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Randy Drew file
ACT/007/007 #3

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 CORRECTIONS AND SUPPLEMENT TO MOTION FOR APPROVAL TO SELL FOOTPRINT PROPERTY AND WATER RIGHTS FREE AND CLEAR OF CLAIMS ENCUMBRANCES AND INTERESTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE

Kenneth A. Rushton, the chapter 7 trustee (the "Trustee") of the debtor Sunnyside Coal Company (the "Debtor") in the above-captioned case, has by prior motion ("Motion") moved this Court to enter an Order approving the Debtor's sale of certain real property ("Footprint Property") and attendant structures on such property, and certain Water Rights (the "Sale Assets") to Penta Creek LLC or its assignees ("Penta Creek" or "Purchaser" as the context requires), free and clear of all liens, interests, encumbrances, and claims pursuant to section 363(b) and (f) of title 11, United States Code (the "Bankruptcy Code"). By this supplement to the Motion, the Trustee makes certain technical corrections to that Motion and asks the Court for additional relief in connection with the transfer of the Footprint Property.

Technical Corrections

1. Typographical Error Respecting Amount of Acreage. In the Motion at paragraph 6, the representation was made that the Footprint Property consisted of 110 acres. This representation was incorrect. The actual acreage associated with the Footprint Property is approximately 220 acres. The legal description of the Footprint Property attached to the original Motion indicated that the acreage was significantly more than the representation made in the Motion.

Request for Additional Relief

2. At the time the Trustee sold the bulk of the estate's real property (the "Mountain Property") to Penta Creek, the Trustee excepted from that sale what is referred to as the Footprint Property -- the property upon which Sunnyside Coal conducted the majority of its above-ground mining operations.

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3. In his original deed to Penta Creek conveying the Mountain Property, the Trustee used a description of the Footprint Property which had been created from plats and aerial photgraphs and not from an actual survey of the disturbed area which constituted the Footprint Property.

4. Recognizing that such a description might not be completely accurate, the Trustee contracted, in his original purchase/sale agreement with Penta Creeks, to allow for technical corrections of the description of the Footprint Property to allow the Trustee to obtain back from Penta Creeks, if erroneously transferred, any portion of the the disturbed mining operation area which should constitute the Footprint Property. Penta Creek did not intend, at that point, to own any portion of the disturbed Footprint Property.

5. Shortly after completing the sale of the Mountain Property (and due to the interest of certain proposed purchasers), the Trustee decided to clarify the boundaries and description of the Footprint Property by means of a survey. The Trustee hired Echoff, Watson and Preator ("EWP") to complete the survey. Shortly after beginning the survey, EWP disclosed to the Trustee that there existed certain errors in the legal description of the Footprint Property used to except such property from the sale to Penta Creeks. In essence, such Footprint Property description did not match the area outlined various operational maps as the boundaries of the Footprint Property and it did not encompass the entire area traditionally recognized as the Footprint Property including certain buildings which were used in the Debtor's above ground mining operations. EWP noted that certain parts of the description described the same piece of property twice and it left holes in areas recognized as Footprint Property. In the survey process, the Trustee was provided by EWP with a correct description of the Footprint Property.

6. As a result of using the incorrect legal description for the Footprint Property, Penta Creek had become the record owner of certain parts of the disturbed property when it acquired the Mountain Property.

7. The Trustee immediately notifed Penta Creek of the error in the description and provided the correct description of the Footprint Property to Penta Creek. The Trustee was informed that Penta Creek intended to sell a portion of the Mountain Property to a subsequent purchaser -- Mr. Barnes. Accordingly, the Trustee asked Penta Creek to except from its sale to Mr. Barnes, the correct description of the Footprint Property and to, at the same time, reconvey to the estate any parts of the disturbed property which had been erroneously transferred to it in the sale of the Mountain Property.

