

# TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

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August 3, 2004

TO: Internal File

THRU: Jim Smith, team lead *JS*

FROM: *JH* Joe Helfrich, Administrative, Biology

RE: Permit Boundary Expansion, Hidden Splendor Resources, Inc., Horizon Mine, C/007/0020, Task ID #1933

## SUMMARY:

On May 21, 2004 the Division received a permit boundary expansion application for the Horizon Mine. The expansion includes the remaining portion of lease U-74804, approximately 866 acres extending Northward from Beaver Creek. The lease is in Carbon County and can be located on the Jump Creek 7.5 minute quadrangle map, Township 13 South, Range 8 East, portions of sections 6,7 and 8. This memo will include a review of the Administrative and Biology sections of the regulations.

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**TECHNICAL ANALYSIS:**

**GENERAL CONTENTS**

**IDENTIFICATION OF INTERESTS**

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

**Analysis:**

Hidden Splendor Resources, Inc. is incorporated under the laws of the state of Nevada and is in good standing with legal corporate existence. Hidden Splendor Resources is also the applicant and mine operator. Alexander H. Walker III is the resident agent and Cecil Ann Walker will pay the abandoned mine land reclamation fee. Officers of the applicant are listed on page 2-2 of the application.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**VIOLATION INFORMATION**

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

**Analysis:**

Neither Hidden Splendor nor any of its affiliates have had a permit suspended or revoked in the past five years nor forfeited a bond as noted on page 2-6 of the application. The application states that violation information is listed in Appendix 2-4 of the application. As there is no appendix 2-4 in the application or MRP it is not clear whether there have been no violations or the required information has not been provided. By way of phone conversation 6/29/04 this reviewer spoke with Mr. Pappas regarding appendix 2-4. According to Mr. Pappas there have been no violations in connection with the mine in the past three years. The text on page 2-6 of the application needs to be changed to reflect the current status of the mine's violation history.

**Findings:**

The information provided is not adequate to meet the requirements of this section of the regulations. Prior to approval the following information must be provided in accordance with:

**R645-300-132; R645-301-113;** the text on page 2-6 of the application needs to be changed to reflect the current status of the mine's violation history.

**RIGHT OF ENTRY**

Regulatory Reference: 30 CFR 778.15; R645-301-114

**Analysis:**

The right, title, and interest to the Horizon mine was assigned to Hidden Splendor on March 24, 2003 by the U. S. Bankruptcy Court for the Eastern District of Kentucky. Hidden Splendor has the right to enter and undertake coal mining based on the assignment from Lodestar by its chapter 11 trustee, the designation of Operator executed by lodestar and the federal coal lease. The Horizon mine was issued a Right-of Way SL 063011 through the BLM lands in 1966 to facilitate mining coal from fee lands. Documents pertinent to these actions are included in appendices 2-1 and 2-3.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS**

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

**Analysis:**

Page 2-7 of chapter 2 describes the legal description of the permit boundary. On July 6, 2004 the Division received an "E" mail from Mr. Pappas noting the corrected legal description for the proposed public notice. The second parcel in section 17 was changed from E1/2NE1/4 to W1/2NE1/4. The legal description in the application needs to be corrected also. Page 2-8 of chapter 2 describes the status of unsuitability claims. The remaining portion of the lease is not

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within an area under study as an area designated as unsuitable for mining. There are no petitions filed with the D. O. G. M. that could affect the proposed lease application. As there is no surface disturbance associated with the mining of the additional lease area there will be no activities within 300 feet of an occupied dwelling or 100 feet from a cemetery.

**Findings:**

The information provided is not adequate to meet the requirements of this section of the regulations. Prior to approval the following information must be provided in accordance with:

**R645-300-121.120; R645-301-112.800; R645-301-141; R645-301-115,** The legal description on page 2-7 of the application needs to be corrected.

**PERMIT TERM**

Regulatory References: 30 CFR 778.17; R645-301-116.

**Analysis:**

As stated in chapter 2, page 2-8 of the application the permit term is for 5 years.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**PUBLIC NOTICE AND COMMENT**

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

**Analysis:**

The application states that the public notice is included in appendix 2-2. However there is no Appendix 2-2 in the application. On July 6, 2004 the Division received an "E" mail from Mr. Pappas noting the corrected legal description for the proposed public notice. For proof of publication a copy of the notice as published in the newspaper needs to be included in the application as appendix 2-2.

**Findings:**

The information provided is not adequate to meet the requirements of this section of the regulations. Prior to approval the following information must be provided in accordance with:

**R645-300-120, R645-301-117.200**, a copy of the notice as published in the newspaper needs to be included in the application as appendix 2-2.

