

C/015/015 Incoming  
CC: Steve C.

Bronco Utah Operations LLC  
P.O. Box 527  
Emery, Utah 84522  
(801) 286-2301

#5058

March 25, 2016

Daron Haddock  
Utah Division of Oil, Gas and Mining  
Coal Program  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

RECEIVED  
MAR 30 2016  
DIV. OF OIL, GAS & MINING

Re: CONSOL Mining Company LLC  
Emery Mine  
DOG M Permit No. C/015/015 Transfer to Bronco Utah Operations LLC  
DOG M Task ID 5058 – Responses to Permit Transfer Application Deficiencies Noted in Division  
Technical Memorandum

Dear Mr. Haddock:

On February 17, 2016, Bronco Utah Operations LLC (“Bronco”) received a copy of a technical memorandum (“Technical Memorandum”) prepared by Steve Christensen, Environmental Scientist III and submitted to the internal file of the Division of Oil, Gas and Mining (“Division”), relating to the above captioned proposed mine permit transfer application. The Technical Memorandum identified and described certain deficiencies in Bronco’s proposed mine permit transfer application. The Division has requested that Bronco respond to the identified deficiencies.

Please find enclosed with this letter Bronco’s responses to the permit transfer application deficiencies identified in the Technical Memorandum. As requested by the Division, Bronco has provided its responses to the Division’s concerns in-line within a copy of the Technical Memorandum. Please note that Bronco’s enclosed responses reference updated permit transfer application materials provided under separate cover submitted contemporaneously with this letter.

Please let us know if you have any questions concerning Bronco’s responses to the deficiencies identified in the Technical Memorandum.

Sincerely,



Dan R Baker  
Chief Executive Officer-President

Attachment:

Division Technical Memorandum, updated with in-line responses by Bronco, and attached Exhibits

## TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

February 17, 2016

TO: Internal File

THRU: Daron Haddock, Coal Program Manager

FROM: Steve Christensen, Environmental Scientist III

RE: Permit Transfer, Bronco Utah Operations, LLC, Emery Deep Mine, C/015/0015, Task ID #5058

### SUMMARY:

Utah Administrative Code R645-100 to 403 was adopted to administer the Utah Coal Mining and Reclamation Act. These rules establish the information to be submitted and standards to be applied in order to approve an application for permit transfers and coal mining and reclamation activity. R645-303-300 outlines the requirements for the transfer, assignment or sale of permit rights. R645-303-321.300 directs the Applicant to provide the Division with the legal, financial, compliance and related information required by R645-301-100 for approval of a transfer of permit rights. The R645-301-100 rules require an applicant to provide certain violation information. *See* R645-301-113. In addition, under R645-303-340 and-341 “the Division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor...is eligible to receive a permit in accordance with R645-300-132 and R645-300-133.”

On December 18, 2015, the Division of Oil, Gas and Mining (the Division) received a permit transfer application from Bronco Utah Operations, LLC (Bronco or the Applicant). The Applicant is requesting that the Division transfer the Emery Deep Mine’s Surface Mining and Coal Reclamation Act permit (SMCRA permit) from CONSOL Mining Company LLC to Bronco.

Per the requirements of R645-303-300, the Applicant provided the information necessary to initiate a permit transfer review. The name and address of the existing permittee and permit number were provided, along with a description of the proposed permit transfer. The Applicant also provided a copy of the public notice announcing the proposed permit transfer, as well as an Affidavit of Publication from the Emery Country Progress certifying a publication date of December 29, 2015. Additionally, the Applicant provided documentation of appropriate bond coverage. Revised legal, financial and compliance information from the current Mining and Reclamation Plan (MRP) for the Emery Deep Mine was also provided to the Division.

The Division has reviewed the information in the application and provides the following analysis and findings which address requirements for approval listed in R645-303-300. Specifically this review addresses compliance under the following headings:

- I. Identification of legal, financial, compliance, and related information required by R645-301-100 for the applicant;
- II. Eligibility to receive a permit under R645-300-132 and 133; and
- III. Public notice, comment, and bonding and insurance requirements of R645-303-300.

The Division finds that the requirements for public notice and comment, and bonding and insurance are met by the application. However, the requirements regarding identification of interests required by R645-301-100 and eligibility requirements of R645-300-132 and 133 require additional information as noted in the findings.

The following technical memo provides the analysis and deficiencies that have been identified during the review of the proposed permit transfer. At this time, the application is found to be deficient.

**TECHNICAL ANALYSIS:**

**GENERAL CONTENTS**

**IDENTIFICATION OF INTERESTS**

Regulatory Reference: 30 C.F.R. § 773.22; 30 C.F.R. § 778.11; 30 C.F.R. § 778.12; 30 C.F.R. § 778.13; R645-301-112

**Analysis:**

The application does not meet the State of Utah R645-301-100 requirements for Identification of Interests due to the following omissions.

**1. Incomplete identification of business type.**

On page 6 of Chapter 1, the Applicant provides revised ownership and control information. Bronco is identified as both the permit applicant and the mine operator. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association or other business entity is not provided as required by R645-301-112.100. If Bronco is a limited liability company the State in which it is organized and date of organization should also be provided.

Bronco Utah Operations LLC (“Bronco”) is a Delaware limited liability company, formed on November 16, 2015. A revised page 6 of Chapter 1 is included with the revised and executed C1 Form, C2 Form and Cover Letter and permit transfer materials submitted concurrently with this filing (the “*Permit Transfer Package*”).

