undersigned attorneys.

The principal terms of the Motion are set forth therein including a general description of the property to be transferred.

Pursuant to Local Bankruptcy Rule 202, if you desire to oppose this action you must file a written objection and request for hearing with the Court on or before March 27, 1996 and serve a copy thereof on the undersigned attorney. Objections and requests for 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 enter its order approving the Motion without further notice to creditors and other interested parties.

DATED this 4th day of March, 1996.

LeBOEUF, LAMB, GREENE & MacRAE
L.L.P.

By: _____

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Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

In re: SUNNYSIDE COAL COMPANY, Debtor.	CASE NO. 94-12794 CEM Chapter 7

TRUSTEE'S MOTION FOR APPROVAL OF TRANSFER OF PROPERTY FREE AND CLEAR OF CLAIMS ENCUMBRANCES AND INTERESTS PURSUANT TO CLOSING OF WATER SALE AGREEMENTS

Kenneth A. Rushton, the Chapter 7 trustee appointed in this case (the "Trustee"), hereby moves the Court, pursuant to 11 U.S.C. §§ 105 and 363, and 506 to enter an Order approving the transfer of certain water rights and land and the granting of easements as set forth below and in the exhibits attached hereto in accordance and in conjunction with an earlier order of this court approving an agreement selling water right #91-231 to Sunnyside Cogeneration. The property to be transferred is more particularly described in Exhibits 3 through 5 attached hereto. In support of this Motion, the Trustee respectfully represents as follows:

1. This case was filed by the Debtor as a voluntary Chapter 11 case on March 25, 1994.

2. This Court, on June 23, 1995, entered its order converting the above-captioned case from Chapter 11 to Chapter 7.

3. On June 25, 1995, Mr. Rushton was appointed as interim trustee and has since become the Trustee in this case.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

<u>The Water Sale Agreement</u>

5. On or about June 7, 1994, the Court approved by an Order ("Sale Order" attached as Exhibit 1) a transaction involving certain Water Sale Agreements entered into by Sunnyside Coal Company and Sunnyside Cogeneration Associates, with the primary agreement dated September 30, 1993. Pursuant to the Water Sale Agreements (attached as Exhibit 2), Sunnyside Coal Company sold water right number 91-231 (the "Water Right") and other real property rights (the "Real Property" described with particularity in paragraphs 11b and c below) to Sunnyside Cogeneration for the sum of $600,000.

6. Pursuant to the Sale Order, this court authorized the Sunnyside Coal Company as debtor in possession to proceed with the terms and conditions of the Water Sale Agreement with Sunnyside Cogeneration.

7. The Trustee is the legal and proper successor to Sunnyside Coal Company and its rights and duties under the Water Sale Agreements.

8. The Trustee and Sunnyside Cogeneration now wish to proceed to the closing of the sale of Water Right #91-231 and the Real Property and to complete all necessary obligations to effect that closing including the transfer of such property free and clear of liens as set forth below.

Transfer of Property and Easements for Closing of Sale

9. Part of the terms and conditions of the Water Sale Agreements required that Sunnyside Coal Company ("SCC") do the following with respect to closing the sale of the Water Right to Sunnyside Cogeneration Associates ("SCA"):

> 1. Provide all of SCC 's rights to reasonable access, easements and related rights to SCA . . . and reasonably assist SCA in obtaining any such rights from third parties, so that SCA can exercise its rights provided in Section IV A.3 above . . . .
>
> 2. Prior to ceasing operations at the Sunnyside Mine, grant, convey, assign or transfer all of its right, title, and interest in the SCC Water System to SCA along with all title, rights of way, easements and authorizations necessary for SCA to own, operate, maintain and develop the Water Right . . . .

10. Thus, according to the contractual provisions cited above, Sunnyside Coal is obligated to convey title or easement the Real Property such that SCC's use and development of the Water Right is accommodated.

11. Pursuant to the terms of the Water Sale Agreement, the Parties intend to transfer the Water Right and the Real Property as more particularly described below and in attendant exhibits:

a. Water Right #91-231, by quit claim deed, a form of which is attached hereto as Exhibit 3;

b. Fee simple title to approximately 2.29 acres surrounding the well sites developed by Sunnyside Cogeneration in water canyon; to be conveyed by quit claim deed, a form of which is attached hereto as Exhibit 4;

c. A 20 foot easement across Sunnyside Coal Company's property to allow access to an underground water

pipeline connecting the well sites with Sunnyside Cogeneration's property; conveyed by quit claim deed, a form of which is attached hereto as Exhibit 5.

Transfer of Property Interests Free and Clear of Liens

Transfer of the Water Right.

12. In connection with the transfer of Water Right number 9-231, the Trustee believes that there is only one lien which has attached to such property. That lien is held by the Utah Division of Oil, Gas and Mining which is asserted in the amount of $2,000,000. The Division has agreed, to the extent necessary, to sign a deed of reconveyance with respect to the property being transferred. Thus, the water right will be transferred free and clear of liens and interests. The Division has consented to the transfer and thus the sale free and clear is proper under Section 363(f)(2). The value paid by Sunnyside Cogeneration was paid on account of this water right.

13. To the extent other parties may assert an interest in the Water Right, the Trustee believes that it might adequately protect such an interest and, therefore, sell the property free and clear of such an interest. As stated above, however, the Trustee knows of no party asserting a lien interest in the Water Right other than the State of Utah.

Transfer of Interest in Real Property.

