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INA/607/007 #2

cc: Mary Ann
Randy

FAX COVER LETTER

To:

1. Penrod W. Keith, Esq. and Steven J. McCardell, Esq., LeBoeuf, Lamb, Greene & MacRae, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101 (Trustee's Counsel) (Tel. 801-320-6700) (Fax 801-359-8256)
2. Kenneth A. Rushton, Esq., 99 West Main St., Suite 202, Lehi, UT 84043 (Trustee) (Tel. 801-768-8416) (Fax 801-768-4353)
3. Robert D. Clark, Esq., Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Colorado, 1961 Stout Street, Suite 1100, Denver, CO 80294 (Counsel to the U.S. Office of Surface Mining) (Tel. 303-844-3885) (Fax 303-844-0098)
4. Greg Jensen, Principal in Penta Creeks LLC, 140 South Newton, Albert Lea, MN 56007 (Fax 507-377-0344)
5. Ralph C. Petty, Esq., Weiss, Barrett & Petty, 170 South Main Street, Suite 1100, Salt Lake City, UT 84101 (Penta Creeks LLC Principal and Counsel) (Tel. 801-531-7733) (Fax 801-531-7711)
6. Asael T. Sorensen, Jr., General Counsel, COVOL Technologies, Inc., 3280 North Frontage Road, Lehi, UT 84043 (COVOL's representative) (Tel. 801-768-4181) (Fax 801-768-4483)
7. Lowell Braxton, Acting Director, Utah Division of Oil, Gas & Mining, 1594 West North Temple, Suite 1210, Box 145801, Salt Lake City, UT 84114-5801 (Tel. 801-538-5327) (Fax 801-359-3940)

From: Patrick J. O'Hara, Assistant Attorney General, Utah Attorney General's Office, 160 East 300 South, 5th Floor, P.O. Box 140857, Salt Lake City, UT 84114-0857 (Tel. 801-366-0508; Fax 801-366-0352) (DOGM's Counsel)

Re: In re Sunnyside Coal Co.-5/7/98 Draft Stipulated Bankruptcy Court Order re Proposed Sale of the Footprint Property by the Trustee to Penta Creeks LLC

Date: May 7, 1998

In response to the draft Order I sent to you on 4/28/1998 on behalf of the Utah Division of Oil, Gas & Mining (DOGM), I have received comments from the U.S. Office of Surface Mining (OSM) and from COVOL Technologies, Inc. ("COVOL"). The changes requested by OSM—that it be named as a co-beneficiary on the letter of credit (LOC) and that the takings clause be broadened—are acceptable to DOGM and have been incorporated into paragraphs 5(d)(3) and 5(c) of the attached 5/7/1998 draft Order. COVOL's only comment was a counteroffer to change the LOC amount in Paragraphs 5(d) and 5(e) from \$500,000 to \$50,000. DOGM is not willing to accept COVOL's \$50,000 LOC, but the attached 5/7/1998 draft incorporates DOGM's compromise to reduce the LOC amount from \$500,000 to \$250,000. Also, the first deadline has been moved back 1 week to 5/22/1998. Please advise.

Attachment (8 additional pages)

PJO
7/30/98

5/7/1998 Draft

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

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

**ORDER RESPECTING TRUSTEE'S 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**

This matter is before the Court on the motion (the "Motion") of Kenneth A. Rushton, the Chapter 7 trustee appointed in this case (the "Trustee"), pursuant to 11 U.S.C. § 363 to sell certain real property of the estate known as the "Footprint Property" and water rights attendant thereto free and clear of interests to Penta Creek L.L.C. The Court, having reviewed the Motion and the objection filed thereto by the Utah Division of Oil, Gas and Mining ("DOGM"), and finding that the Trustee has settled the objection with DOGM and DOGM has approved the form of this order, and finding that no other written objections have been filed to the Motion, and taking notice of the file in the case, finds that it is appropriate to grant the Motion as set forth below.