**2. Incomplete identification of ownership in Bronco Utah Operations, LLC.**

In Appendix I-1, Ownership and Control, tax payer identification numbers are provided for the numerous business entities identified. Appendix I-1, Ownership and Control, also includes an organizational chart entitled E&P Chart- Bronco Coal Resources. Following the organizational chart, the Applicant provides the names and addresses and phone numbers of the various officers for each of the eleven business entities identified in the organizational chart. In each of the eleven business entities descriptions in Appendix I-1 the application should also identify all persons who own 10% or more of the entity and provide additional information required by R645-301-112.310 to 112.350, if applicable.

A revised Appendix I-1, Ownership and Control information is included in the Permit Transfer Package.

**3. Incomplete identification of previous coal mining operations owned or controlled by Dan R. Baker.**

One of the individuals listed in Appendix I-1 is Dan R. Baker, identified as CEO and President of Bronco. Per the requirements of R645-301-112.340, the Applicant must revise Section UMC 782.14 in Chapter 1 Page 7 to reflect Dan R. Baker’s involvement with the Horizon Mine and Wildcat Loadout within the last 5 years.

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The Horizon Mine MRP identifies Dan R. Baker as the current President, CEO and Director of America West Resources, LLC. America West Resources, LLC is identified as the owner of Hidden Splendor Resources, Inc. which is the operator of the Horizon Mine (DOGM Permit #C/007/0020, Volume 1, pages 2-2 and 2-2A).

The Wildcat Loadout MRP identifies Wild West Equipment & Hauling, LLC as the operator of the facility and Dan Baker as the Vice President of the company (DOGM Permit #C/007/0033, Chapter 1, page 1-2).

A revised Section UMC 782.14 in Chapter 1 Page 7 is included in the Permit Transfer Package and has been updated to reflect Dan R. Baker's involvement with the Horizon Mine and Wildcat Loadout within the last 5 years.

**4. Incomplete information on ownership of the surface and the coal in the permit area.**

On page 7 of Chapter 1, the Applicant indicates that the ownership and leasehold interest information for both surface and coal within and adjacent to the permit area and adjacent area is contained in Appendix I-2. Upon review of the revised Appendix I-2, it appears that the information pertains only to surface land ownership within and adjacent to the permit area as the text on top of each page only refers to the surface ownership (i.e. there is no mention of coal ownership). Per the requirements of R645-301-112.500, the Applicant must revise Appendix I-2 to include the name and address of each legal or equitable owner of record of the mineral property to be mined. It appears that only the individuals of the surface ownership within and adjacent to the permit area are provided.

A revised Appendix I-2 is included in the Permit Transfer Package, and has been updated to include the name and address of each legal or equitable owner of record of the mineral property to be mined.

**Findings**

The application does not meet the State of Utah R645 requirements for Identification of Interests. The following deficiencies must be addressed prior to final approval:

**R645-301-112.100:** The Applicant must provide a statement as to whether the applicant is a corporation, partnership, single proprietorship, association or other business entity.

See response to item 1 above and revised permit documentation attached included in the Permit Transfer Package.

**R645-301-112.310, -112.320, -112.330:** The Applicant must identify every person who owns, of record, 10 percent or more of the entities identified in Appendix I-1 and provide additional information as to each individual's name, address, telephone numbers, position, title, and relationship to the Applicant, including percentage of ownership and location in organizational structure and the date each position was assumed. If any person who owns 10 percent or more of

the entities identified in Appendix I-1 has owned or controlled a coal mining and reclamation operation in the last five years, the requirements of R645-301-112.340 through 112.112.420 must be addressed.

*See response item 2 above and revised permit documentation included in the Permit Transfer Package.*

**R645-301-112.340, -112.400, -112.410, -112.420:** The Applicant must revise Section UMC 782.14 in Chapter 1 Page 7 to reflect Dan R. Baker's involvement with the Horizon Mine and Wildcat Loadout within the last five years.

*See response to item 3 above and revised permit documentation included in the Permit Transfer Package.*

**R645-301-112.500:** The Applicant must revise Appendix I-2 to include the name and address of each legal or equitable owner of record of the mineral property to be mined. It appears that only the individuals of the surface ownership within and adjacent to the permit area are provided. The application must clearly identify the legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchase of record under a real estate contract for the property to be mined

*See response to item 4 above and revised permit documentation included in the Permit Transfer Package.*

#### **VIOLATION INFORMATION**

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

#### **Analysis:**

The application does not meet the R645 State of Utah requirements for Violation Information. The application does not provide compliance and violation information for mining operations which the applicant or the operator control or which is under common control of the operator

In Chapter 1 Page 7, the Applicant states, "Information on all violations received by the applicant or operator during the past three (3) years, related to environmental requirements are contained in Appendix I-4. Due to the fact that the applicant and operator are newly created entities in 2015, there is no history of violations." Appendix I-4 reiterates that "there is no history of violations."

Per the requirements of R645-301-113.300, the Applicant must provide a list of all violation notices received by the proposed applicant or operator during the three year period preceding the application date and include information regarding violations for entities "which the applicant or the operator control or which is under common control of the operator."

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The Division recognizes that Bronco is a new company and has not incurred any violation. However, R645-301-113.300 also applies to individuals and any coal mining or reclamation operation of which they have had ownership or control. Because Dan Baker has ownership or control of Bronco, and also has ownership or control of the Horizon Mine and the Wildcat Loadout, violations for these sites must be identified.

The Division has identified the following violations which must be identified in the application together with others issued.

**A. Horizon Mine.**

Notice of Violation N10141 (NOV #10141). NOV #10141 was issued by the Division on May 27, 2014 for failure to maintain the primary sediment pond at the Horizon Mine (DOGM Permit #C/007/0020).

Mr. Baker resigned from America West Resources, Inc. ("*America West*") on June 27, 2013 and was no longer in a control or ownership position with respect to the Horizon Mine when NOV #10141 was issued on May 27, 2014. See discussion concerning ownership and control of the Horizon Mine included in Responses to the "Eligibility to Receive Permit" section included below.

