

# STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
General Counsel & Chief of Staff

BRIDGET K. ROMANO  
Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

July 20, 2015

Denise A. Dragoo  
Snell & Wilmer L.L.P.  
15 West South Temple  
Suite 1200  
SLC, UT 84101

Re: Hidden Splendor Resources Application for Significant Revisions,  
Horizon Mine C/007/0020

Ms. Dragoo,

The Division does not agree with the analysis and conclusions in your letter of July 10, 2015 sent in defense of Hidden Splendor Resource's (HSR) application for significant revision of the Horizon Mine permit. This is to advise you that the Division stands by its prior decision and the significant revision will not be reviewed until the deficiencies are addressed. Additionally, the Division will continue to proceed with forfeiture of the surety for the reasons provided in this response.

A significant revision requires an application addressing all of the requirements for a permit (R645-303-226). The definition of an administratively complete application is "an application for permit approval . . . 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" (R645-100-200, emphasis added). One of the purposes is to provide notice of the application and receive comments (R645-300-121.300). This is not simply a checklist. The statute delegates to the Division discretion to determine completeness based on the nature of the application and the information required. In general, the Division believes it is better to err on the side of obtaining as much information as possible prior to a finding of completeness, so that the public notice is meaningful and the subsequent analysis can go forward without additional requests for information. The Division has twice indicated that it needed more information for its evaluation, and much of this additional information has still not been provided.

The burden is on HSR to demonstrate that it is proposing a better land use that is practical, and one with a reasonable likelihood of use, rather than a change that will end up as an abandoned, unused, and insufficiently reclaimed area. No specific plans have been presented by HSR that would allow the Division to make an evaluation of the reasonable likelihood of achieving a higher and better use as required. The ability of HSR to sell the land is still unaddressed. The Division requires evidence that a recreational use as proposed is practical and reasonable (R645-301-413.310 and 413.331). Does Mr. Walker's affidavit argue that a parking area for trucks for a hunting camp is a higher and better use? If more development is proposed or needed for a higher use (such as a boys or girls camp, or a KOA facility), will income support the costs? Is there a need for water, toilets, buildings, etc.? What will be the costs of such amenities? Will the site attract sufficient interest to be successful? Is there a binding agreement with a viable and experienced developer or operator of such a facility? These are questions that the application must address and the Division needs to evaluate.

However, this disagreement about the administrative completeness of the application ignores the history of HSR's failure to address many problems at the mine since its cessation of operations. HSR's failure to address its regulatory problems has left the Division with little choice but to proceed to forfeit the surety. Reclamation is required when the operator refuses or is unable to conduct reclamation of an unabated violation, R645-301-880.910. A Failure to Abate Cessation Order (FTACO) was issued to HSR on August 5<sup>th</sup>, 2014 for not addressing the actions required in Notice of Violation #10141 (NOV). The NOV was issued for failure to maintain the primary sediment pond. To this date, HSR has done nothing to address the FTACO. In addition, on April 8<sup>th</sup>, 2014, the Division initiated a midterm review of the Horizon Mine's Mining and Reclamation Plan (MRP). As part of that process (Task ID #4512), HSR was directed to provide updated information for estimated bonding costs including a 5 year escalation of 1.9% to 2019 dollars. HSR was granted two extensions to provide the updated bond information (once on May 7<sup>th</sup>, 2014 and again June 6<sup>th</sup>, 2014). The second extension established a June 20<sup>th</sup>, 2014 deadline for providing the updated bond information. The Division has yet to receive any updated information. At this time it is not clear if the current value of the condominium allowing for costs of holding and selling is sufficient to cover the costs of reclamation.

It has been more than two years since the bankruptcy auction and the failure to sell the mine and consequential sale of the mining equipment. This development made it apparent that mining would not resume and initiated our communications about proceeding with reclamation. The Division filed its Notice of Agency Action last fall to forfeit the surety. We held that action in abeyance while again trying to work with you and Mr. Walker and eventually withdrew the NOAA to provide further notice to all parties and to the surety of their opportunity to reclaim the mine themselves. HSR has now submitted three inadequate applications to change the post mining land use. It is apparent that HSR is either unable or is refusing to reclaim the site and address the outstanding violations. Forfeiture is not premature.

Finally, contrary to your assertions, reclamation is not proceeding. There were some early steps taken to remove the buildings but since then no significant work has been completed and the conditions at the site continue to worsen. Ten Notices of Violation had been issued since January of 2014. Many of them issued as a result of HSR's failure to maintain the stability of the mine site. Significant erosion of the cut slopes (including the topsoil pile) and further

July 20, 2015

Page ~ 3 ~

degradation of the primary sediment pond continue to be observed during routine inspections. The result of HSR's on-going negligence increases the possibility of off-site impacts occurring. The primary sediment pond was noted as having produced a discharge in September of 2014. Although, HSR documented that a discharge had occurred, a sample was not obtained by HSR (as required per the Utah Pollutant Discharge Elimination System permit). Additionally, continued negligence of mine site maintenance will only serve to increase the cost and complexity of reclamation efforts in the future as material (such as topsoil) continues to erode. An inspection on July 15, 2015 found that conditions continue to worsen: top soil protection waddles need repair, a culvert was discovered to be plugged (for the second time this spring) resulting in flow over of the mine pad, and the sedimentation pond's condition continues to degrade. Two more violations were written.

This is not a large site. It could be easily reclaimed, seeded, and returned to the pre-mining condition as required by the permit. The mine pad is not attractive for recreational use except to the extent that might provide a parking area for hunter's trucks. If that were the requirement for a recreational post-mining use there would be no reason to reclaim any mine pad within Utah's mountainous coal country. The pad area is not level, there are no trees or amenities on it, and it sits adjacent to a dusty road without any buffer. The location is remote, dry, not forested, and with sparse vegetative cover. It is not a particularly attractive location except as it may provide access to hunting areas. An application for a change in the post mining land use must demonstrate that it is more than a request to leave the land in a less than fully reclaimed condition?

The Division remains willing to work with HSR to complete a reclamation plan consistent with the permit. The Division will review a complete application for change in the post mining land use, when past violations and the FTACO have been addressed. However, the delays and the continued inattention to the site require the Division proceed with forfeiture of the surety.

Yours sincerely,



Steve Alder  
Assistant Attorney General  
Counsel for the Division of Oil, Gas and Mining

cc: Dana Dean