IT IS THEREFORE ORDERED that, pursuant to the terms of the Footprint Property sale agreement (the "Agreement", a true and correct copy of which is attached hereto as Exhibit A), the Trustee may sell the Footprint Property and attendant water rights identified therein to Penta Creek L.L.C. or its designee ("Buyer") under the terms and conditions of the Agreement, but subject to the following modification to such Agreement:

Section 5 of the Agreement is amended to add the following language:

It is expressly recognized by the Buyer and the Seller that the Buyer, after it purchases from Seller, intends to sell and lease and shall sell and lease certain parts of the "Footprint Property", consisting of about 210 acres (i.e., not approximately 110 acres as stated in the Motion), which is described more particularly in the Agreement attached hereto as Exhibit A and hereby incorporated by reference, to COVOL Technologies, Inc., a Utah Corporation ("COVOL"). The parties recognize that COVOL is attempting to obtain approval from the Utah Division of Oil, Gas and Mining ("DOGM") of a post-mining land use with respect to certain parts of the Footprint Property. DOGM has expressed concern over the performance of

COVOL under its intended post-mining land use. To facilitate the sale of the Footprint Property to Buyer, COVOL, the Buyer, and the Seller agree to the following provisions.

- 5a. Addition of COVOL as Party to Agreement: Recognition of Third Party Beneficiary. COVOL shall execute this Agreement as a party and agrees, by so signing, to be bound by the covenants contained in this section 5. COVOL, Buyer and Seller expressly recognize that the terms and covenants in this section are made for the benefit of DOGM and DOGM is accepted as a third-party beneficiary to this Agreement with rights to enforce any provision or covenant in this Agreement and is specifically entitled to enforce the provisions of this section 5 against any of the parties hereto by means of equitable remedies including negative or affirmative injunctions including seeking the same from the Bankruptcy Court to the extent such court has or retains jurisdiction over such enforcement action. It is agreed by the parties that this section 5 shall be binding upon the successors or assigns of the parties. Provided: To encourage and induce DOGM to approve the alternative post-mining land use as proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, hereby certify to that this agreement and the order approving same impose no contractual obligations in their favor vis-a-vis the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, or any of their respective agents, employees and contractors.
- 5b. Asbestos Obligation (Deadline: 11/15/1998).—The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Asbestos Obligation." To encourage and induce DOGM to approve the alternative post-mining land use as proposed by COVOL for the Footprint Property, by November 15, 1998, COVOL, for itself and its successors and assigns, agrees that, if the approval is made by DOGM, and if COVOL timely closes on its contemplated purchase and lease from Buyer, COVOL shall, at its sole expense, remediate all known potentially hazardous material within the structures and areas to be retained by COVOL. Specifically, COVOL, for itself and its successors and assigns, agrees it shall mitigate the asbestos materials as identified in the pre-demolition asbestos survey conducted by IHI Environmental of Salt Lake City, dated October 20, 1997 (a true and correct copy of which is reproduced as Appendix H in COVOL's filing with DOGM entitled, "Post Mining Land Use Change Application, Sunnyside Property, April 1998", and which is hereby incorporated by this reference). COVOL agrees it shall get all required permits and shall use qualified personnel timely to

complete said asbestos remediation work in a workmanlike manner in accordance with all applicable state and federal laws.

5c. Site Safety Obligation (Deadline: 11/15/1998) .--The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Site Safety Obligation". To encourage and induce DOGM to approve the alternative post-mining land use as proposed by COVOL for the Footprint Property, by November 15, 1998, COVOL, for itself and its successors and assigns, agrees that, if the approval is made by DOGM, and if COVOL timely closes on its contemplated purchase and lease from Buyer, COVOL, for itself and its successors and assigns, shall, by November 15, 1998, at its sole expense, abate any safety hazards which exist within the areas retained by COVOL. Specifically, COVOL, with regard to the hole in the upper bridge over Grassy Trail Creek, COVOL, for itself and its successors and assigns, agrees that it shall by said deadline repair, gate or otherwise secure said hole so it will not pose a hazard to the public and site workers. Also, with regard to the structures and areas at the Sunnyside site retained by COVOL, COVOL, for itself and its successors and assigns, also agrees it shall by said deadline install reasonable site security measures, including signs and gates to restrict access and to prevent unauthorized entry to the site.