State Cessation Order C012147 (CO #12147) was issued by the Division for failure to abate NOV #10141 within the time-frame specified. This failure to abate cessation order remains unabated. A maximum civil penalty of \$22,500 as required by R645-401-420 was assessed and has not been paid.

Mr. Baker resigned from America West on June 27, 2013 and was no longer in a control or ownership position with respect to the Horizon Mine when CO #12147 was issued on August 5, 2014.

Notice of Violation N21151 (NOV #21151) was issued on July 16<sup>th</sup>, 2015 for failure to maintain the surface drainage controls at the Horizon Mine.

Mr. Baker resigned from America West on June 27, 2013 and was no longer in a control or ownership position with respect to the Horizon Mine when NOV #21151 was issued on July 16, 2015.

State Cessation Order CO21155 (CO #21155) was issued for failing to complete required abatement of NOV #21151. An informal conference was conducted in September of 2015. A finding as to the status of CO #21155 is pending with the Division.

Mr. Baker resigned from America West on June 27, 2013 and was no longer in a control or ownership position with respect to the Horizon Mine when CO #21155 was issued on August 4, 2015.

Additionally, nine notices of violations (NOV's) have been issued to the Horizon Mine since January of 2014. To date, the Division has yet to receive the civil penalty payments as a result of those NOV's.

Mr. Baker resigned from America West on June 27, 2013 and was no longer in a control or ownership position with respect to the Horizon Mine when the notices of violation noted above were issued after January 2014.

**B. Wildcat Loadout.**

Two NOV's have been issued to the Wildcat Loadout in the last three years: Notice of Violation N10129 (NOV #10129) was issued on June 20, 2013 for non-permitted oil trans-loading activities that occurred.

NOV #10129 was terminated by the Division on July 2, 2013 with the following explanation:

*The Permittee performed all required actions noted in the NOV. The trans-loading of oil at the facility stopped and an amendment to the MRP was submitted to the Division for review. The amendment included a description of activities, an updated map of the facility and provided the Division a copy of an updated Spill Prevention, Control and Countermeasure (SPCC) plan to comply with the Clean Water Act.*

Notice of Violation N10132 (NOV #10132) was issued on November 26, 2013 for failure to prevent additional contributions of suspended solids to stream flow outside the permit area.

NOV #10132 was terminated by the Division on March 13, 2014 with the following explanation:

*The Permittee performed the required actions as noted in the NOV. An on-site meeting took place Jan. 23, 2014, coal fines were removed in the deepest areas along the east side of the facility, and the cleaned areas have been seeded. An amendment to the MRP was received March 10, 2014 and will be reviewed by the Division.*

**Findings**

The application does not meet the R645 State of Utah requirements for Violation Information. The following deficiency must be addressed prior to final approval:

**R645-301-113, -113.300 through -113.360:** The Applicant must provide the required information for the additional violations received in connection with the operations of the Horizon Mine and the Wildcat Loadout within the last three years.

A revised Appendix I-4 is included in the Permit Transfer Package and has been updated to reflect the violations received in connection with the operations of the Horizon Mine for the period from December 18, 2010 up to the date of Mr. Baker's resignation from America West on June 27, 2013, which covers the only period of time within the five year period prior to the date Bronco submitted its permit transfer application on December 18, 2015 in which Mr. Baker was

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acting in an ownership or control position with respect to the Horizon Mine. In addition the revised Appendix I-4, as included in the Permit Transfer Package, has been updated to reflect the violations received in connection with the operations of the Wildcat Loadout during the time period in which Mr. Baker was in a control position within the last five years with respect to the Wildcat Loadout.

**RIGHT OF ENTRY**

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

**Analysis:**

The application does not meet the State of Utah R645-301-114 requirements for Right of Entry.

Specifically, the application does not provide a description of the documents upon which the Applicant bases its legal right to enter and begin coal mining and reclamation operations in the permit area. The application must also state whether the right of entry is the subject of pending litigation. The description must also identify the documents by type and date of execution, identify the specific lands to which the document pertains and explain the legal rights claimed by the Applicant.

**Findings**

The application does not meet the State of Utah R645-300-132 requirements for Right of Entry. The following deficiency must be addressed prior to final approval:

**R645-301-114:** The applicant must provide a description of the documents upon which the Applicant bases its legal right to enter and begin coal mining and reclamation operations in the permit area. The application must state whether that right is the subject of pending litigation. The description must also identify the documents by type and date of execution, identify the specific lands to which the document pertains and explain the legal rights claimed by the Applicant.

A revised Appendix I-2 is included in the Permit Transfer Package and has been updated to provide (i) a description of the documents upon which the Applicant bases its legal right to enter and begin coal mining and reclamation operations in the permit area, and (ii) a statement that the right of entry is not the subject of any pending litigation.

**ELIGIBILITY TO RECEIVE PERMIT**

Regulatory References: 30 C.F.R. § 773.15; 30 C.F.R. § 773.23; 30 C.F.R. § 778.14(c); R645-303-341; R645-300-132; R645-301-112 and 113

**Analysis:**

The Division is required to make a finding that based on violations, permit history, ownership reviews and the AVS report that the Applicant is eligible to receive a permit in accordance with

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the review required by R645-300-132. The application does not meet the requirements to make this finding for the following reasons.

1. Failure to provide complete ownership and control information precludes the Division from verifying there are no current violations for owners of the permittee and operator.

As noted in the identification of interests discussion above, the application must identify previously operated coal mining and reclamation operations owned or operated in the past five years by every officer, partner, member, director, and every person with 10% ownership in an entity occupying such a position. Since the identification of interests was not complete for those with a 10% ownership as set forth above, the Division cannot determine if there are violations for those entities not identified.

