

Steven F. Alder (00033)
Douglas J. Crapo (14620)
Assistant Attorneys General
SEAN D. REYES (7969)
UTAH ATTORNEY GENERAL
1594 West North Temple, Suite No. 300
Salt Lake City, Utah 84116
Telephone: (801) 538-7227

FILED

SEP 10 2014

**SECRETARY, BOARD OF
OIL, GAS & MINING**

Attorneys for the Division of Oil, Gas and Mining

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In re Hidden Splendor Mine, Inc. and Request by the Utah Division of Oil, Gas and Mining that the Board of Oil, Gas and Mining Forfeit the reclamation surety which consists of a Deed of Trust in Unit No. R-2404-N of the American Towers Condominiums located at 57 West 200 South, Salt Lake City, Salt Lake County, Utah; and has been provided to guaranty reclamation of the Horizon Mine, Permit ACT/007/020 located in Sections 13 and 17, Township 13 South, Range 8 East, SLM, Carbon County, Utah.

NOTICE OF AGENCY ACTION

Docket No. 2014-037

Cause No. ACT/007/020 (04)

The Division of Oil, Gas and Mining (“**Division**”), through its attorneys, hereby commences this action, seeking an order of the Board of Oil, Gas and Mining’s (“**Board**”) forfeiting the reclamation surety provided for the Horizon Mine Permit ACT/007/020 located in Sections 13 and 17, Township 13 South, Range 8 East, SLM Carbon County, Utah. The surety consists of real property in the form of a Deed of Trust with Assignment of Rents executed by

Alexander H. Walker , Jr. and Cecil Ann Walker, husband and wife on August 1, 2003 and recorded August 4, 2003 as entry 8759481, Book 8856, page 735 of the records of the Salt Lake County Recorder (herein “Trust Deed”) in an amount of \$342,000.00 (and any additional amount required by the Reclamation Agreement dated June 11, 2003). The Division also seeks authorization by the Board to proceed with all necessary legal actions required to foreclose the trust deed, and if necessary, dispose of the real property interests acquired thereby and use the proceeds for the reclamation of the Horizon Mine.

In support of this Notice of Agency Action the Division alleges as follows:

JURISDICTION

1. The Division files this matter with the Board pursuant to its authority to administer the Utah Coal Mining and Reclamation Act (the “Act”), Utah Code Ann §§ 40-10-1 to 31 (West 2013) and Utah Mined Land Reclamation Act Utah Code 40-8-1 to 23 (West 2013). These Acts give the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” *Id.* § 40-8-5(1)(a). The Act, also, gives the Board the power and the duty to hold hearings and issue orders based on those hearings and “[t]o do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” *Id.* § 40-8-6(2), (4); § 40-10-6(7) and § 40-10-6.7(2)

2. This proceeding is to be conducted formally according to the provisions of the Board’s administrative rules found in Utah Administrative Code Rule R641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

3. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled a Board Hearing scheduled for October 22, 2014 in the auditorium of the

Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah. The hearing is scheduled to begin at 9:00 A.M. to hear pending requests and notices of agency action.

4. This proceeding may affect property interests of the permitted operators, the mineral owners, and the surface landowners and surety, and named individuals and each are “respondents” as defined under Utah Administrative Code Rule R641-100-200 and therefore, must “file and serve a written response signed by the respondent or his/her representative with[in] twenty (20) days of the mailing date” of this Notice of Agency Action. Utah Admin. Code R. R641-104-141 (2012). Under administrative rules R641-104-131.600 and R641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

FACTUAL ALLEGATIONS

1. The Permit for the Horizon Mine, Permit No. ACT/007/020, was initially issued to Horizon Coal Corporation on October 10, 1996 covering lands in Section 8 and Section 17, Township 13 South, Range 8 East SLM, Carbon County, Utah.

2. The permit was transferred several times after it was issued and was eventually transferred from Lodestar Energy Inc. to Hidden Splendor Resources, Inc. (“HSR”) on July 1, 2003.

3. Prior to approval of the transfer, a Reclamation Agreement was executed by Cecil Ann Walker, President, on behalf of Hidden Splendor Resources, Inc., effective June 11, 2003 committing HSR to reclaim the disturbed areas of the Horizon Mine as required by the Permit, and the Utah Coal Mining and Reclamation Act Utah Code §§40-10-1 to 28 (2014) and its regulations.

4. The Reclamation Agreement was originally guaranteed by a Letter of Credit dated May 14, 2003 from Bank One in an amount of \$342,000.00 and by a Deed of Trust with Assignment of Rents executed by Alexander H. Walker , Jr. and Cecil Ann Walker, husband and wife on August 1, 2003 and recorded August 4, 2003 as entry 8759481, Book 8856, page 735 of the records of the Salt Lake County Recorder in an amount of \$342,000.00 hereinafter “Deed of Trust”. A second Deed of trust that was identical in terms to the August 1, 2003 Deed of Trust was executed by Alexander H. Walker Jr. and Cecil Ann Walker at the request of the Division on June 29, 2005 to correct the omission of the Office of Surface mining as an additional Beneficiary. This deed of trust was not recorded.