5d. Waiver of Rights to Contest Decision of DOGM. DOGM and COVOL recognize that there remains certain actions which must be undertaken by COVOL (the "Remaining Actions") prior to the acceptance by DOGM of COVOL's proposed post-mining land use, including but not limited to delivery of a \$250,000 letter of credit with DOGM and OSM to guarantee COVOL's performance of the proposed post-mining land use. In particular, the Remaining Actions are set forth more particularly in Paragraph 5e and 5f. COVOL represents that it will be able to complete the Remaining Actions by May 22, 1998 (the "Submission Deadline"). If the Remaining Actions are not completed by the Submission Deadline, the Trustee, COVOL, the Buyer and the Seller irrevocably agree that none of them will:

(1) interfere, hinder or obstruct in any way the Debtor, DOGM or OSM in post-sale reclamation or inspection activities on the Footprint Property including any action such parties may take with respect to the destruction of any buildings or structures on the Footprint Property or the realignment of certain stream channels.

(2) prevent, hinder or interfere with the Debtor, DOGM or OSM, or any of their respective agents, contractors, employees, or legal counsel, in entering upon the Footprint Property to perform any

act related to reclamation of such land including to inspect the land, to survey the land, to re-contour the land, to re-vegetate the land, to demolish any buildings or structures used by the Debtor as part of the coal mine, or to otherwise complete any other reclamation activities consistent with the Utah version of the Federal Surface Mining and Control and Reclamation Act of 1977, Public Law 95-87, 11 U.S.C. 1201 et seq. ("SMCRA"), codified at Utah Code Ann. §§ 44-10-1 et seq. (1953, as amended) and Utah Admin. Code R645 et seq. (implementing administrative rules) ("U-SMCRA").

(3) seek any suit in law or equity against DOGM, OSM or the governments of the State of Utah or Federal Government or any branch or agency thereof that alleges recovery under any theory of contract, tort, eminent domain, taking, temporary taking, inverse condemnation, or regulatory taking with respect to any of the reclamation activities of the Debtor, DOGM, OSM or any agents or employees as set forth herein or pursuant to the laws cited above, as this Agreement is intended to provide said agencies and persons a blanket release for all such claims, if any, which may now exist or which may arise hereafter.

5e. Letter of Credit Obligation (Deadline: 5/22/1998).--The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Letter of Credit Obligation." By 4:00 p.m. Salt Lake City time on May 22, 1998, COVOL agrees, for itself and its successors and assigns, that it shall deliver to DOGM a \$250,000 letter of credit, issued by a federally-insured bank authorized to do business in the State of Utah, in a form acceptable to DOGM, to secure COVOL's timely and workmanlike performance of the Asbestos Obligation and the Site Safety Obligation. To call the letter of credit, COVOL, and its successors and assigns, agrees that, upon presentation to the issuing bank of a letter signed by the Director or Acting Director of DOGM (or a letter signed by the Denver Regional Director of OSM) certifying that COVOL, or its successors and assigns, has not timely and satisfactorily performed the Asbestos Obligation and/or the Site Safety Obligation, the issuing bank immediately shall pay DOGM (or OSM, if OSM is the moving agency) \$250,000. DOGM (or OSM, if OSM is the moving agency) shall thereafter be entitled without interference from Buyer, Seller, COVOL, or the Trustee, or any of their respective successors and assigns, to use said Letter of Credit funds to reclaim the portions of the Sunnyside Footprint Property retained by COVOL if DOGM approves COVOL's proposed alternative post-mining land use. If defaults by COVOL require DOGM (or OSM, if OSM is the moving agency) to call the letter of credit in the manner set forth herein, COVOL, Buyer and Seller expressly agree that DOGM