A revised Appendix I-1, Ownership and Control information is included in the Permit Transfer Package.

2. The Division cannot find that the Permittee and Operator are eligible to receive a permit transfer due to unresolved and current violations, unpaid civil penalties, and pending forfeiture actions for operations the applicant or operator owns or controls. Specifically, the Horizon Mine is in current violation of the laws, rules and regulations referred to in R645-300-132 and is found to be under the control of Dan R. Baker.

Mr. Baker resigned from America West on June 27, 2013. Based on the information provided by the Division in this Technical Memorandum, all of the unresolved and current violations, unpaid civil penalties, and pending forfeiture actions relating to the Horizon Mine arose after Mr. Baker's resignation at a time when Mr. Baker did not hold an ownership or control interest in America West, Hidden Splendor or the Horizon Mine. A more detailed response outlining why Mr. Baker should not be responsible for unresolved and current violations, unpaid civil penalties, and pending forfeiture actions with respect to the Horizon Mine occurring after his June 27, 2013 resignation is included in the responses below.

**A. Eligibility requirements of R645-300-132:**

The eligibility determination requires that the Division review enumerated violations of laws, rules and regulations including civil penalties and other information for "any coal mining and reclamation operations *connected with the applicant, the operator*, the operations the applicant owns *or controls* and the operations the operator owns *or controls*." R645-300-132.100 (emphasis supplied)

"Control or controller means: . . . [a]ny person who has the ability to determine the manner in which a coalmining and reclamation operation is conducted." R645-100-200.

This inquiry requires that the Division:

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- (1) “[R]eview ownership information provided under R645-301-112 and any other information available to review the applicant’s and the applicant’s operator’s organizational structure and ownership and control relationships” R645-300-132.100.1;
- (2) “request a narrative report from the AVS.” R645-300-132.100.1;
- (3) “determine if the applicant or operator have previous mining experience” R645-300-132.100.2; and
- (4) “if none, the Division may conduct a review under R645-300-185.300 or authorize the AVS office to review to determine if someone else with mining experience controls the mining operation.” R645-300-132.100.2

Based upon the foregoing inquiries and “the violations, permit history, ownership reviews and the AVS report, the Division will then make a finding that neither the applicant, the operator, operations the applicant owns or controls or operations the operator owns or controls, are facing permanent permit ineligibility under R645-300-183, or currently in violation of any law, rule, or regulation referred to in R645-300-132.” R645-300-132.100.3.

The laws, rules, and regulations referred to in R645-300-132 for which there must not be a current violation include: “forfeitures, unabated or uncorrected violations, cessation orders or civil penalties” required to be listed by R645-301-113; and “failure-to-abate cessation orders, . . . delinquent civil penalties, . . . bond forfeitures, . . . and unabated violations of the Act, derivative laws of other states and other federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant, the operator, the operations the applicant owns or controls, and the operations the operator owns or controls. R645-300-132.100 (emphasis supplied).

**B. Analysis of Application:** The Division has made a review of the application and the information referred to in this rule as follows:

(1) **Review of ownership information.** The ownership information required by R645-301-112 in Appendix I-1 includes Dan R. Baker, listed as CEO and President of Bronco. As noted above, this identification is considered incomplete and the application must be revised at Section UMC 782.14 in Chapter 1 Page 7 to reflect Dan R. Baker’s ownership and control of the Horizon Mine and as operator of the Wildcat Loadout within the last 5 years.

**A revised Appendix I-1, Ownership and Control Information, and Appendix I-4, List of Violations is included in the Permit Transfer Package.**

(2) **Review of AVS information.** The Division staff ran an evaluation of the officer and director information with the Office of Surface Mining Applicant/Violator System (AVS) on January 28, 2016. As of that date, two outstanding violations at the Horizon Mine were identified (Violations 19 and 20). Violation 19 was a result of Notice of Violation N10141 (NOV #10141). NOV #10141 was issued by the Division on May 27, 2014 for failure to maintain the primary sediment pond at the Horizon Mine (DOG M Permit #C/007/0020).

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Violation 20 is State Cessation Order C012147 (CO #12147). CO #12147 was issued by the Division for failure to abate NOV #10141 within the time-frame specified.

In addition to those listed in the AVS, other current violations exist at the Horizon Mine. Notice of Violation N21151 (NOV #21151) was issued on July 16, 2015 for failure to maintain the surface drainage controls. State Cessation Order CO21155 (CO #21155) was issued for failing to complete required abatement of NOV #21151. An informal conference was conducted in September of 2015. A finding as to the status of CO #21155 is pending with the Division. Additionally, nine Notices of Violation (NOVs) have been issued to the Horizon Mine since January of 2014. To date, the Division has yet to receive the civil penalty payments as a result of those NOVs.

Mr. Baker resigned from America West, Inc. on June 27, 2013. Mr. Baker's resignation was reported in a Form 8-K filed with the U.S. Securities and Exchange Commission on June 27, 2013, attached hereto as Exhibit A. Following Mr. Baker's resignation, Alex Walker replaced Mr. Baker as President of America West and continued to make the necessary filings to maintain the company in the State of Nevada from the period from July 2013 to July 2015. Attached as Exhibit B are the annual filings for America West filed by Alex Walker with the Nevada Secretary of State on July 30, 2013 covering the period from July 2013 to July 2014, and filed on July 31, 2014 covering the period from July 2014 to July 2015, listing Alex Walker as the President of America West. From the time of Mr. Baker's resignation up to the current date, Mr. Baker has not owned any stock or other equitable interest in America West. Furthermore, Mr. Baker has never held a position as an officer or director of Hidden Splendor Resources, Inc. ("*Hidden Splendor*"), the permittee under the MRP for the Horizon Mine, or owned any stock or other equitable interest in Hidden Splendor. From the date of Mr. Baker's resignation from America West on June 27, 2013 forward, Mr. Baker has not held or acted in a control or ownership position with respect to America West, Hidden Splendor or the Horizon Mine.