5. The letter of credit was subsequently reduced to \$57,500.00 and was held together with the Deed of Trust as substitute surety.

6. The Deed of Trust was given “FOR THE PURPOSE OF SECURING (1)timely completion of the reclamation obligations for the Horizon mine . . . and to pay to the Beneficiary the cost of said reclamation in an amount of \$342,000.00, together with any additional amount required pursuant to any extensions and/or renewals or modifications [of the Reclamation Contract dated June 11, 2003] . . . and (3) the payment of such additional sums as may be required as a result of mining operations and the consequent reclamation obligations for the Horizon Mine hereafter.”.

7. An evaluation of the cost of the reclamation was completed in April 2005 and concluded that the total required surety was \$421,000 in 2011 dollars including contingencies associated with the real property including costs of holding and costs of sale. An appraisal of the condominium unit provided in July 2003 concluded the value was \$370,000.00. Therefore at

that time the value of the real property was in adequate and an additional \$57,500.00 LOC was required and provided as surety.

8. The Letter of Credit for 57,500.00 lapsed on January 20, 2007 after notice that it would not be renewed. No replacement LOC was required since there had been an increase in value of the property based on the tax notice valuation that showed a value of \$437,400.00 for 2006, \$531,400.00 in 2007, and \$584,500.00 in 2008. The value decreased to \$451,000.00 in 2011 but this was in excess of the 2011 cost estimate of \$421,000.00.

9. In 2013 the Division received notice that the Horizon Mine was included in the Chapter 11 Bankruptcy proceedings entitled *In re: America West Resources, Inc. et al. case no. BK -13-10865*. The Division filed a notice of its interests as holder of the surety and objections to sale and operation of the mine without adequate surety. The Horizon Mine and permit to operate were not acquired by any purchaser at the sale, but the mining equipment was sold. This sale of equipment precluded operation of the Horizon Mine without a large investment in new equipment.

10. To the knowledge of the Division, the creditor and others have attempted to attract investors to buy the mine or coal but have not been successful.

11. Since the bankruptcy sale was final, the BLM has issued various notices of deficiency for failure to adequately bond for royalties due under the leases.

12. On June 3, 2013, John Baza, Director of the Division, gave notice to Hidden Splendor Resources, Inc. that due to the Bankruptcy and other difficulties it appeared that resumption of mining was not likely and that reclamation would be required. The operator was

advised that it had the option of completing the reclamation work and that the Division required notice of intent to commence the work no later than July 3, 2013. HSR did not respond.

13. On April 30, 2014 notice was given that there was a deficiency of \$400,000.00 for the coal lease bond and that HSR had thirty days to cure the deficiency or loose the leases. To the knowledge of the Division, HSR has not cured the deficiency and the coal leases have been terminated.

14. On July 15, 2014 HSR was again given notice by the Utah Attorney General on behalf of the Division that it appeared that reclamation was necessary and demanded that HSR provide the division with a reclamation plans and schedule by August 8, 2014, after the passing of the BLM's August 5th deadline to cure deficiencies.

15. The Division personnel in June, July and August of 2014 personally met with Alex Walker the registered agent and current manager for HSR and advised him that reclamation must commence and that the Division intended to file a Notice of Agency Action seeking to forfeit the bond no later than September 10, 2014. Mr. Walker was informed that HSR or the owners of the condominium were entitled to reclaim the property to prevent filing of the forfeiture action, and encouraged to do so, but that the Division required evidence of actions by HSR or the owners of the condominium to commence reclamation.

16. Mr. Walker has failed to provide evidence that either he or HSR is able to commence reclamation at this time although he has indicated that HSR would like to modify the post mining land use in order to accommodate a proposed purchaser of the mine property and reduce the costs of reclamation. No application for a change in the post mining land use has been submitted and none could be approved while violations remain unabated.

17. In April 2014 the Division advised HSR of numerous violations that have occurred as a result of the failure to maintain personnel at the mine and to comply with monitoring and other requirements of the permit. A summary of the Violations issued this year includes eight violations with assessments in excess of \$5000.00. A Failure to Abate Cessation Order was issued August 15, 2014.

