

FEB 04 2002

DIVISION OF OIL, GAS AND MINING

CC: 007000V

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
(LEXINGTON DIVISION)

IN RE	:	Chapter 11 Proceeding
	:	
LODESTAR ENERGY, INC.	:	Case Nos. 01-50969 and 01-50972
LODESTAR HOLDINGS, INC.,	:	
	:	Jointly Administered under
Debtors.	:	Case No. 01-50969
	:	
	:	Judge Joseph M. Scott, Jr.

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LODESTAR ENERGY, INC., ET AL.	:	Adv. Proceeding No. 02-5001
	:	
PLAINTIFFS	:	
	:	
vs.	:	
	:	
THE STATE OF UTAH, ET AL.	:	
	:	
	:	
DEFENDANTS.	:	

**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTION TO DISMISS  
FOR FAILURE TO JOIN INDISPENSABLE PARTIES AND FOR  
INSUFFICIENCY OF SERVICE OF PROCESS; TO DISMISS  
FOR IMPROPER VENUE; OR, IN THE ALTERNATIVE, FOR STAY  
PENDING MANDATORY WITHDRAWAL OF REFERENCE OF JURISDICTION**

Plaintiffs Lodestar Energy, Inc. and Lodestar Holdings, Inc. (hereafter, collectively "Lodestar"), debtors and debtors in possession, respectfully submit this objection (the

“Objection”) to Defendants’ Motion To Dismiss For Failure To Join Indispensable Parties And For Insufficiency Of Service Of Process; To Dismiss For Improper Venue; Or, In The Alternative, For Stay Pending Mandatory Withdrawal Of Reference Of Jurisdiction (the “Dismissal Motion”). In support of this Objection, Lodestar respectfully states as follows:

**BACKGROUND**

1. On January 2, 2002, Lodestar commenced this adversary proceeding to seek injunctive relief to prevent the Defendants from taking certain actions with respect to the reclamation bonds relating to Lodestar’s coal mining operations in the State of Utah (the “State”).<sup>1</sup> The threatened actions, as set forth in letters to Lodestar from the State (attached as Exhibits N and O of the complaint) (the “Correspondence”), involve requiring Lodestar to replace reclamation bonds obtained and posted with the State prepetition or cease operations at facilities covered by those bonds. The sole authority cited by the State for the threatened actions is the Utah Annotated Code and Utah Administrative Code.

2. On January 3, 2002, the Defendants filed the Dismissal Motion and their Motion for Mandatory Withdrawal of the Reference (the “Withdrawal Motion”).

3. The hearing on Lodestar’s motion for injunctive relief has been continued to January 31, 2002.

**ARGUMENT**

4. Through the Dismissal Motion, the Defendants argue that this adversary proceeding should be dismissed on the grounds that (i) Lodestar failed to join as defendants the United States and other entities as “indispensable parties” (the “Additional Parties”); and (ii)

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<sup>1</sup> Lodestar’s mining operations at issue are its White Oak No. 1 and No. 2 Mines (the “White Oak Mines”) and the Horizon Mine, both located in Utah.

venue is not appropriate in this Court. Additionally, the Defendants contend that the adversary proceeding should be stayed pending the District Court's resolution of the Withdrawal Motion.

**I. Joinder of the Additional Parties is Not Required Under Federal Rule of Bankruptcy Procedure 7019**

5. Without citing any authority to support their request for relief, the Defendants claim that the United States and certain unidentified parties owning surface rights to certain unidentified portions of the real property upon which Lodestar conducts mining operations (the "Landowners") should be joined in this action pursuant to Bankruptcy Rule 7019. This Rule provides, in pertinent part, "Rule 19 F.R.Civ.P applies in adversary proceedings . . ." with some exceptions that are inapplicable to the relief requested in the Dismissal Motion. Rule 19 of the Federal Rules of Civil Procedure provides, in pertinent part:

**(a) Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

6. The Defendants do not even identify whether dismissal or joinder should be required under the independent criteria set forth in 19(a)(1), 19(a)(2)(i) or 19(a)(2)(ii), let alone set forth facts to establish that the United States or the Landowners meet those criteria. Rather, in support of their assertion that the United States is an indispensable party, the Defendants state only that their duties include enforcement of both state and federal mining reclamation regulations and that the United States is identified as a joint beneficiary to the bonds in question. Further, the sole basis for Defendants' argument that the Landowners are indispensable parties is

the Defendants' statement that the Landowners have an expectation that "the State of Utah would enforce state and federal surface reclamation bonding obligations." However, the Defendants make no attempt to relate these assertions to the requirements of Rule 19 and offer no legal argument or authority regarding how these assertions might justify the relief requested in the Dismissal Motion.

7. For example, the Defendants do not argue, nor could they argue, that complete relief cannot be granted in the absence of the Additional Parties. This adversary proceeding addresses the *State's* demand, based solely upon the *State's* regulations, asserted in the Correspondence, that Lodestar replace its existing reclamation bonds. No other parties are needed for the Court to determine that the *State* should be enjoined from requiring Lodestar to replace the bonds or cease operations. *See Becker v. County of Sacramento (In re Hackney)*, 83 B.R. 20, 23 (Bankr. N.D.Cal. 1988) ("There is no indication that complete relief as to the matters at issue in this adversary proceeding cannot be accorded to the Trustee and to the County."). Therefore, the Additional Parties are not necessary under Rule 19(a)(1) for the adjudication of this adversary proceeding.