8. Penta Creek complied with the Trustee's request by executing a deed of reconveyance and by attempting to use the correct description of the Footprint Property in reserving the Footprint Property from its sale to Mr. Barnes. Unfortunately, Penta Creek made a typographical error in describing certain property -- it transcribed a "SW" to an "NW" in the legal description. As a result of this erroneous description, a certain part of the Footprint Property passed to Mr. Barnes. Mr. Barnes then sold his interest to two entities: Sunnyside Land L.L.C. and Sunnyside Timber L.L.C. These two entities, as of the date of this filing, show as the owner of certain acreage (approx. 5 acres) of land which is encompassed in the description of "Footprint Property."

9. Sunnyside Land and Sunnyside Timber have both agreed to reconvey to the estate any interest they may have in the Footprint Property. But these entities have asked that the Trustee obtain an order from the Bankruptcy Court "expunging" them from the chain of title on the mistakenly transferred land and that the estate pay their costs (estimated at less than $1,500) associated with their reconveyance of the Footprint Property.

10. The Trutee has agreed to these concessions subject to Bankruptcy Court approval of the same. Thus, the Trustee requests that this court, as part of the sale order on the Footprint property sale motion, order that

a. The Property described in Exhibit A attached hereto consitutes the correct description of the Footprint Property;

b. That the entities who obtained any part of this property by inadvertance and mistake be expunged from the title: specifically Frank Barnes, Sunnyside Land L.L.C. and Sunnyside Timber L.L.C., and that such expungement may be accomplished by a recorded document filed by the Trustee noting the inadvertant transfer of portions of the Footprint Property which includes this Court's order that such persons be expunged from the chain of title;

c. That the Trustee be allowed to pay the costs of Sunnyside Land L.L.C. and Sunnyside Timber L.L.C. associated with the reconveyance of the Footprint Property not to exceed $1500 unless adequate documentation is presented to the court and served upon creditors explaining the basis of such costs.

WHEREFORE, the Trustee prays that this Court enter an Order as set forth in the preceding three paragraphs and such other and further relief as the Court deems appropriate.

DATED this 15th day of May, 1998.

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

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Counsel for Kenneth A. Rushton,
Chapter 7 Trustee

CERTIFICATE OF MAILING

I hereby certify that a copy of the TRUSTEE'S CORRECTIONS AND SUPPLEMENT TO MOTION FOR APPROVAL TO SELL FOOTPRINT PROPERTY AND WATER RIGHTS FREE AND CLEAR OF CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY COURT was deposited in the U.S. mail, postage prepaid, this 15th day of May, 1998, to the addresses listed on the attached pages.

Sharon Holdorf

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EXHIBIT A
(Sunnyside Coal Company Footprint Property)

Section 32, Township 14 South, Range 14 East, SLB&M:

S ½ NW ¼ SW ¼ NE ¼; SW ¼ SW ¼ NE ¼;
W ½ NE ¼ NW ¼ SE ¼; W ½ NW ¼ SE ¼;
W ½ NW ¼ SW ¼ SE ¼; S ½ SE ¼ NE ¼ SW ¼; SE ¼ SW ¼;
E ½ SE ¼ SW ¼ SW ¼

Section 33, Township 14 South, Range 14 East, SLB&M:

S ½ SW ¼ SW ¼

Section 4, Township 15 South, Range 14 East, SLB&M:

N ½ NW ¼ NW ¼

Section 5, Township 15 South, Range 14 East, SLB&M:

NW ¼ NW ¼ NE ¼; NE ¼ NW ¼ NE ¼;
NW ¼ NE ¼ NE ¼; N ½ NE ¼ NE ¼ NE ¼;
W ½ NW ¼ NE ¼ NW ¼; NE ¼ NW ¼ NW ¼
W ½ SE ¼ NW ¼ NE ¼; W ½ SW ¼ NW ¼;
E ½ NW ¼ NW ¼ NW ¼; SW ¼ NW ¼ NW ¼;
W ½ E ½ NW ¼ SW ¼; W ½ NW ¼ SW ¼;
NW ¼ SW ¼ SW ¼.