



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

IN REPLY REFER TO:

3483

UTU-73346 (Blackhawk LMU)  
(UT-932)

MAY 08 2001

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CERTIFIED MAIL—Return Receipt Requested

### DECISION

Plateau Mining Corporation	:	Coal Leases: SL-046652,
847 NW Hwy. 191	:	SL-048442-050115, U-0146345,
Helper, Utah 84526	:	U-0148779, SL-029093-046653,
	:	SL-071737, U-058184, U-25485,
	:	and UTU-73975

### Force Majeure Suspension Granted

Following an explosion and fire in the Willow Creek Mine on July 31, 2000, Plateau Mining Corporation (Lessee/sublessee) filed an application for a *force majeure* suspension of operations and production. This application was filed in our office October 18, 2000. The application covers all leases currently comprising the Blackhawk Logical Mining Unit (LMU) (leases SL-046652, SL-048442-050115, U-0146345, and U-0148779) plus leases contained in a application to modify the LMU (SL-029093-046653, SL-071737, U-058184, U-25485, and UTU-73975).

In accordance with 43 CFR 3483.3 (a)(1), the authorized officer must suspend the requirement for continued operation by the period of time it is determined that strikes, the elements, or casualties not attributable to the operator/lessee have interrupted operations under the Federal coal lease or LMU.

According to the Bureau of Land Management (BLM) guidelines a *force majeure* suspension may be granted if the following criteria are met:

1. Production has been interrupted by strikes, elements or casualties not attributable to the operator/lessee;
2. Production has commenced on the lease or LMU;
3. The situation prevented the operator/lessee from producing in commercial quantities.

The granting of a *force majeure* suspension suspends the following terms and conditions of the LMU for a period of time equal to the duration of the suspension:

1. Minimum production requirements;
2. Minimum royalty requirements;
3. Diligent development;
4. Continued operation year;
5. 3-year period for submission of an R2P2;
6. 40-year mine-out period for the LMU;
7. 2(a)(2)(A) requirements.

Production on UTU-73975 and elsewhere has satisfied the diligent development requirement.

The terms and conditions not suspended or extended by the granting of a *force majeure* suspension are:

1. Deferred bonus payment;
2. Rental;
3. Royalty for coal sold during the term of suspension;
4. Beneficial use of the lease or LMU;
5. Lease term and readjustment date;
6. Reclamation/Mine Maintenance/Health & Safety.

For coal lease UTU-73975, the last deferred bonus payment of \$1,025,440 was paid February 1, 2001.

A *force majeure* suspension ends on the first day of the calendar month during which one of the following first occurs:

1. Conditions for the suspension no longer exist;
2. Production reaches the pre-suspension rate;
3. Annual certification is not provided;
4. Expiration date established by the authorized officer.

The BLM Manual states that the company must certify on an annual basis that the conditions causing the interruption of coal production still exist. (BLM Manual, 3483 Diligence Requirements, page .32A2C, Jan. 7, 1991). BLM considers the fire as the condition causing the interruption of coal production. In the absence of a report from Mine Safety and Health Administration (MSHA) on the July 31, 2000, explosion and fire, BLM treats the fire as a casualty that is not attributable to the Lessee. Therefore, BLM will grant to Plateau Mining Corporation a *force majeure* suspension from July 31, 2000, until July 31, 2001, for the Willow Creek Federal coal leases.

In order to continue the *force majeure* suspension beyond July 31, 2001, the Plateau Mining Corporation must provide an annual certification on or before **July 1, 2001**, explaining that the conditions justifying the suspension still exist. To satisfy the certification requirement, the Lessee must do more than merely monitor the gas levels in the mine and place temporary seals at the portals; it must show that positive steps are being made to determine the status of the fire. Steps that the BLM would consider to be positive include, but are not limited to, submitting a plan to MSHA for drilling a hole near the location of the fire to monitor gas levels along with a time table for implementation, or submitting a plan to MSHA to re-enter the mine to determine the status of the mine fire. Prior to submitting a plan to MSHA, the Lessee/sublessee shall submit the plan(s) and implementation time table(s) to the BLM Price Field Office for their review. As part of that review, BLM will determine if the plan and the implementation time table justify continuing the *force majeure* suspension.

The *force majeure* suspension will relieve the Lessee of the responsibility to pay advance royalties, but it also gives the Lessee the right to use the lease. BLM considers the company's determination of the status of the fire to be within their suspended lease rights. If the fire is not out, then it is the responsibility of the Lessee to put the fire out in order to comply with the terms of the lease, Part I (Lease Rights Granted ), Section 1, and the regulations at 43 CFR Subpart 3484 (Performance Standards) and Part II, (Terms and Conditions), Section 7 (Damages to Property and Conduct of Operations),

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21)(58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting a stay.

/s/ ROBERT A. BENNETT

Sally Wisely  
State Director

FOR

Enclosures:

1. Form 1842-1 (1 p)
2. *Force Majeure* Suspension Guidelines (4 pp)
3. Plateau Mining Corp. Suspension Application (3 pp)

cc: Price Coal Office (Attn: Jay Marshall) (w/enclosures)  
Plateau Mining Corp., 94 Inverness Terrace East, Suite 120, Englewood, CO 80112-5300  
(w/enclosures)  
Regional Solicitors Office (Attn: Emily Roosevelt)  
MMS, MRM, Solid Mineral Staff, MS3153, P.O. Box 25165, Denver, CO 80225  
RAG American Coal Holding, Inc., Attn: Greg A. Walker, 999 Corporate Blvd.,  
Linthicum Heights, MD 21090 (w/enclosures)

bcc: Central Files  
Terry Graham  
Solid Chron File  
Stan Perkes

SPerkes:jan:05/04/01