8. Moreover, as statements made in the Defendants' own Dismissal Motion indicate, participation of the Additional Parties is not required pursuant to Rule 19(a)(2). With respect to the United States, the Defendants declare in the Dismissal Motion that the "State of Utah Division of Oil, Gas and Mining is the administrative and enforcement agency not only for the Utah Coal Mining and Reclamation Act, Utah Code Ann. 40-10-1 *et seq.* (Supp. 2001), but also for the Federal Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C.A. §1200 *et seq.*" With respect to the Landowners, the Defendants state that such owners "granted coal

leases to the Debtor on the reasonable expectation that the State of Utah would enforce state and federal surface reclamation bonding issues.”

9. These statements clearly and unequivocally demonstrate that dismissal or joinder under Rule 19(a)(2)(i) is inappropriate. Rule 19(a)(2)(i) requires the joinder of a party if that party claims an interest in a matter and is so situated that its absence may “as a practical matter impair or impede the person’s ability to protect that interest.” In the case at hand, the Additional Parties are not so situated. As stated by the Defendants, the Additional Parties’ interests are represented by the State as it enforces its own reclamation bonding regulations. The Defendants’ claim that these parties are helpless in the face of Lodestar’s action flies in the face of reason when their interests are, as admitted by the Defendants, represented by the State. Furthermore, if the Additional Parties deem their interests not sufficiently protected, they may seek leave to intervene in this proceeding.

10. Even if the Court determines that the interest of the United States must be taken into account, such interest is directly represented by the State pursuant to the Cooperative Agreement entered into by United States Secretary for the Department of the Interior and the Governor of the State of Utah. The Cooperative Agreement, attached hereto as Exhibit A, appears at 30 CFR §944. Pursuant to the Cooperative Agreement, “the laws, regulations, terms and conditions” of the Utah Code Annotated and the Utah State Program dealing with reclamation (the “Program”) “are applicable to Federal lands in Utah.” *See* 30 CFR §944.30 (Art. IV). DOGM is also granted explicit “primary enforcement authority” under SMCRA, the Cooperative Agreement and the Program. *See* 30 CFR §944.30 (Art. VIII). From this regulatory scheme, it is abundantly clear that the United States has explicitly delegated its interest in this

matter to the State and the United States is not an indispensable party to the resolution of this adversary proceeding.

11. Finally, the Defendants have not even argued, let alone established, that under Rule 19(a)(2)(ii), they will be subject to double, multiple or otherwise inconsistent obligations by reason of the claimed interest of the Additional Parties.<sup>2</sup>

12. Civil Rule 19, as incorporated by Bankruptcy Rule 7019, provides specific criteria for the joinder of additional parties to an adversary proceeding. The Defendants have failed to identify the criteria and to demonstrate how the joinder of the Additional Parties might be required pursuant to that criteria. Therefore, Lodestar respectfully requests that the Court deny the Dismissal Motion with respect to the joinder of the Additional Parties.

## **II. Venue is Appropriate in This District**

13. The Defendants' objection to venue is based on the fact that a revision to the White Oak Mine permit was issued on October 26, 2001, after the Petition Date.<sup>3</sup> The Defendants declare, without citing the language of the appropriate statute or any authority thereunder, that this adversary proceeding "is based on a claim arising after the order for relief from the operation of the business of the Debtor." However, this proceeding has nothing to do with the revision of a mining permit. The sole claim brought by Lodestar is to enjoin the

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<sup>2</sup> Apparently in an effort to address Rule 19(a)(2)(ii), Defendant Lowell P. Braxton, in the Affidavit of Lowell P. Braxton (the "Braxton Affidavit"), declares, without factual or legal support, that he is "reasonably apprehensive" that the State will be saddled with inconsistent obligations vis-a-vis the Additional Parties. The Plaintiffs have objected to this portion of the Affidavit on the grounds that, *inter alia*, it lacks foundation and expresses a legal conclusion.

<sup>3</sup> The Defendants state that Lodestar's permit on its White Oak Mine was issued on October 26, 2001, after the Petition Date. In so doing, the Defendants erroneously characterize the status of the permit for the White Oak Mine. That permit, like the Horizon Mine permit, was issued to Lodestar in 1999. A permit *revision* was issued on October 26, 2001.

Defendants' actions to require Lodestar to replace reclamation bonds. The Defendants commenced these actions well before the Relief Date, and merely continue them postpetition.

14. The threatened actions by the Defendants giving rise to this proceeding are the culmination of conduct between the parties that commenced well before the Relief Date. On or about June 5, 2000, the State sent a letter, attached hereto as Exhibit B, to Lodestar requiring Lodestar to replace its reclamation bonds with Frontier Insurance Company ("Frontier") due to the financial condition of Frontier. In response, Lodestar sent letters dated June 22, 2000, September 6, 2000 and January 15, 2001, attached hereto as Exhibits C, D and E, regarding its inability to replace the Frontier bonds. Thus, the controversy over replacing Lodestar's reclamation bonds with Frontier arose nearly a year prior to the Petition Date.