All of the above described Notices of Violation and Cessation Orders were issued well after Mr. Baker's resignation from America West. Mr. Baker resigned from America West Resources, Inc. on June 27, 2013 and had not acted as an officer or in a control or ownership position with America West for over 10 months when NOV #10141 was issued on May 27, 2014 or when CO #12147 was issued on August 5, 2014. Similarly, Mr. Baker had not served as an officer or in any control or ownership position for over two years when NOV #10141 was issued on July 16, 2015 and when CO #21155 was issued on August 4, 2015.

In addition, the nine notices of violation cited in the Division's memorandum, which did not appear on the AVS report, all occurred after January 2014, well after Mr. Baker's resignation from America West on June 27, 2013.

**(3) Review of ownership and control status and activities of Dan R. Baker.**

**(a) Controller on MRP Information.** The Horizon Mine MRP identifies Dan R. Baker as the current President, CEO and Director of America West Resources, Inc. (AWR). According to information only recently provided to the Division, Dan R. Baker submitted his resignation from AWR on June 27, 2013. This resignation was not provided to the Division as required by

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February 17, 2016

R645-300-148.100. AWR is identified as the owner of Hidden Splendor Resources, Inc. (HSR) HSR is the operator of the Horizon Mine (DOGM Permit #C/007/0020, Volume 1, pages 2-2 and 2-2A). According to Utah Business Search, AWR's Nevada registration and legal status expired on July 7, 2013 and the HSR legal status expired May 16, 2014. The Division was also not provided notice of these terminations as required. The MRP for the Horizon Mine does not include any notices or requests to change the corporate ownership or control despite these events. Absent Division approval of a change, the obligations of the permittee and operator to meet the MRP duties continue.

The Division cites R645-300-148.100, which provides as follows:

*Within 60 days of any addition, departure, or change in position of any person identified in R645-301-112.300, the applicant must provide the information required under R645-301-112.310 through R645-301-112.330 and the date of any departure.*

The referenced regulations at R645-301-112.310 through R645-301-112.330 relate to the ownership and control information contained in an MRP, including the listing of "every president, chief executive officer, officer, partner, member, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity."

While the Division correctly notes that the Division should have been notified under R645-300-148.100 of the resignation of Mr. Baker from America West, the obligation to notify the Division is an obligation of the "applicant", which in this case was Hidden Splendor, the permittee under the MRP. Following his resignation from America West, Mr. Baker no longer had the legal authority to act on behalf of America West or its subsidiary Hidden Splendor and was not authorized to act on behalf of either company with respect to updating the ownership and control information in the MRP. Mr. Baker and Bronco should not be held responsible for the failure of Hidden Splendor to update the ownership and control information in the MRP following Mr. Baker's resignation from America West on June 27, 2013.

**(b) Successor of Corporate Entities.** The obligation to comply with the MRP including maintaining an inactive site is not eliminated by unilaterally resigning as CEO, particularly when there has been no transfer of these obligations to a responsible party capable of meeting them, and when there is no reasonable expectation that the obligations will otherwise be met. These obligations are enforceable against the corporate assets, any successors and owners and controllers of the same. Owners of controllers reasonably include persons who continue to act for, control, benefit from, or have an interest in the mining operations or assets. On February 1, 2013 prior to the termination of AWR's corporate status and prior to Dan R. Baker resignation as CEO, a Chapter 11 bankruptcy case was filed on behalf of AWR, HSR, America West Marketing Inc. and America West Services Inc. a/k/a Wildcat Loadout, as Debtors. During the pendency of the Bankruptcy all of the underground mining equipment was sold and removed from the mine. At the time of the termination of the corporate status of AWR, the Horizon Mine had substantial debt, no assets except the mine property, the permit and the contract to operate the Wildcat Loadout.

The cure amounts (the amount a company proposes to pay to keep a contract in place as part of an approved bankruptcy plan) filed in the bankruptcy in March 2013 listed a proposed cure amount from AMR to Wild West Equipment & Hauling, LLC (Wild West) in a sum of \$446,000 for services since 2010. On June 21, 2013 acting on an application signed by Dan R. Baker, the Wildcat Loadout Operator was changed from America West Services Inc. to Wild West. The Wildcat Loadout MRP identifies Wild West Equipment & Hauling, LLC as the operator of the facility and Dan Baker as the Vice President of the company (DOGM Permit #C/007/0033, Chapter 1; page 1-2). Patricia C. Baker is identified as the Manager of Wild West Equipment & Hauling, LLC on the Utah Corporations web-site. On July 9, 2013, the bankruptcy case was dismissed without granting any of the requested relief.

**Since Mr. Baker's resignation from America West on June 27, 2013, Mr. Walker has held and exercised control of Hidden Splendor and the Horizon Mine.**

The Division's position that there was no responsible party capable of meeting the obligations of America West and Hidden Splendor upon Mr. Baker's resignation and that there was no reasonable expectation that the obligations of the permittee would be met is inaccurate. At the time Mr. Baker resigned, the obligations to act as President of America West were transferred to Alex Walker. From June 27, 2013 to the current date, Alex Walker has acted as the President of America West and has demonstrated the ability to act on behalf of America West and Hidden Splendor.