(or OSM, if OSM is the moving agency) shall have the right but not duty, if sufficient funds are available, to use the Letter of Credit funds to demolish the structures at the Sunnyside site previously retained by COVOL, even if it would be less expensive for DOGM (or OSM, if OSM is the moving agency) to only complete the unfinished work on the Asbestos Obligation and/or the Site Safety Obligation. In the event that DOGM (or OSM, if OSM is the moving agency) calls the Letter of Credit in the manner set forth herein, funds shall only be used by DOGM (or OSM, if OSM is the moving agency) within the Footprint Property to reclaim those areas intended to be left for the benefit of COVOL's proposed alternative post-mining land use. Any funds remaining from the Letter of Credit following final reclamation shall be returned by DOGM (or OSM, if OSM is the moving agency) to COVOL, or its successors and assigns. COVOL and its successors and assigns shall not be liable for any reasonable costs or liabilities in excess of the amount of the Letter of Credit. COVOL's obligation to provide DOGM and OSM a Letter of Credit as a condition of securing DOGM's approval of the alternative post-mining land use proposed by COVOL shall in no way be construed to be a reclamation bond for a permitted coal mine nor as any other coal mine permit obligation as defined by the permitting and bonding requirements under the rules and regulations pertaining to the Utah Coal Regulatory Program.

5f. The Deed & Lease Obligation (Deadline: 5/22/1998).---The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Deed and Lease Obligation." By May 22, 1998, COVOL shall deliver to DOGM true and correct copies of fully signed leases and deeds from the Buyer for all portions of the Footprint Property identified in COVOL's proposed alternative post-mining land use. In particular, COVOL, or its successors and assigns, shall deliver to DOGM signed deeds and lease agreements with Buyer substantially in the form attached to COVOL's filing with DOGM entitled, "Post Mining Land Use Change Application, Sunnyside Property, April 1998", which forms are hereby incorporated by this reference). The Deed & Lease Obligation is essential to confirm to DOGM that COVOL, or its successors and assigns, has, in a timely manner, acquired the rights to conduct operations at the site within all or part of the Footprint Property of the Sunnyside site.

5g. Landowners' Consent to Leave Mining Structures in Place.--To encourage and induce DOGM to approve all or part of the alternative post-mining land use as proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, hereby certify to DOGM, that they, as current and prospective future landowners, lessors and/or lessees of record of property

interests in the Footprint Property, are aware that any coal mining structures and facilities DOGM approves for retention as part of COVOL's proposed alternate post mining land use shall become property of said landowners, as their respective interests of record may appear, and that any liability or costs associated with such structures and facilities shall become those of said landowners, as their respective interests of record appear.

- 5h. No Governmental Liability. -- To encourage and induce DOGM to approve the alternative post-mining land use as proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, further agree that the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, and their respective agents, employees and contractors, shall not be held liable or accountable to, the Seller, the Buyer, and COVOL, or any of their respective successors and assigns, for any liability or costs associated with such structures DOGM ultimately approves to be retained by COVOL if DOGM approves COVOL's proposed alternate post mining land use in whole or in part.
- 5i. Right of Entry. -- Despite any of the foregoing, COVOL, the Buyer and the Seller agree that they will at all times grant access at no cost to DOGM, the U.S. Office of Surface Mining Reclamation and Enforcement ("OSM") or the Debtor, and their respective employees, agents, and contractors, to enter onto the Footprint Property to undertake reclamation activities and inspections as authorized by applicable law and by the police power of such agencies.
- 5j. Survival Clause. -- The Seller, the Buyer, COVOL and the Trustee agree that all of the provisions herein and in other paragraphs of the Agreement for the benefit of the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, and their respective agents, employees and contractors, shall survive the execution, delivery and recording of the various deeds and leases contemplated by and between the Seller, the Buyer, and COVOL, and any of their respective successors and assigns.
- 5k. Time is of the Essence. -- The Seller, the Buyer and COVOL are aware that DOGM currently plans to conduct a public meeting at Sunnyside on April 29, 1998 at 6:30 p.m. to discuss the intended reclamation plans for the Sunnyside Reclamation Project, and that DOGM plans that bids for construction of the site will be noticed and available on or about May 4, 1998 with the bid opening and bid award to occur by the end of May. Reclamation construction is anticipated to commence early in June.