15. Courts have routinely found that 28 U.S.C. § 1409(d) is not applicable when a debtor's claim arises from a postpetition event that is the culmination of a prepetition relationship with the defendant. *See Nutri/System, Inc. v. Carma, Inc. et al. (In re Nutri/System, Inc.)*, 159 B.R. 725, 727 (E.D.Pa. 1993). In *Nutri/System*, the district court upheld the bankruptcy court's refusal to dismiss or transfer under Section 1409(d) where "because this adversary proceeding involves allegations of postpetition breaches of a prepetition contract, venue is proper in this district pursuant to 28 U.S.C. § 1409(a), and therefore section 1409(d) and section 1391(b) are inapplicable." *Id.*; *see also Transicoil, Inc. v. Blue Dove Development Assoc.'s L.P. (In re Eagle-Picher Ind., Inc.)*, 162 B.R. 140, 142 (Bankr. S.D. Ohio 1993) ("It cannot fairly be said that at hand is a claim arising after the commencement of the case. There was a continuum in dealing between the parties beginning long prior to the filing of the bankruptcy petition when the lease was initially entered into, and so it cannot fairly be said that

the matters raised in the complaint are purely postpetition matters.”). Here, the initial demand for replacement of the Frontier bonds was made nearly a year prior to the Petition Date.

16. While the Defendants’ most recent demand for replacement of the Frontier bonds occurred after the Petition Date, it is clear that these events are merely part of the same course and pattern of dealings between the parties and that Lodestar’s claim for relief is rooted in prepetition events and its prepetition relationship with the Defendants. Therefore, Section 1409(d) is inapplicable and venue for this adversary proceeding is appropriate in this District under 11 U.S.C. §1409(a).

**III. The Withdrawal Motion Has Been Withdrawn, Making the Request for a Stay Moot.**

17. On January 3, 2002, the Defendants filed their Withdrawal Motion, in which they sought the withdrawal of the District Court’s reference of this adversary proceeding to this Court. As part of the parties’ agreement to attempt to negotiate a settlement of the issues presented herein, the Defendants withdrew the Withdrawal Motion, without prejudice. Therefore, the request for a stay of this adversary proceeding pending resolution of the Withdrawal Motion in the District Court is moot.

Respectfully submitted,

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

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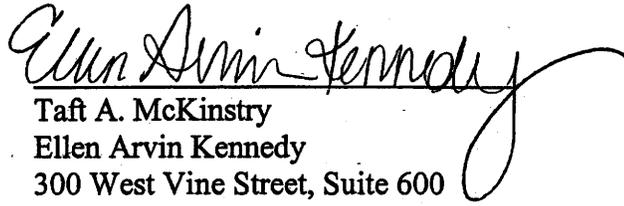
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**COUNSEL FOR DEBTORS AND  
DEBTORS IN POSSESSION**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served via First-Class U.S. Mail, postage pre-paid, upon those parties listed below, on this the 28th day of January, 2002:

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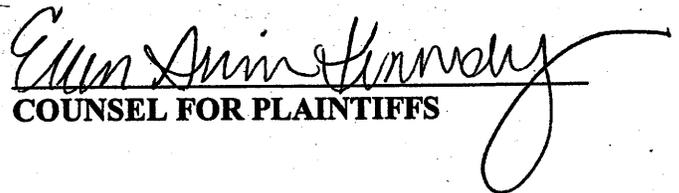
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1 of 1 DOCUMENT

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\*\*\* THIS SECTION IS CURRENT THROUGH THE JANUARY 17, 2002 ISSUE OF \*\*\*  
\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 30 -- MINERAL RESOURCES

CHAPTER VII -- OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,  
DEPARTMENT OF THE INTERIOR

SUBCHAPTER T -- PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN  
EACH STATE

PART 944 -- UTAH

30 CFR 944.30

@ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary of the Interior under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3480 through 3487, and surface coal mining and reclamation operations and activities in Utah on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and the Utah Code Annotated (State Act) governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR part 3480, Subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Utah in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas, and Mining (DOG M) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the Federal Register as a final rule.

This agreement will remain in effect until terminated as provided in Article XI.

#### Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA 30 CFR parts 700, 701 and 740, the Program, including the State Act, and the rules and regulations promulgated pursuant to that Act, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

#### Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Utah except as otherwise stated in this Agreement, SMCRA 30 CFR 740.4, 740.11(a) and 745.13, and other applicable Federal laws, Executive Orders, or regulations.

#### Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM has and will continue to have the authority under State law to carry out this Agreement

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted area costs for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Field Operations office will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands on-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or

## 30 CFR 944.30

cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40-10-6(5), Utah Code Annotated 1953 as amended and UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees and civil penalty fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalty fines will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees collected during the State's prior fiscal year.

#### Article VI: Review of Permit Application Package

A. Submission of Permit Application Package: DOGM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) in an appropriate number of copies to DOGM. DOGM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOGM and will include any supplemental information

required by OSMRE and the Federal land management agency. Where section 522(e) (3) of SMCRA applies, DOGM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or historic property included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for DOGM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where There is No Leased Federal Coal Involved: 1. DOGM will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4 (c) (2), DOGM will be responsible for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request such Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 calendar days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOGM under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOGM will review the PAP for compliance with the Program and State Act and regulations. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his non-delegable determinations under SMCRA, some of which have been delegated to OSMRE.

4. OSMRE and DOGM will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE may provide assistance to DOGM in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. OSMRE will send to DOGM copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA.

5. DOGM will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the National Park System (NPS), DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impact as set forth under Article X of this agreement.

(b) The permit will include terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over a publicly owned park or historic property included in the NRHP which would be affected by a design under section 522(e)(3) of SMCRA. A copy of the permit and written findings will be submitted to OSMRE if requested.