As noted above, Mr. Walker made annual filings with the Nevada Secretary of State for America West and for Hidden Splendor for portions of 2014 and 2015. Furthermore, since the date of Mr. Baker's resignation, Hidden Splendor and Mr. Walker have shown the ability to act in response to notices of violation and other actions taken by the Division with respect to the Horizon Mine. In May 2014 the Division issued NOV #10140 and NOV #10142 relating to the failures of Hidden Splendor to maintain culverts and ditches at the Mine site, and to control and properly store noncoal mine waste. By August 2014, Hidden Splendor and Alex Walker had engaged a contractor to complete work on the culverts and ditches and to control and properly store noncoal mine waste in order to address the issues raised in the NOVs, and the Division issued a termination of NOV #10140 and NOV #10142 in August 2014. Similarly the Division issued NOV #21151, which is referenced in this Technical Memorandum as outstanding, on July 16, 2015 and a subsequent Cessation Order (CO #21155) for failure to maintain the surface drainage controls at the Horizon Mine. In the Fall of 2015, Hidden Splendor and Alex Walker engaged a contractor to complete the necessary work to address the issues raised by NOV #21151 and CO #21155 and in the Division's Inspection Report, dated December 17, 2015, for the Horizon Mine, the inspector notes that "[t]he abatement work on [CO #]21155 has been completed ...."

The above described actions by Hidden Splendor and Alex Walker with respect to the Horizon Mine demonstrate that Hidden Splendor and Mr. Walker have the ability to act to address the concerns of the Division. Mr. Baker did not leave the company without the ability or expectations to meet its permit obligations. Mr. Baker left the company in the hands of Alex Walker who has demonstrated the authority and ability to act on behalf of Hidden Splendor. At the time of Mr. Baker's resignation, Hidden Splendor and the Horizon Mine were in compliance

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with the MRP, there were no outstanding notices of violation or cessations orders and the Division held a reclamation surety, formally approved by the Division, for the Horizon Mine. Mr. Baker should not be held responsible for certain failures of Hidden Splendor and Mr. Walker to address the concerns of the Division which arose well after Mr. Baker's resignation from America West.

Furthermore, Mr. Baker has never held an officer, director or ownership interest in Hidden Splendor, the actual permittee under the Horizon Mine MRP. Alex Walker has served as the President of Hidden Splendor since at least 2008 and is the individual that should be held responsible for the activities of Hidden Splendor.

**Mr. Baker and Wild West did not benefit from the bankruptcy of America West and Hidden Splendor.**

Mr. Baker did not personally receive any payments, assignments of assets or other benefits from the bankruptcy of America West and Hidden Splendor. Furthermore, Wild West did not receive any payments, assignments of assets or other benefits from the bankruptcy of America West and Hidden Splendor. As noted by the Division, Mr. Baker has served as an officer of Wild West. In the America West and Hidden Splendor bankruptcy Wild West asserted a claim in the amount of \$446,000 for coal hauling that had been completed by Wild West prior to the bankruptcy. In the bankruptcy proceeding, Wild West did not receive a single cent of the \$446,000 owed by Hidden Splendor, and Wild West's claim was discharged. Furthermore, Wild West did not receive an assignment of the contract to operate the Wildcat Loadout in the bankruptcy or otherwise from America West Services Inc. The contract to operate the Wildcat Loadout held by America West Services Inc. was terminated during the course of the bankruptcy proceedings. Following the bankruptcy proceedings and Mr. Baker's resignation from America West, Wild West was approached by a representative from IPA (the owner of Wildcat Loadout) to step in and operate the facility for IPA while IPA sought bids from any company interested in leasing the facility. Wild West operated the facility during this bid process. Based on the bidding process, IPA awarded a lease to AES (an oil transloading group) and Wild West no longer had any affiliation or rights or obligations to operate that portion of the facility. IPA awarded a second lease approximately 12 months later to Bowie Resources for coal loading at the facility. Following receipt of the lease, Bowie Resources contacted Wild West to be a subcontractor on its lease and to act as the operator on behalf of Bowie Resources. Wild West currently acts as operator of the Wildcat Loadout with respect to coal loading. Wild West's activities at the Wildcat Loadout occurred after and are isolated from the bankruptcy proceedings for America West and Hidden Splendor.

Furthermore, Dan Baker and Wild West did not receive any of the equipment from the Horizon Mine. Certain assets of America West and Hidden Splendor, including some of the equipment at the Mine, were sold for the benefit of the companies' creditors at a court ordered auction. The equipment was sold to Castle Valley Mining LLC pursuant to an Asset Purchase Agreement dated April 4, 2013, with the bankruptcy court eventually distributing the proceeds to the creditors of America West and Hidden Splendor.

(c) **Controller of remedial work.** It is the Division's conclusion that Mr. Baker was an owner/controller of the Horizon Mine during the time period relevant to the violations. He had the ability, but neglected, to make decisions on reclamation and maintenance of the site in 2013. Since then, Division staff have documented and observed on numerous occasions that maintenance work and repairs to the Horizon Mine were conducted by or with the assistance of Wildcat Loadout equipment and labor. Observations of Wildcat Loadout equipment and labor performing work at the Horizon Mine continue to this day. As indicated previously, the Wildcat Loadout MRP identifies Wild West Equipment & Hauling, LLC as the operator of the facility and Dan Baker as the Vice President of the company (DOGM Permit #C/007/0033, Chapter 1, page 1-2).