18. Utah Administrative Code rules R645-301-890.900 to 932 (adopted by the Board pursuant to the provisions of Utah Code § 40-10- 6(1) through (9)) and govern the forfeiture of bonds provided as surety for reclamation. Rule R645-301-890.910 provides that: “if an operator refused or is unable to conduct reclamation of an a unabated violation, if the terms of the permit are not met, or if the operator defaults on the condition under which the bond was accepted, the Division will take the following action to forfeit all or part of the bond . . . :

19. The Bankruptcy sale of the mine equipment, the BLM lease termination, failure of the operator to attract buyers for the mine, and the violation of the Act and failure of HSR to abate these violations and maintain the mine in a manner that precludes risks to the public health and safety, require that the Horizon mine be reclaimed.

20. HSR has failed to respond to the requests by the Division that it provide plans to commence reclamation work or evidence of contracts to do the work.

21. HSR and has therefore refused or is unable to conduct reclamation, has not complied with the terms of the permit to reclaim the mine when mining operations have ceased and forfeiture of the surety is required to reclaim the lands disturbed by mining operations.

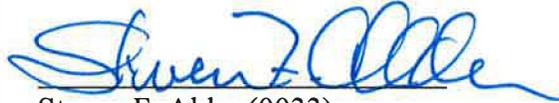
REQUEST FOR ACTION

Based on the foregoing allegations, the Division asks the Board to enter an Order granting relief as follows:

- (a) Terminating the permit for the Horizon Mine ACT/007/020;
- (b) Forfeiting to the Division all interest in the Deed of Trust held as surety for the performance of the obligations under the Reclamation Agreement dated June 11, 2003 and the obligation under the Act to reclaim the lands disturbed by mining operations;
- (c) Authorizing the Division and Utah Attorney General Office to take any and all actions necessary to foreclose the Deed of Trust and exercise of the power of sale and other actions necessary to liquidate the real property held as surety and used such proceeds from the sale of the real property to pay the costs of reclamation of said lands;
- (d) Authorizing the Division to use the proceeds obtains from the foreclosure of the Deed of Trust for the reclamation of the land disturbed by Horizon Mine in accordance with the mine reclamation plan and the Act;
- (e) Authorizing the Utah Attorney General to take action as appropriate to recover any cost of reclamation not covered by the proceeds of the foreclosure; and

(f) Providing such other relief and is just and equitable based on the evidence adduced at the hearing of this matter.

RESPECTFULLY SUBMITTED this 10th day of September 2014.



Steven F. Alder (0033)
Douglas J. Crapo (14620)
Assistant Attorneys General
ATTORNEY GENERAL'S OFFICE
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116
(801) 538-7227

Attorneys for the Division of Oil, Gas and Mining

Board Address

Ruland J. Gill, Jr.
Chairperson of the Board
Board of Oil, Gas and Mining
1594 West North Temple, Suite 3710
P.O. Box 145610
Salt Lake City, Utah 84114-5610
(801) 538-7200

Division Address

John R. Baza
Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 3710
P.O. Box 145610
Salt Lake City, Utah 84114-5610
(801) 538-7200

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2014, I caused a true and correct copy of the foregoing **NOTICE OF AGENCY ACTION** for Docket No. 2014-037, Cause No. ACT/007/020 (04), to be mailed with postage prepaid, via E-mail, Certified Mail, or First Class Mail, to the following:

By email to:

Michael S. Johnson
Assistant Attorney General
Utah Board of Oil, Gas and Mining
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116

By certified mail to:

CERTIFIED MAIL NO. 7010 1670 0001 4810 3386

Hidden Splendor Resources Inc.
Alexander H. Walker III, Registered Agent
57 West 200 South, Suite 400
Salt Lake City, Utah 84101

By first class mail to:

Current Resident
Unit 2404N American Towers
Condominiums
48 West 300 South
Salt Lake City, Utah 84101

American Towers Home Owners
Association
Suite 2208 American Towers
48 West 300 South
Salt Lake City, Utah, 84101

Estate of Cecil Ann Walker
Care of
Alexander H. Walker III,
57 West 200 South, Suite 400
Salt Lake City, Utah 84101

Kent Hoffman
Deputy State Director
Bureau of Land Management
440 West 200 South, Suite 500,
Salt Lake City, UT 84101



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>Ann</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>H.M.H.</i> C. Date of Delivery</p>
<p>1. Article Addressed to: HIDDEN SPLENDOR RESOURCES INC. ALEXANDER H. WALKER III, REGISTERED AGENT 57 WEST 200 SOUTH, SUITE 400 SALT LAKE CITY, UTAH 84101</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7010 1670 0001 4810 3386</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

UNITED STATES POSTAL SERVICE

STATE MAIL 09/17/2014 04:45

First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

RECEIVED 7 2014 DIV. OF OIL, GAS & MINING

RECEIVED SEP 17 2014 DIV. OF OIL, GAS & MINING

• Sender: Please print your name, address, and ZIP+4 in this box •

Julie Ann Carter
~~EARLENE RUSSELL~~
 DIVISION OF OIL, GAS & MINING
 PO BOX 145801
 SALT LAKE CITY, UT 84114-5801

|||