C. Review Procedures Where Leased Federal Coal is Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c) (1), DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to DOGM under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE, and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3847, the Bureau of Land Management (BLM) will be the primary contact with the applicant. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Lawritz  
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cc: SWH  
MED  
6/8/00  
RECEIVED JUN 08 2000

June 5, 2000

CERTIFIED  
P 074 978 604

Dave Miller, Resident Agent  
Lodestar Energy, Inc.  
HC 35 Box 370  
Helper, Utah 84526

Re: Replacement of Sureties Requested, Lodestar Energy, Inc., White Oak Mine, ACT/007/001,  
Horizon Mine, ACT/007/020, Outgoing File

Dear Mr. Miller:

White Oak Mine is currently mining federal coal and Horizon Mine is seeking a permit to mine federal coal, but has mined through the BLM right-of-way. Federal agencies and bonds with federal obligees may only be accepted if they are written by a surety listed in the Department of Treasury, Circular 570. It has recently come to the attention of the Division that Frontier Insurance Company is no longer an acceptable surety on federal bonds, see Department of Treasury listing dated June 1, 2000 (attached). Additionally, the A.M. Best Rating Guide currently rated this company at C++ (attached). Due to the fact that the bonds are no longer acceptable for federal bond, these bonds need to be replaced.

Therefore, pursuant to the requirements of R645-301-870 please replace surety bonds # 143718 in the amount of \$4,292,000 for White Oak Mine and #125427 in the amount of \$711,000 for the Horizon Mine, both issued by Frontier Insurance Company by July 15, 2000.

If you have any questions, please call me.

Sincerely,

Pamela Grubaugh-Litig  
Permit Supervisor

pg/aa  
cc: Mary Ann Wright  
Prior Field Office  
O:\007001.WO\BOND\replacahr2000.wpd

EXHIBIT  
B

FEB 25 2002

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
(LEXINGTON DIVISION)

AT LEXINGTON  
JERRY D. TRUITT, CLERK  
U.S. BANKRUPTCY COURT

IN RE	:	Chapter 11 Proceeding
	:	
LODESTAR ENERGY, INC.	:	Case Nos. 01-50969 and 01-50972
LODESTAR HOLDINGS, INC.,	:	
	:	Jointly Administered under
Debtors.	:	Case No. 01-50969
	:	
	:	Judge Joseph M. Scott, Jr.
<hr/>		
LODESTAR ENERGY, INC., ET AL.	:	Adv. Proceeding No. 02-5001
	:	
PLAINTIFFS	:	
	:	
vs.	:	
	:	
THE STATE OF UTAH, ET AL.	:	
	:	
DEFENDANTS.	:	

**AGREED ORDER**

This matter having come before the Court (i) in this adversary proceeding upon the Complaint for Injunctive Relief filed by Lodestar Energy, Inc. ("LEI") and Lodestar Holdings, Inc. ("LHI" and, collectively with LEI, the "Debtors" or the "Plaintiffs"), the Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction, and the Memorandum of Law in Opposition to Plaintiffs' Motion for Temporary Restraining Order and to Plaintiffs' Motion for

EXHIBIT A  
TO MEMORANDUM 4-2-02

RECEIVED

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ATTORNEY GENERAL  
Natural Resource Division

an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay (the "Objection") filed by the State of Utah (the "State"), the successor to Kathleen Clarke, Executive Director of State of Utah Department of Natural Resources, Division of Oil, Gas & Mining ("DOGM") and Lowell P. Braxton, Division Director of DOGM (collectively, the "Defendants"); and (ii) in the within chapter 11 cases (the "Cases") on the Debtors' Motion for an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay, and on the Defendants' Objection; and it appearing to the Court that the parties, and Wexford Capital LLC ("Wexford"), have agreed to settle and fully resolve all of the disputes and controversies between them on the terms and conditions set forth in this Agreed Order (this "Order"); and the Court finding that approval of such settlement and resolution is in the best interests of the Debtors, their estates and their creditors and that good and sufficient cause exists for entry of this Order; now, therefore,

**IT IS HEREBY AGREED AND THE COURT FINDS THAT:**

**Jurisdiction and Venue**

1. On March 30, 2001, involuntary petitions (the "Involuntary Petitions") were filed in this Court against the Debtors under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). On April 27, 2001 (the "Relief Date"), upon the consent of the Plaintiffs to the relief requested in the Involuntary Petitions, the Court entered an Order for Relief Under Chapter 11 of the Bankruptcy Code in the Cases.

2. Since the Relief Date, the Plaintiffs have continued in possession of their property and are operating and managing their businesses and property and financial affairs as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over the Cases and this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue for the Cases and this adversary proceeding is proper in this District under 28 U.S.C. § 1409.

#### Background

5. For purposes of this Order, the Debtors' operations in Utah are the "White Oak Mines" #1 and #2 (known locally in Utah as the "Whisky Creek Mine") under DOGM Permit No. ACT/007/001, as amended (the "White Oak Operations") and the "Horizon Mine" under DOGM Permit No. ACT/007/020 (the "Horizon Operations" and, collectively with the White Oak Operations, the "Debtors' Utah Operations") (DOGM Permit No. ACT/007/001, as amended, and DOGM Permit No. ACT/007/020, as amended, are hereafter collectively referred to as either "Permit" or "Permits").

6. Frontier Insurance Company ("Frontier") is the surety for all of the Debtors' performance bonds relating to the Debtors' Utah Operations (the "Frontier Bonds").

7. Both prior to and after the Relief Date, one or more of the Defendants or their representatives notified Plaintiffs that they were required to replace the Frontier Bonds by reason of the financial condition of Frontier and that Frontier had its Certificate of Authority to conduct or transact business within the State of Utah revoked (the "Rebonding Demand").