**The Notices of Violation (10141 and 21151) and Cessation Orders (12147 and 21155) that appear on the AVS search for the Horizon Mine arose well after Mr. Baker's resignation from America West and were not caused by activities conducted by America West and Hidden Splendor prior to Mr. Baker's resignation.**

*Notice of Violation 10141 and Cessation Order 12147*

Mr. Baker resigned from America West on June 27, 2013. The Division inspected the sediment pond at the Horizon Mine on a regular basis prior to issuing NOV #10141, including quarterly impoundment inspections. The inspection reports and quarterly impoundment inspections at the time of Mr. Baker's resignation and for eleven months following his resignation did not identify any compliance issues with respect to the sediment pond. In a May 23, 2013 inspection report for the Horizon Mine, Division inspector noted, "First quarter 2013 sediment pond inspection was done on February 15, 2013. No problems were noted in this sediment pond inspection." The inspection for the second quarter of 2013 conducted on May 24, 2013 (just over a month prior to Mr. Baker's resignation) found no issues of non-compliance, noted no hazardous conditions or slumping and included an estimated sediment elevation that was unchanged from the prior inspection conducted in the first quarter of 2013. The third quarter inspection was conducted on September 20, 2013, roughly two months after Mr. Baker's resignation, and found no issues of non-compliance, noted no hazardous conditions or slumping and included an estimated sediment elevation that was unchanged from the prior inspection. The fourth quarter inspection was conducted on December 9, 2013 over five months after Mr. Baker's resignation, and found no issues of non-compliance, noted no hazardous conditions or slumping and included an estimated sediment elevation that was unchanged from the prior three inspections. The sediment pond was again inspected in March 2014, over eight months from the date of Mr. Baker's resignation, and the report found no issues of non-compliance, noted no hazardous conditions or slumping and included an estimated sediment elevation below the 60% storage capacity elevation. The first signs of any issues with pond did not arise until May 2014, over 10 months from the date of Mr. Baker's resignation. The second quarter pond inspection from 2014 reports that the sediment is unchanged from the first quarter inspection, but notes for the first time that there appears to be some slumping/erosion on the embankment and some sediment accumulation. It was not until a Division inspection on May 21, 2014, nearly 11 months for Mr. Baker's resignation that the Division first raised a compliance issue with respect to the sediment

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pond. For a period of nearly 11 months, with over eight Division inspections, and four quarterly impoundment inspections, the Division found no issues of non-compliance.

At the time of Mr. Baker's departure from America West, the sediment pond was in compliance. The compliance issues described in Notice of Violation 10141 and Cessation Order 12147 arose well after Mr. Baker's resignation, at a time when he had no ownership or control over America West, Hidden Splendor or the Horizon Mine and should not be attributable to Mr. Baker under the AVS system or by the Division in determining the eligibility of Bronco to hold the Emery Deep Mine MRP.

*Notice of Violation 21151 and Cessation Order 21155*

Notice of Violation 21151 related to the failure of Hidden Splendor to maintain an inlet culvert and outlet culvert at the Mine, and was issued on July 16, 2015, over two years after Mr. Baker's resignation from America West. Hidden Splendor's failure to maintain the culverts happened well after Mr. Baker resignation and should not be attributable to Mr. Baker under the AVS system or by the Division in determining the eligibility of Bronco to hold the Emery Deep Mine MRP. Furthermore, the work required to remediate the issues raised by Notice of Violation 21151 and Cessation Order 21155 have been completed. In the Division's Inspection Report, dated December 17, 2015, for the Horizon Mine, the inspector notes that "[t]he abatement work on [CO #]21155 has been completed ...."

**All work at the Horizon Mine conducted by Wild West has been conducted as an independent contractor in an arm's length engagement with Hidden Splendor and Mr. Walker and at no time following his resignation from America West has Mr. Baker or Wild West acted in an ownership or control capacity for the Horizon Mine.**

The Division notes in its Technical Memorandum that Wild West has conducted maintenance work and repairs to the Horizon Mine. The Division is correct. From time to time over the past year Wild West has been engaged as an independent contractor by Mr. Walker to conduct reclamation or other dirt work at the Mine site. Such engagements have been conducted as arm's length transactions, including the preparation of estimates and invoices and the payment of service by Mr. Walker. Attached as Exhibit C are copies of the relevant invoices and evidence of payment for the services conducted by Wild West at the Mine site. At no time has Wild West acted in an ownership or control position with respect to the Mine and in no way should Wild West or Mr. Baker be imputed with the compliance issues of the Horizon Mine.

**(d) Failure to begin reclamation and/or to reclaim.** On June 3, 2013, Division Director John Baza sent a letter to Alex Walker (Resident Agent of the Horizon Mine). The letter indicated that the Division had been notified of a bankruptcy filing and the financial difficulties of HSR and raised concerns relative to the reclamation obligations of the site. The letter further discussed that as a result of the bankruptcy/financial difficulties of HSR, the Division would "need to make a claim on the reclamation bond and start the reclamation process" in the event that HSR was not willing or able to perform the reclamation work itself. A deadline of July 3, 2013 was established for written communication to be submitted to the Division indicating

whether or not the required reclamation work would be performed by HSR. Such written communication was never received by the Division.

On July 9, 2013 a meeting was conducted with Division staff, Alex Walker, and Dan R. Baker concerning the reclamation issues associated with the Horizon Mine. Mr. Walker and Mr. Baker indicated that efforts were underway to find a prospective buyer for the property and that reclamation of the Horizon Mine would be premature. These statements demonstrate that Mr. Baker was still a controller of the Horizon Mine. Currently, the Federal coal lease associated with the Horizon Mine has been forfeited and no prospective buyers of the property have been identified. In June of 2013, the bankruptcy proceedings were dismissed. During this time period, Division staff began to document the absence of any presence at the mine site and that routine maintenance of the property was being neglected. The violations discussed above began to be issued shortly thereafter.

