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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

RECEIVED

FEB 14 2002

DIVISION OF
OIL, GAS AND MINING

IN REPLY REFER TO:

3480
UTU-73346
(UT-923)

FEB 13 2002

Certified Mail--Return Receipt Requested
Certificate No.

Mr. Dennis Ware
Authorized Agent
Plateau Mining Company
847 NW Hwy 191
Helper, Utah 84526

Re: **ORDER** - Maintain mine access and ventilation to Willow Creek mine and workings on Federal Coal LMU UTU-73346 (Blackhawk LMU).

Dear Mr. Ware:

A mine fire/explosion occurred at the Willow Creek Mine on July 31, 2000. Since this event the mine has been under a temporary abandonment and the Federal Coal leases have been issued a Force Majeure suspension. MSHA released a report on the incident on July 17, 2001 which BLM is continuing to review. On September 29, 2001, AMWEST, acting with permission from Plateau, re-started the main mine fan and began to ventilate the mine. On October 9, 2001 the ventilation had been re-established in the mine and access was available to the workings. On November 15, 2001 AMWEST was designated as the operator and local agent for the Willow Creek mine. AMWEST is in the process of inspecting the condition of the mining equipment and supplies underground, as well as the mine's infrastructure. AMWEST is assessing their findings to make a determination if they are interested in leasing the properties. AMWEST and Plateau have not yet entered into any agreement for transfer or assignment of the leases at this time. Now the mine has had ventilation re-established and the workings are accessible, the status of initiation of starting production or abandonment is unknown. In order to implement 43 CFR 3480.0-6(3), 3480.0-6(8) and 3484.2 you are hereby **ORDERED** to maintain access and ventilation of the Willow Creek mine and **all** workings and all regulatory safety inspections shall be continued. This shall take place until such time as an underground abandonment plan is approved by the Authorized Officer in writing and BLM has inspected the underground workings or a modification to the R2P2 is approved for a resumption of mining activities.

Appeal Rights

You have 30 days from the receipt of this order to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 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 within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

*Copy Pete Ness
orig -> file*

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay 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 the petition for a stay must also be submitted to the Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with 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 a stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted and;
- (4) Whether the public interest favors granting the stay.

If you have any questions, please contact Stan Perkes of my staff at (801) 539-4036.

Sincerely,

/s/ Roger Zortman

Roger Zortman
Deputy State Director for Lands and Minerals

Enclosures

Appeal Form 1842-1

cc: AMWEST

Exploration Company, 340 Hardscrabble Road, Helper, Utah 84526 (Attn: Gary Barker)

RAG C. Corwin Bromley Asst. General Counsel, RAG American Coal Holding Inc., 94 Inverness Terrace East, Suite 120, Englewood, Colorado, 80112

UT-070, Price Field Office

Utah Division of Oil, Gas and Mining, Attn. Mary Ann Wright, P.O. Box 145801, Salt Lake City, Utah 84114-5801

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you.
- AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE
NOTICE OF APPEAL State Director, Utah
Bureau of Land Management
Utah State Office
P. O. Box 45155
Salt Lake City, Utah 84145-0155

SOLICITOR
ALSO COPY TO Regional Solicitor
Department of the Interior
Federal Building, Room 6201
Salt Lake City, Utah 84138

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR
ALSO COPY TO Regional Solicitor
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Salt Lake City, Utah 84138

4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the *Statement of Reasons*, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).

5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(cX2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a)).

SUBPART 1821.2--OFFICE HOURS; TIME AND PLACE FOR FILING

Sec. 1821.2-1 Office hours of State Offices. (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

As of February 18, 1993, Federal rules pertaining to the effect of appeals on Department of the Interior decisions were revised to provide that decisions would become effective under certain conditions even where an appeal has been filed. The following paragraphs now apply.

43 CFR § 4.21(a)(2) A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a person for a stay pending appeal is filed together with a timely notice of appeal; a person for a stay may be filed only by a party who may properly maintain an appeal.

43 CFR § 4.21(b)(1) Standards and procedures for obtaining a stay. Except as otherwise provided by law or other permanent regulation (1) A person for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (i) The relative harm to the parties if the stay is granted or denied.
- (ii) The likelihood of the appellant's success on the merits.
- (iii) The likelihood of irreparable and immediate harm if the stay is not granted, and
- (iv) Whether the public interest favors granting the stay.