8. The Plaintiffs contested the Rebonding Demand and sought orders of this Court in this adversary proceeding and in the Cases that would, among other things, enjoin the Defendants from taking any action to require the Debtors to cease coal extraction and processing operations and otherwise comply with the Rebonding Demand and/or issuing to Plaintiffs notices of non-compliance or cessation orders, and/or suspending LEI's mining permits and/or taking any other enforcement action adverse to the Plaintiffs (individually or collectively, the "Adverse Actions") as a consequence of the Debtors' failure to comply with the Rebonding Demand.

9. Defendants have moved to dismiss the adversary proceeding and have opposed the Debtors' motions in the respective Cases, contending, among other defenses, that the Rebonding Demand and the Adverse Actions are proper exercises of Defendants' regulatory and police power under both state and federal law, are exempt from the automatic stay under 11 U.S.C.A. Section 362(b)(4), and that the Plaintiffs, as Debtors in Possession operating on property within the State of Utah, must conduct their business in accordance with state law pursuant to the provisions of 28 U.S.C.A. Section 959. The Plaintiffs and Defendants dispute each others' claims, but have agreed, without admission of liability, and only for the purposes of compromising disputed claims and avoiding further costs of litigation, to settle such claims on the terms and conditions set forth herein.

10. The Defendants have agreed not to take Enforcement Action (as defined below) except upon the terms and conditions set forth in this Order. For purposes of this Order, "Enforcement Action" means, individually or collectively, any of the Adverse Actions or any other action (a) to enforce the Rebonding Demand, or (b) otherwise to require the Plaintiffs to replace the Frontier Bonds.

11. The parties hereto neither admit nor deny that the Permits are executory contracts that may be assumed or rejected pursuant to the provisions of 11 U.S.C. section 365. However, if it is hereafter determined that either or both of such Permits are rejected under 11 U.S.C. section 365, such rejection shall not affect the rights or obligations of any party under this Order.

### The Settlement Agreement

#### Sharing of Wexford Superpriority

12. In the Final Order Authorizing (1) Debtors, Pursuant to Section 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure, to (A) Obtain Supplemental Post-Petition Financing from Wexford Capital LLC, (B) Grant Senior Liens, Priority Administrative Expense Status and Adequate Protection to Wexford Capital LLC, and (C) Modify the Automatic Stay, and (2) Amendments to Financing Agreements with Congress Financial Corporation, as Agent, and the CIT Business Group/Business Credit, Inc., as Co-Agent, entered on October 18, 2001 and the "Agreed Order Amending Final Order" entered on November 2, 2001 (collectively referred to as the "Wexford DIP Order"), the obligations of the Debtors to Wexford under the Loan Documents and all Supplemental Indebtedness (as defined in the Wexford DIP Order; referred to herein as the "Wexford Claim") shall have priority pursuant to 11 U.S.C. § 364(c)(1) over any and all costs and expenses of administration or other priority claims in this Chapter 11 case or any subsequent Chapter 7 case, including those described in 11 U.S.C. §§ 503(b) and 507(b), and, except for the Senior Encumbrances (as defined in the Wexford DIP Order), shall not be subordinated to any other security interest or lien granted under 11 U.S.C. § 364 or § 105 or otherwise (the "Wexford Superpriority Status").

13. To provide the Defendants with adequate assurance that the Debtors' reclamation

obligations and all other obligations under the Permits for the Debtors' Utah Operations will be satisfied in the event that the Frontier Bonds are not replaced (the costs of the reclamation obligations and all other obligations under the Permits for the Debtors' Utah Operations pursuant to the Frontier Bonds shall be defined as the "State Claim"), through an Acquisition or Plan (as those terms are defined below), with bonds that comply with 30 U.S.C.A. §1201 et. seq. and U.C.A. 40-10-1 et. seq. and Rules enacted thereunder (collectively referred to as the "Regulations"), Wexford has agreed to allow the State to share in the Wexford Superpriority Status on the following terms and conditions:

(a) the State with its State Claim shall share with the Wexford Claim in its Wexford Superpriority Status pursuant to the terms of Paragraph 13(c) of this Order until such time that the Plaintiffs have performed all of their reclamation and other Permit obligations regarding the Debtors' Utah Operations under the Regulations;

(b) the State shall share the Wexford Superpriority Status only to the extent that Frontier fails to perform or pay a claim within one hundred and eighty (180) days after the State submits a written demand for payment to Frontier under the Frontier Bonds<sup>1</sup>; and

(c) unless increased in accordance with the provisions of paragraph 23 below, the Wexford Superpriority Status extended to the State Claim shall be \$1,000,000 (the "First Utah Share"). Any payment, if any, in respect of the Wexford Superpriority Status shall be paid 10% to the State and 90% to Wexford; *provided*, that under no circumstances shall the State receive more than \$1,000,000 in the aggregate for the First Utah Share. If Wexford receives a

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<sup>1</sup> The terms of this Paragraph 13(b) shall not be deemed as a change in any of the terms or conditions of the Frontier Bonds as transacted between the State and Frontier.

distribution from the assets of the Plaintiffs under the Wexford Superpriority Status, the State's 10% share shall be held in the escrow account of Sawyer & Glancey, attorneys for Wexford, until such time as all terms and the time limit of paragraph no. 13 (b) above have occurred and expired, respectively, regarding the State's written demand for payment within one hundred and eighty (180) days thereof against Frontier on the Frontier Bonds.<sup>2</sup> Finally, Wexford shall not grant, convey, transfer or share any of the Wexford Superpriority Status with any other creditor of the Debtors, entity or any other party without the express written consent of the State.