14. The Trustee believes that the following entities may assert some lien or encumbrance on the acreage to be transferred to Sunnyside Cogeneration pursuant to this motion and sales agreement attached hereto:

(1) The Utah Department of Natural Resources, Division of Oil, Gas and Mining which asserts a deed of trust and security agreement encumbering the Property in the approximate amount of $2,000,000.

(2) BXG, Inc., a Colorado corporation, who asserts a trust deed and security interest in the Property which is disputed by the Debtor and the Trustee.

(3) Great Lake Timber Company who might assert lien in certain mineral interests.

(4) Range Creek Partners LLC which has asserted a Lis Pendens interest in the Property.

(5) PDM Steel Service Center, Inc. which asserts an interest under a notice of lien in the amount of $2,102.15.

(6) Rocky Mountain Bolt Company which might assert a mechanic's lien in the Property in the amount of $17,852.24.

(7) O'Brien Plumbing & Heating which might assert a mechanic's lien in the Property in the amount of $1,750.

(8) Triune Inc. & Tritronics which might assert a notice of lien in the Property.

(9) Mountainland Supply Company which might assert a judgment lien in the Property in the amount of $16,506.63.

(10) Firemaster which might assert an unspecified lien interest in the Property.

(11) Mine Hydraulics Inc. which might assert an unspecified lien interest in the Property.

(12) Westinghouse Electric Supply which might assert an unspecified lien interest in the Property.

(13) Anixter Inc. which might assert an unspecified lien interest in the Property.

(14) Sierra Drilling Inc. which asserts a lien against Sunnyside Cogeneration in the amount of $396,498.56.

15. The Trustee asserts that the Real Property may be transferred free and clear of such liens and interests under one or more of the following principles.

16. First, in connection with the transfer of the interest in Real Property, including the fee simple and easement interests, the Trustee asserts that there is only one lien which has attached to such property under principles of Section 506(a). That lien is held by the Utah Division of Oil, Gas and Mining in the amount of $2,000,000. The Division has agreed, to the extent necessary, to sign a deed of reconveyance with respect to the Real Property being transferred. Thus, the property will be transferred free and clear of liens and interests.[1] The Division

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[1] To the extent other parties might assert a lien in the real property to be transferred, the Trustee believes that, for the most part, these liens have been satisfied or otherwise released. To the extent a party may assert a continuing interest in the real property to be transferred, the Trustee believes that such liens are abrogated under Section 506(a) of the Bankruptcy Code because of the prior lien of the Utah Division of Oil, Gas and Mining (approximately $2,000,000) far exceeds the value of the real property being transferred and, thus, there is no equity for such liens to attach. The Trustee asserts that the value of

(continued...)

has consented to the transfer and thus the transfer of Real Property is free and clear pursuant to otherwise applicable Utah state law and pursuant to Section 363(f)(2).

17. Second, with respect to parties listed above other than the Division and Sierra Drilling, if such party asserts a lien in the property to be transferred, the Trustee requests that the transfer be ordered to be free and clear of such liens, encumbrances and interests with any valid lien by any party to attach to the remaining property or the proceeds of the remaining property of the estate against which such liens are also asserted.[2] The Trustee believes that the remaining property of the estate or the proceeds therefrom is more than sufficient to satisfy such liens to the extent they are valid. The value of the remaining property is sufficient to adequately protect such lien interest under Section 363(e) of the Bankruptcy Code.

18. Finally, the Trustee asserts that the lien of Sierra Drilling, noted above, was filed on property of Sunnyside Coal and was filed in contravention of the automatic stay and is therefore invalid ab initio. The Trustee notes that the lien filing arises from a dispute between Sunnyside Cogeneration and Sierra Drilling and, thus, property of the estate may not be encumbered by such a lien. Hence, the Trustee moves the court to order that the proposed transfer of real property is free and clear of that lien and that lien does not attach to the proceeds from the sale of the real estate.

19. The Trustee and Sunnyside Cogeneration reserve the right to contest the validity of the lien of Sierra Drilling on any and all other grounds which might be available to them to contest such lien.

CONCLUSION

20. The Trustee believes that the estate is obligated to transfer the property set forth above to SCA in accordance with the terms and conditions of the Water Sale Agreements and the

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[1] (...continued)
the real property transferred to Sunnyside Cogeneration is less than $1,000. To abrogate such liens may require, however, an adversary proceeding initiated pursuant to Bankruptcy Rule 7001. Accordingly, the Trustee relies upon adequately protection of such liens with respect to this motion.

[2] The Trustee has approximately 26,000 acres of other real property in the estate which it proposes to sell. The proceeds from the sale of this property, as stated in the motion filed with the court to sell this property, is sufficient to pay any valid lien asserted against it, including the liens of the entities listed in this motion with the exception of Sierra Drilling. As stated below, the Trustee does not believe that Sierra Drilling has a valid lien.

transfer of the Property in question is necessary to comply with such conditions.

WHEREFORE, the Trustee prays that this Court enter an Order approving the transfer of the property rights listed in paragraph 11 above free and clear of liens and encumbrances with the valid lien of the Utah Division of Oil, Gas and Mining to attach to the proceeds of the sale and with the valid lien of any other entity, if any, to attach to property remaining in the hands of the estate or otherwise treated as set forth above.

DATED this 4th day of ~~February~~ March, 1996.

LeBOEUF, LAMB, GREENE & MacRAE
L.L.P.

By: _____

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