**FILING FEE**

Regulatory Reference: 30 CFR 777.17; R645-301-118.

**Analysis:**

There is no filing fee required for this permitting action.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**PERMIT APPLICATION FORMAT AND CONTENTS**

Regulatory Reference: 30 CFR 777.11; R645-301-120.

**Analysis:**

The application has been formatted in accordance with the R645 rules of the Utah coal regulatory program.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**REPORTING OF TECHNICAL DATA**

Regulatory Reference: 30 CFR 777.13; R645-301-130.

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**Analysis:**

The application contains a statement to the effect that all technical data submitted in the application will be accompanied by the name or organization responsible for the collection and analysis of the data. The applicant's technical data has been analyzed under the requirements of the regulations. Authorized and certified entities and individuals are referenced in the application.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**MAPS AND PLANS**

Regulatory Reference: 30 CFR 777.14; R645-301-140.

**Analysis:**

Maps and plans submitted with the application include the Permit Boundary, Mine Plan and Subsidence monitoring Points, Old Workings Castlegate "A" Seam, Hiawatha Seam, Land Use, Surface Ownership, Coal Ownership, Geology, Water Monitoring Locations, Water Rights, Soils, Vegetation and Wildlife. The maps have been certified by Mark Wayment, a certified Professional Engineer registered with the state of Utah. The maps are to appropriate scale and contain information set forth on the U. S. Geological Survey 1:24,000 scale series.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

**COMPLETENESS**

Regulatory Reference: 30 CFR 777.15; R645-301-150.

**Analysis:**

The application was determined Administratively Complete by The Division on June 28, 2004. "**Administratively Complete Application**" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain

information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

**Findings:**

The information provided is adequate to meet the requirements of this section of the regulations.

## ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

### PERMIT AREA

Regulatory Requirements: 30 CFR 783.12; R645-301-521.

**Analysis:**

The applicant has submitted an application to increase the size of the permit area by 866 acres. Plate 1-1 of the application includes the additional acreage.

**Findings:**

The information provided in the application is adequate to meet the requirements of this section of the regulations.

## VEGETATION RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.19; R645-301-320.

**Analysis:**

Chapter 9 of the current operation and reclamation plan provides the vegetation resource information. Plate 9-1 depicting the vegetative communities and acreage has been updated to include the proposed permit area expansion. Vegetative communities include Oakbrush, Salina Wildrye, Maple/Oakbrush/Aspen, Fir/aspen, Alpine Herb/Grassland, Manzanita, and Sagebrush/grass/ Rabbitbrush.

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This information is adequate to predict the potential for reestablishing vegetation. Since there is no surface disturbance proposed with mining in this area it is unlikely that there will be a need for reclamation practices to occur.

**Findings:**

Information provided in the application is adequate to meet the requirements of this section of the regulations.

**FISH AND WILDLIFE RESOURCE INFORMATION**

Regulatory Reference: 30 CFR 784.21; R645-301-322.

**Analysis:**

The Fish and Wildlife Information in the application is referenced in section 3.4.6 et sec, and discussed in chapter 10 of the current plan. Plate 10-1 has been revised to include the proposed addition to the permit area. This map shows the proposed permit boundary, the location and status of raptor nests and big game habitat. The map has been revised to show the identification and location of the three nests located during the May 12, 2000 raptor survey. The proposed addition to the permit area is divided into critical yearlong elk habitat and critical summer deer and elk habitats. There are three digit numbers associated with each of the nests shown on the map, 482- Golden Eagle-inactive, 484-Golden Eagle-old/dilapidated, 936- American Kestrel-active. The 2001 raptor survey is included in the 2001 annual report. It is labeled 2001 Raptor Survey-Horizon Mine, Jump Creek UT Quad. The map depicts the flight path of the survey that extends into and covers the majority of the proposed lease area. There were no nests identified in this area. According to the applicant, the Division of Wildlife Resources (DWR) provided them with a letter indicating that raptor surveys within the Horizon permit area were no longer necessary. Typically the Division requires a raptor survey current to the year of the permitting activity. In this case since previous surveys have also shown no evidence of nesting raptors in the proposed lease area and the DWR supports no additional surveys, the 2001 survey would be sufficient. A copy of the letter from the DWR should be included in the application.

**Findings:**

The information provided is not adequate to meet the requirements of this section of the regulations. Prior to approval the applicant must provide the following in accordance with:

**R645-301-322**, the applicant needs to include the letter from the DWR stating that it is no longer necessary to conduct raptor surveys of the Horizon permit area.