#### **The Wexford Acquisition Track**

14. During the first sixty (60) days after the entry of this Order (the "First Wexford Acquisition Period"), the Defendants shall not take any Enforcement Action, during which time Wexford may seek to consummate a transaction whereby Wexford would acquire, lease or contract mine from the Debtors the Debtors' White Oak Operations and/or Horizon Operations through a transaction that includes replacement, in full, immediately upon closing, of the Frontier Bonds with performance bonds that comply with the Regulations (an "Acquisition"). The State shall assign to Wexford, if required by Wexford upon reasonable written notice, effective upon Wexford's replacement in full of the Frontier Bonds with performance bonds that comply with the Regulations (whether such replacement occurs pursuant to an Acquisition or a Wexford Plan [as defined below]), the State Claim; provided, however, no assignment shall occur until it is determined by the parties hereto that the State Claim can be preserved as a matter of law. If Wexford elects not to take assignment of the State Claim, Defendants acknowledge that, when

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<sup>2</sup> It is the intent of the parties that for purposes of calculating the State's distribution from the assets of the Plaintiffs, if the State receives any recovery from Frontier after the 180 day period described in paragraph 13(b) above, then such recovery shall be included in the calculation of the State's distribution under paragraph 13(c) and paragraph 23, if applicable.

the Frontier Bonds have been replaced in their entirety to the satisfaction of the State in its reasonable discretion by either the efforts of Debtors, Wexford or any other party, the Defendants shall withdraw that portion or portions of their claim related to the State Claim and shall amend their proof of claim accordingly (Defendants, however, reserve the right to amend their proof of claim to assert any claims other than the State Claim, if any).

15. For purposes of this Order, the term "Enforcement Relief" shall mean a right of the Defendants to take any Enforcement Action, unless otherwise consented to in writing by the State, without prior order of this Court and unaffected by these Cases, including conversion thereof to cases under chapter 7, or any subsequent case or proceeding that the Debtors, or either of them, may commence or have commenced against them, as to which Enforcement Action the Debtors and any other party claiming by or through the Debtors and Wexford shall have no right to seek an injunction or stay. NOTICE IS HEREBY GIVEN TO ALL INTERESTED PARTIES THAT THE TERMS OF THIS PARAGRAPH DEVIATE FROM THIS COURT'S LOCAL RULE 4001-2(c). If Wexford has not closed an Acquisition by the end of the First Wexford Acquisition Period, the Defendants shall immediately be entitled to Enforcement Relief; *provided, however*, that if Wexford shall have provided to the Defendants' counsel, Matthew B. Bunch or W. Thomas Bunch ("Defendants' Counsel"), on or before the last day of the First Wexford Acquisition Period, written notice which demonstrates that Wexford is in good faith pursuing an Acquisition (the "Wexford Acquisition Extension Notice") or has contracted for the Acquisition but cannot obtain a Court date for approval thereof due only to the Court's own scheduling conflict within the First Wexford Acquisition Period, then Wexford shall have an additional sixty (60) day period commencing on the day after the end of the First Wexford

Acquisition Period (the "Second Wexford Acquisition Period")<sup>3</sup> to close an Acquisition.

16. The Defendants shall not take any Enforcement Action during the Second Wexford Acquisition Period.

17. If Wexford fails to (a) give a Wexford Acquisition Extension Notice prior to the end of the First Wexford Acquisition Period, or (b) consummate an Acquisition prior to the end of the Second Wexford Acquisition Period, then the Defendants shall immediately be entitled to Enforcement Relief *unless* any of the following occurs: (x) Wexford has not given a Wexford Acquisition Extension Notice prior to the end of the First Wexford Acquisition Period, but has, prior to the end of the First Wexford Acquisition Period, given to Defendants' Counsel written notice (a "Wexford Plan Notice") that Wexford intends to sponsor or propose a plan or plans of reorganization in the Cases (a "Plan"); (y) Wexford has given a Wexford Acquisition Extension Notice, and prior to the end of the Second Wexford Acquisition Period, Wexford has given a Wexford Plan Notice; or (z) the Debtors have given to Defendants' Counsel written notice, prior to the end of the First Wexford Acquisition Period, that the Debtors intend to propose a Plan (a "Debtor Plan") that is not sponsored or proposed by Wexford but provides for replacement, in full, no later than the eleventh (11<sup>th</sup>) day after entry of an order confirming the Plan (such entry date being hereafter referred to as the "Confirmation Date" and said order shall be tendered to the Court for entry within three business days after such confirmation hearing date), of the Frontier Bonds with reclamation bonds that comply with the Regulations (a "Debtor Plan Notice"). In the event that Wexford has given a Wexford Plan Notice, then the rights and

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<sup>3</sup> It is understood that the Second Wexford Acquisition Period ends on the one hundred and twentieth (120th) day after the date of entry of this Order.

obligations of the parties shall be governed by the provisions of paragraphs 18 through 25 below under the subheading "The Wexford Plan Track". In the event that the Debtors have given a Debtor Plan Notice, then the rights and obligations of the parties shall be governed by the provisions of paragraphs 26 through 36 below under the subheading "The Debtors Plan Track".

### **The Wexford Plan Track**

18. Wexford may give a Wexford Plan Notice no later than one hundred and twenty (120) days after the date of entry of this Order. In the event that Wexford timely gives a Wexford Plan Notice, a Plan proposed or sponsored by Wexford that provides for replacement, in full, no later than the eleventh (11<sup>th</sup>) day after the Confirmation Date, of the Frontier Bonds with reclamation bonds that comply with the Regulations (a "Wexford Plan") shall be filed no later than two hundred and forty (240) days after the date of entry of this Order (the "Wexford Plan Deadline").