Therefore, the Seller, the Buyer and COVOL agree that time is of the essence with regard to COVOL's deadlines herein.

IT IS FURTHER ORDERED that the foregoing amendment to section 5 of the Agreement is incorporated by this order and made a part hereof and relate to the sale of the Footprint Property which is described with particularity in Exhibit A attached hereto; and

IT IS FURTHER ORDERED that neither the Buyer nor COVOL shall have, except as expressly provided in the foregoing language, any financial liability with respect to the reclamation of the Footprint Property either by law or by contract; and

IT IS FURTHER ORDERED that neither this order nor the sale of the Footprint Property under section 363 relieves the Debtor of any liability, including financial liability, for the reclamation of the Footprint Property; and

IT IS FURTHER ORDERED that the Trustee shall separately account for and preserve the proceeds from the sale of the Footprint Property until this court has ruled on the validity of any lien, claim, encumbrance or right which DOGM or OSM may have with respect to such proceeds except that such adjudication may be made upon a request of hearing by notice or motion by any of the Trustee, DOGM or OSM.

IT IS FURTHER ORDERED that the transfer of Footprint Property as described in the legal description hereto and of the water rights identified in the Agreement shall, except as set forth above, be free and clear of all liens, encumbrances, and interests, with valid liens to attach to the proceeds of the sale.

IT IS FURTHER ORDERED that the Trustee shall, within no more than 30 days after entry of this Order, record the Agreement and this Order with the County Recorder for Carbon County, UT to impart constructive notice of its contents to all persons interested in the Footprint Property. The Seller, the Buyer, and COVOL shall have a duty to execute any additional documents as may be required to facilitate the recording of the Agreement and this Order.

DATED this ____ day of _____, 1998.

BY THE COURT

Charles E. Matheson
Chief Bankruptcy Judge

APPROVALS:

<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Counsel for the Trustee Kenneth Rushton Steven J. McCardell Leboeuf, Lamb, Greene & MacRae 136 South Main Street, Suite 1000 Salt Lake City, UT 84101-1645</p>	<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Kenneth A. Rushton Chapter 7 Trustee of the Estate of Sunnyside Coal Co. (Seller) 99 West Main St., Suite 202 Lehi, UT 84043</p>
<p>Approved this ___ day of ____, 1998.</p> <p>By _____ COVOL Technologies, Inc. 3280 North Frontage Road Lehi, UT 84043 By Russell Madsen Its Vice President</p>	<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Counsel for the Utah Division of Oil, Gas and Mining Patrick J. O'Hara Assistant Attorney General Utah Attorney General's Office 160 East 300 South, 5th Floor Salt Lake City, Utah 84114-0857</p>
<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Penta Creeks LLC or its Designee: (print name): _____ (Buyer) (print officer's name) _____ (street) _____ (city, state, zip) _____ Its: (print officer's title) _____</p>	<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Counsel for the U.S. Office of Surface Mining Reclamation & Enforcement Robert D. Clark, Assistant U.S. Attorney for the District of Colorado 1961 Stout Street, Suite 1100 Denver, CO 80294</p>
<p>Approved this ___ day of ____, 1998.</p> <p>By _____ Counsel & Principal for Penta Creeks LLC Ralph C. Petty, Esq. Weiss, Barrett & Petty 170 South Main Street, Suite 1100 Salt Lake City, UT 84101</p>	