## LAND-USE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.22; R645-301-411.

### Analysis:

The land use information is located in chapter 4. Current land uses consist of grazing, logging, mining, mining reclamation activities, recreation and wildlife habitat. This permit application lies beneath an area that is undeveloped. The names, and addresses of the surface owners are provided and identified on plate 4-2. Plate 4-3 shows the ownership and location of the mineral tracts. The applicants' legal right to enter is shown on plate 1-1 and discussed in the lease documentation located in chapter 2.

### Findings:

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

## OPERATION PLAN

### FISH AND WILDLIFE INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

### Analysis:

#### Protection and Enhancement Plan

A description of the wildlife mitigation and management plan is provided for in chapter 10 of the current operation and reclamation plan. The plan addresses the protection of wildlife and vegetation in the current disturbed area but does not include the portion of Beaver Creek and associated riparian areas that are located within the proposed lease area. Since there will be no surface disturbance the only potential impact would be habitat loss resulting from subsidence. The current plan, (chapter 10, plate 10-1), identifies the proposed lease area as critical summer habitat for deer and elk. The 2001 raptor survey included in the application does not show the existence of any raptor nests in the proposed lease area. However the portion of Beaver Creek and associated riparian areas that extends through the proposed lease area from Southwest to

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Northeast would be considered high value and or crucial habitats as well as any springs in the area. The application indicates that these areas will be mined under and uniformly subsided. Therefore the application needs to include a Protection and Enhancement plan for these habitat areas that may be impacted by subsidence. The following criteria are suggested for inclusion in the plan:

- A monitoring schedule for the macroinvertebrates in Beaver Creek,
- Color infrared aerial photo monitoring of the riparian and meadow areas associated with Beaver Creek once every three years,
- Channel characteristics, Cross Sections, Longitudinal profiles, and
- Riparian Surveys as described in the Skyline Mine Subsidence Study. The plan should be developed in cooperation with the Division of Wildlife Resources and the Division of Oil, Gas and Mining.

**Endangered and Threatened Species**

Chapter 10, section 10.3.3.1 page 10-25 and table 10-1 address this section of the regulations. The text on page 10-25 and table 10-1 need to be updated to reflect the current status of Threatened, Endangered and Candidate species. A current list of species for Carbon county has been "E" mailed to the applicant for inclusion in their application and MRP. The list of threatened, endangered and candidate species that may occur in Carbon County are Graham Beardtongue, Uintah Basin Hookless Cactus, Bonytail Chub, Colorado Pike Minnow, Humpback Chub, Razorback Sucker, Bald Eagle, Mexican Spotted Owl, Western Yellow-billed Cuckoo and the Black-Footed Ferret. Of these species listed only one, the Bald Eagle, may occur in the proposed lease area. Most threatened or endangered species that could occur in Carbon County occur at lower elevations than the mine and have no habitat in the proposed permit area expansion. There have been no confirmed sightings of Black-Footed Ferrets in Carbon County in several years. However, the mine has potential, through water depletions, of adversely affecting four listed threatened and endangered fish species of the upper Colorado River drainage. They include the Bonytail Chub, Colorado Pike Minnow, Humpback Chub and Razorback Sucker. The Fish and Wildlife Service requires mitigation when water depletions exceed 100 acre-feet annually. Chapter 7 section 7.3.2 PHC Determinations, page 7-71 lists the criteria and volumes used to calculate an estimated consumption of 60 acre feet of water per year.

**Bald and Golden Eagles**

Bald eagles are common in the area during the winter and could occasionally fly through or roost in the proposed addition to the permit area. Mining would have negligible effects on these birds.

### **Wetlands and Habitats of Unusually High Value for Fish and Wildlife**

Beaver Creek, a perennial stream, and several springs that lie within the proposed permit area expansion are identified on plate 7-1. The portion of Beaver Creek and associated riparian areas that extend through the proposed lease area from Southwest to Northeast would be considered high value and or crucial habitats as well as any springs in the area. The application indicates that these areas will be mined under and may be subsided. Therefore the application needs to include a Protection and Enhancement plan for these habitat areas in the event they are impacted by subsidence. Suggested criteria are noted in the Protection and Enhancement Plan section of this document.

#### **Findings:**

The information contained in this section of the application is not adequate to meet the requirements of the regulations. Prior to approval the applicant needs to provide the following in accordance with: **R645-301-322, -301-333.**

**R645-301-322, -301-333,** The portion of Beaver Creek and associated riparian areas that extend through the proposed lease area from Southwest to Northeast would be considered high value and or crucial habitats as well as any springs in the area. The application indicates that these areas will be mined under and uniformly subsided. Therefore the application needs to develop a protection and enhancement plan for these habitat areas that may be impacted by subsidence. Additional comments are provided in the Protection and Enhancement Plan section of this document. The plan should be developed in cooperation with the Division of Wildlife Resources and the Division of Oil, Gas and Mining.