19. The Defendants shall not take any Enforcement Action during the period from the date upon which a Wexford Plan Notice is given through the Wexford Plan Deadline and, if a Wexford Plan is filed, shall not take any Enforcement Action except as provided in paragraphs 21 through 25 below.

20. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that a Wexford Plan is not filed on or before the Wexford Plan Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

21. In the event that a Wexford Plan is filed on or before the Wexford Plan Deadline, then no later than the date on which the Wexford Plan is transmitted to creditors for voting (the "Wexford Plan Voting Commencement Date"), Wexford shall provide to Defendants' Counsel a

copy of a written commitment from a surety qualified under the Regulations to provide performance bonds (a "Qualified Surety") to replace in full the Frontier Bonds no later than the Confirmation Date (a "Bond Replacement Commitment").

22. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that Wexford fails to provide Defendants' Counsel a copy of a Bond Replacement Commitment on or before the Wexford Plan Voting Commencement Date, then the Defendants shall immediately be entitled to Enforcement Relief.

23. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that a Wexford Plan is filed on or before the Wexford Plan Deadline, and in the further event that Wexford provides to Defendants' Counsel a copy of a Bond Replacement Commitment on or before the Wexford Plan Voting Commencement Date, but an order confirming the Wexford Plan is not entered on or before sixty (60) days after the Wexford Plan Deadline (the "Initial Wexford Confirmation Deadline"), then the Defendants shall immediately be entitled to Enforcement Relief; *provided, however*, that if Wexford provides to Defendants' Counsel, prior to the Initial Wexford Confirmation Deadline, a notice that Wexford elects to extend the period in which to obtain confirmation of a Plan (the "Wexford Extension Notice"), then the Defendants shall not take any Enforcement Action during the period from the date upon which the Wexford Extension Notice is given through the date that is sixty (60) days after the Initial Wexford Confirmation Deadline (the "Ultimate Wexford Confirmation Deadline"). Wexford's giving of the Wexford Extension Notice shall automatically result in a further extension of the Wexford Superpriority Status to the State Claim by an additional \$1,000,000 (the "Second Utah Share"), and, thereafter, any payment, if any, in respect of the Wexford

Superpriority Status shall be paid 20% to the State and 80% to Wexford; *provided*, that under no circumstances shall the State receive more than \$2,000,000 in the aggregate for the First Utah Share and the Second Utah Share.

24. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that an order confirming the Wexford Plan is not entered on or before the Ultimate Wexford Confirmation Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

25. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that an order confirming the Wexford Plan is entered on or before the Initial Wexford Confirmation Deadline or the Ultimate Wexford Confirmation Deadline, but a Qualified Surety does not replace in full the Frontier Bonds within eleven (11) days after entry of such confirmation order, notwithstanding an appeal or stay of such confirmation order, then the Defendants shall immediately be entitled to Enforcement Relief.

#### **The Debtors Plan Track**

26. The Debtors may give a Debtor Plan Notice not later than sixty (60) days after the date of entry of this Order (the "Debtor Plan Notice Deadline").

27. The Defendants shall not take any Enforcement Action during the period prior to the Debtor Plan Notice Deadline.

28. In the event that the Debtors timely give a Debtor Plan Notice, the Debtors shall, within sixty (60) days after the Debtor Plan Notice Deadline (the "Debtor Plan Funding Notice Deadline"), give notice to Defendants' Counsel which notice shall contain or be accompanied by evidence that the Debtors have a source of adequate funding for a viable Debtor Plan (the

"Debtor Plan Funding Notice").

29. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that the Debtors fail to give a Debtor Plan Funding Notice on or before the Debtor Plan Funding Notice Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

30. If the Debtors give a timely Debtor Plan Funding Notice, the Defendants shall not take any Enforcement Action from the Debtor Plan Funding Notice Deadline through the one hundred and twentieth (120<sup>th</sup>) day after the Debtor Plan Funding Notice Deadline (the "Debtor Plan Deadline").

31. The Defendants shall not take any Enforcement Action during the period from the date upon which a Debtor Plan Funding Notice is given through the Debtor Plan Deadline and, if a Debtor Plan is filed, shall not take any Enforcement Action except as provided in paragraphs 32 through 36 below.

32. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that a Debtor Plan is not filed on or before the Debtor Plan Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

33. In the event that a Debtor Plan is filed on or before the Debtor Plan Deadline, then no later than the date on which the Debtor Plan is transmitted to creditors for voting (the "Debtor Plan Voting Commencement Date"), the Debtors shall provide to Defendants' Counsel a copy of a Bond Replacement Commitment from a Qualified Surety.

34. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that the Debtors fail to provide to Defendants' Counsel a copy of a Bond Replacement

Commitment from a Qualified Surety on or before the Debtor Plan Voting Commencement Date, then the Defendants shall immediately be entitled to Enforcement Relief.

35. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that a Debtor Plan is filed on or before the Debtor Plan Deadline, and in the further event that the Debtors provide to Defendants' Counsel a copy of a Bond Replacement Commitment from a Qualified Surety on or before the Debtor Plan Voting Commencement Date, but an order confirming the Debtor Plan is not entered on or before sixty (60) days after the Debtor Plan Deadline (the "Debtor Confirmation Deadline"), then the Defendants shall immediately be entitled to Enforcement Relief.

36. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that an order confirming the Debtor Plan is entered on or before the Debtor Confirmation Deadline, but a Qualified Surety does not replace the Frontier Bonds within eleven (11) days after entry of such confirmation order, notwithstanding an appeal or stay of such confirmation order, then the Defendants shall immediately be entitled to Enforcement Relief.

#### Other Provisions

37. Defendants shall have the right to conduct weekly inspections of the Debtors' Utah Operations to determine the Debtors' compliance with all regulations applicable thereto.

38. The Debtors and Wexford agree not to object to any request or application filed by the Defendants for allowance of an administrative expense claim for Defendants' attorneys' fees and costs, under section 503(b)(3)(D) of the Bankruptcy Code, in an amount not to exceed \$50,000.00, and further agree not to urge any other entity, creditor or interested party to object to any such request or application on any basis, including but not limited to, the basis that the

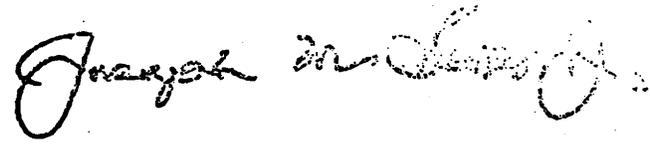
Defendants assert or contend that they, by means of this Agreed Order, have made a substantial contribution for the benefit of the Debtors, their estates and the creditors therein.

39. If the Defendants are entitled to Enforcement Relief at any time as outlined in this Agreed Order but the right to such relief thereunder has not been exercised by the Defendants, such Enforcement Relief shall not be deemed waived by the Defendants and the Defendants may later specifically invoke such relief at any time without prior notice.

40. Any cash payments made to the State by any party in satisfaction of the State Claim made (1) prior to the Frontier Bonds being replaced in their entirety or (2) in advance of any failure or default by the Debtors to perform their reclamation obligations under the Permits, immediately upon receipt, reduce the First Utah Share or Second Utah Share, whichever is applicable, dollar for dollar; provided, however, that such payments shall not (a) require a partial release of any Frontier Bonds from the State; (b) be deemed as a waiver of any of the State's rights against Frontier under the Frontier Bonds; or (c) a reduction of Frontier's liability under the Frontier Bonds.

41. Since all matters and issues in Adversary Proceeding No. 02-5001 have been resolved, said adversary proceeding and the Debtors' Motion for an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay should be and the same hereby are dismissed with prejudice with each party to bear its own costs, expenses and attorney's fees, except as specifically provided in paragraph 38 of this Order. There being no just cause for delay, this is a final and appealable order.

Dated: \_\_\_\_\_ FEB 25 2002



HON. JOSEPH M. SCOTT, JR.  
UNITED STATES BANKRUPTCY COURT

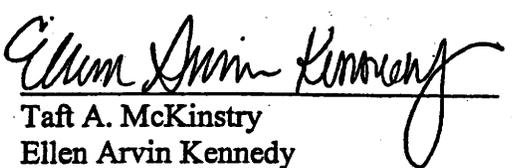
TO BE ENTERED AS AN AGREED ORDER:

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

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and

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*Matthew B. Bunch by Ellen Arvin Kennedy  
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**COUNSEL FOR WEXFORD CAPITAL LLC**

Pursuant to Local Rule 9022-1(c), Taft A. McKinstry or Ellen Arvin Kennedy shall cause a copy of this Order to be served on each of the parties designated to receive this order pursuant to Local Rule 9022-1(a) and shall file with the Court a certificate of service of the Order upon such parties within ten (10) days hereof.

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**LODESTAR ENERGY, INC SETTLEMENT**  
**FEBRUARY 25, 2002**

United States Bankruptcy Court, Eastern District of Kentucky  
Case Nos. 01-50969 and 01-50972: Adversary Case No. 02-5001

DOGM Permit No.   ACT/007/001 (Whiskey Creek Significant Revision)  
                          ACT/007/020 (Horizon Permit)

Frontier Ins. Co. Bond Replacement Deadlines

- By April 26, 2002:   Wexford must either have closed an acquisition of Lodestar's Utah operations with 100% bond replacement, or  
                                  A. Wexford has given notice which demonstrates that it is proceeding in good faith with such an acquisition; or  
                                  B. Wexford or Lodestar have given notice that one or both of them are proposing a Plan of Reorganization that includes 100% bond replacement as of the date the order approving such plan becomes final
- By June 25, 2002:   Either Wexford must have closed an acquisition with 100% bond replacement, or either Wexford or Lodestar must have given notice that one or both of them is proposing a Plan with 100% bond replacement
- By Oct. 23, 2002     If a Plan Notice has been given by June 25, a Plan with 100% bond replacement must have been filed with the bankruptcy court. In addition, before the Plan is transmitted to creditors for voting, Wexford or Lodestar must have provided a Bond Replacement Commitment executed by a Qualified Surety, that the bonds will be replaced 100% no later than the Plan's confirmation date. If the Bond Replacement Commitment is not timely provided, DOGM is entitled to immediate Enforcement Relief.
- By Dec. 12, 2002     Either a final order must have been entered confirming a Plan with 100% bond replacement, or Wexford, by requesting a sixty-day extension for the confirmation date, shall have conveyed to DOGM an additional 10% superpriority lien interest, bringing the aggregate DOGM superpriority position to 20%, not to exceed \$2 million.
- By Feb. 25, 2003     A final order must have been entered confirming a Plan with 100% bond replacement. In addition, a Qualified Surety must have provided the 100% replacement bond within 11 days of entry of such order, or DOGM is immediately entitled to Enforcement Relief.

**EXHIBIT B TO MEMORANDUM DATED 4-2-02**