Reclamation of the Horizon Mine has been requested repeatedly in order to address the lack of care at the mine and to return the land to its pre-mining condition. In October, 2014 a Notice of Agency Action was filed seeking forfeiture of the surety and an order authorizing the Division to use the funds to reclaim the Horizon Mine. A motion to dismiss the action as premature was filed and the matter was later withdrawn to permit evaluation of an application to change the post mining land use. Several applications to change the post-mining land use were submitted but they were all found to be insufficient for evaluation or approval. During this time the mine has continued to deteriorate. Currently, the application for a revised post-mining land use is not acceptable. Furthermore, although unrelated to the transfer of the Emery Deep Mine permit to Bronco, it is unlikely that such a permit change can be approved given the status of the unaddressed violations outlined above.

The surety amount for the Horizon Mine was due for adjustment in April of 2014. The current bond amount may no longer be sufficient to assure full reclamation. Work required to reclaim the Horizon Mine in accordance with the existing reclamation plan could begin with little delay, but is being delayed by pursuit of the change in post-mining land use. The obligation to reclaim the mine remains with those who control the remaining assets of HSR which arguably may include Dan Baker. This obligation has a legal priority ahead of the obligations to shareholders or debtors of HSR. The obligation to reclaim the mine remains with those persons and is within their ability to be fulfilled.

**Mr. Baker has no control over the actions or activities of Alex Walker or the Horizon Mine.**

In the above paragraphs, the Division describes what appears to be a history of mismanagement by Alex Walker with respect to the Horizon Mine in the period following Mr. Baker's resignation from America West. Following his resignation from America West, Mr. Baker has had no control or ownership interest over the Horizon Mine and has not been involved in any of the management decisions of Mr. Walker, as described above, with respect to the Horizon Mine.

The Division notes in its Technical Memorandum that Mr. Baker attended a meeting with the Division on July 9, 2013 with respect to the Horizon Mine. Mr. Baker attended the July 9, 2013 meeting as a representative of a private equity group that was conducting due diligence on the

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potential purchase of several coal mines in the state of Utah, including the Horizon Mine. Mr. Baker did not attend as a representative of Hidden Splendor or the Horizon Mine and did not exert any control over the actions or decisions of Mr. Walker in that meeting or with respect to the Horizon Mine. In addition, over the years following his resignation from America West, Mr. Baker has at times attended meetings held by the Division with respect to the Horizon Mine, however, in each case Mr. Baker has either attended the meetings on behalf of parties investigating the purchasing of the Mine or on behalf of Wild West, acting as a subcontractor to Mr. Walker with respect to reclamation and dirt-work at the Mine site, as described above and on the invoices attached hereto as Exhibit C. At no time following his resignation from America West, in meetings with the Division, or otherwise, has Mr. Baker held any ownership or control authority with respect to the Horizon Mine.

**Findings**

The application does not meet the State of Utah R645-300-132 requirements for eligibility to receive a permit. The following deficiencies must be addressed prior to final approval:

Please see responses above.

**R645-300-132:** -The Applicant must revise the permit transfer application to reflect outstanding violations currently listed in the Office of Surface Mining Applicant/Violator System (AVS) for Dan R. Baker as controller of the Horizon Mine, the current unabated notices of violations/cessation orders received relative to coal mining and reclamation activity at the Horizon Mine, and all outstanding civil penalties. As submitted the application for permit transfer cannot be approved.

A revised Appendix I-4, List of Violations is included in the Permit Transfer Package.

If the Division finds that a permit cannot be issued or transferred to the applicant, the options available to the Applicant to address outstanding violations are set forth at R645-300-132.150 through -132.150.11.

**PUBLIC NOTICE AND COMMENT**

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

**Analysis:**

The application meets the State of Utah R645 requirements for Public Notice and Comment. On January 6<sup>th</sup>, 2016, the Division received an Affidavit of Publication (the Affidavit) from the Emery County Progress (a weekly newspaper of general circulation, published at Castle Dale, UT Emery County). The Affidavit indicated that the Applicant had published in the December 29<sup>th</sup>, 2015 issue of the Emery County Progress. The public notice contained the information required in R645-303-322.

**Findings**

The application meets the State of Utah R645 requirements for Public Notice and Comment.

No response required.

**BONDING AND INSURANCE REQUIREMENTS**

Regulatory Reference: 30 CFR Pt. 800; R645-301-800, et seq.

**Analysis:**

The application meets the State of Utah R645 requirements for Bonding and Insurance.

On December 16<sup>th</sup>, 2015, Bronco posted a bond with the Division for the Emery Deep Mine. The bond is a surety bond, issued by Iron Shore Indemnity Inc. in the amount of \$3,510,000. Iron Shore Indemnity, Inc. is an 'A' rated company. The required bond amount of \$3,510,000 was determined during the last midterm review of the Emery Deep Mine's MRP. During that review (Task ID #4409), the estimated reclamation cost was \$3,667,000. The amount of bond posted at that time by CONSOL Mining, LLC was \$3,667,000. Per the Division's Tech Directive 007, Calculation Guidelines for Determining Reclamation Bond Amounts, additional posted bond was not required at the time of the midterm review as the difference between the calculated reclamation cost and the posted bond amount was less than 5%. The posted bond amount of \$3,510,000 is valid until 2018 or at such time as any addition to the reclamation cost exceeds \$26,350.00

Bronco provided a Certificate of Liability Insurance from Illinois National Insurance Company (NAIC #23817). Per the requirements of R645-301-890.100, BUOLLC is required to submit a certificate of insurance for personal injury and property damage protection for any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives. The minimum coverage required for bodily injury and property damage is \$300,000 for each occurrence and \$500,000 aggregate. The Certificate of Liability Insurance submitted to the Division identifies amounts of \$1,000,000 per occurrence and \$2,000,000 for the aggregate.

**Findings**

The application meets the State of Utah R645 requirements for Bonding and Insurance.

No response required.