**R645-301-322,** The text on page 10-25 and table 10-1 of the MRP need to be updated to reflect the current status of Threatened, Endangered and Candidate species.

### **VEGETATION**

Regulatory Reference: R645-301-330, -301-331, -301-332.

#### **Analysis:**

Chapter 9 of the current operation and reclamation plan provides the vegetation resource information. Plate 9-1 depicting the vegetative communities and acreage has been updated to include the proposed lease area. Vegetative communities include Oakbrush, Salina Wildrye, Maple/Oakbrush/Aspen, Fir/aspens, Alpine Herb/Grassland, Manzanita, and Sagebrush/grass/ Rabbitbrush. This information is adequate to predict the potential for

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reestablishing vegetation. The portion of Beaver Creek and associated riparian areas that extend through the proposed lease area from Southwest to Northeast would be considered high value and or crucial habitats as well as any springs in the area. The application indicates that these areas will be mined under and uniformly subsided. Therefore the application needs to develop a protection and enhancement plan for these habitat areas that may be impacted by subsidence. Additional comments are provided in the Protection and Enhancement Plan section of this document. The plan should be developed in cooperation with the Division of Wildlife Resources and the Division of Oil, Gas and Mining. The Protection and Enhancement Plan section of this document lists the requirement for the Applicant to develop a plan that would address this section of the regulations as well. Therefore a deficiency will not be listed in this section of the regulations.

**Findings:**

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

## **RECLAMATION PLAN**

### **POSTMINING LAND USES**

Regulatory Reference: 30 CFR Sec. 784.15, 784.200, 785.16, 817.133; R645-301-412, -301-413, -301-414, -302-270, -302-271, -302-272, -302-273, -302-274, -302-275.

**Analysis:**

No surface disturbance other than minimal subsidence is anticipated. The post mining land use for the area included in this application will remain the same as pre mining and mining conditions, i.e., grazing, logging, mining, mining reclamation activities, recreation and wildlife habitat.

**Findings:**

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

## **PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES**

Regulatory Reference: 30 CFR Sec. 817.97; R645-301-333, -301-342, -301-358.

### **Analysis:**

No surface disturbance is anticipated other than minimal subsidence. Beaver Creek and several springs lie within the proposed permit area expansion. The applicant is currently monitoring Beaver Creek and certain springs, and wells in the proposed addition to the permit area, (plate 7-1). The applicant has proposed to mine beneath the reach of Beaver Creek that extends through the lease area. Subsidence will be monitored during mining and for a period of two years following final cessation of mining practices. The subsidence monitoring points are identified on plate 3-3 of the application. The applicant has been requested to develop and implement a mitigation and protection plan under the Fish and Wildlife Information section of this memo.

### **Findings:**

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

## **CONTEMPORANEOUS RECLAMATION**

Regulatory Reference: 30 CFR Sec. 785.18, 817.100; R645-301-352, -301-553, -302-280, -302-281, -302-282, -302-283, -302-284.

### **Analysis:**

No surface disturbance is anticipated other than minimal subsidence. Mining practices would have a minimal effect on the vegetation resources. Potential impacts to vegetation caused by subsidence during active mining operations may be mitigated by implementing Contemporaneous reclamation practices as described in section 3.5.1 of the reclamation plan.

### **Findings:**

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

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**REVEGETATION**

Regulatory Reference: 30 CFR Sec. 785.18, 817.111, 817.113, 817.114, 817.116; R645-301-244, -301-353, -301-354, -301-355, -301-356, -302-280, -302-281, -302-282, -302-283, -302-284.

**Analysis:**

**Revegetation: General Requirements**

The general requirements for revegetation are provided for in Section 3.5 of the reclamation plan. No surface disturbance is anticipated other than minimal subsidence. Mining practices would have a minimal effect on the vegetation resources. Potential impacts to vegetation caused by subsidence during active mining operations may be mitigated by implementing contemporaneous reclamation practices as described in section 3.5.1 of the reclamation plan.

**Revegetation: Timing**

The approximate schedule for reclamation activities is outlined in table 3-4 of section 3.5.7.1 of the reclamation plan.

**Revegetation: Mulching and Other Soil Stabilizing Practice**

Section 3.5.4.3 of the reclamation portion of the plan and proposal describes the mulching and other stabilizing practices to be implemented during reclamation.

**Revegetation: Standards For Success**

The standards for success are provided for in Section 3.5.6 of the reclamation plan.

**Findings:**

Information provided in the proposal is adequate to meet the requirements of this section of the regulations.

**RECOMMENDATIONS:**

The application is not recommended for approval at this time.