



State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

February 17th, 2016

Dan R. Baker, Chief Executive Officer President
Bronco Utah Operations, LLC
P.O. Box 527
Emery, UT 84522

Subject: Permit Transfer, Bronco Utah Operations, LLC, Emery Deep Mine, C/0150015,
Task ID #5058

Dear Mr. Baker:

The Division has reviewed Bronco Utah Operations, LLC's (Bronco's) permit transfer application. The Division finds that the requirements pertaining to public notice and bonding have been satisfied. The Division has identified deficiencies in the information submitted that must be provided as part of the application before the Division can make its final determination. Bronco should be able to address these deficiencies quickly. However, the Division has determined that Dan R. Baker was a controller of the Horizon Mine during the time that violations occurred that have not been abated. These violations at a mining operation controlled by Mr. Baker, who is also an owner and controller of Bronco, would preclude the Division from making the required finding that Bronco is eligible to receive the permit. As submitted, the proposed permit transfer is denied.

The basis for the Division's finding regarding Mr. Baker's control of the Horizon Mine at the time that unresolved violations occurred is set forth in detail in the attached response to the permit transfer application. In summary, the determination is based on (1) Mr. Baker's continued inclusion as an owner and controller on the approved MRP; (2) the lack of any notice by Mr. Baker of his withdrawal as CEO and President of America West Resources, Inc. (AWR), which owned the Horizon Mine, when he was aware that there was no other party with the ability to affect the compliance with the MRP obligations, and when he knew that a failure to take other actions would result in violation of those obligations; and (3) Mr. Baker's failure to take any actions to comply with the Division's directive to reclaim the mine or to take any other actions to protect the mine site despite acquisition of the contract to operate the Wildcat Loadout owned by Intermountain Power Association. Additionally, Mr. Baker has taken actions since his resignation from AWR that evidence a continued control of the operations at the Horizon Mine both as an individual or as operator of the Wildcat Loadout.



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During the time from 2013 to the present there have been numerous violations of the Coal Mining and Reclamation Act at the Horizon Mine including two Failure to Abate Cessation Orders. Two violations currently remain on the AVS system and are linked to Dan R. Baker. These violations and the civil penalties assessed are unresolved. Details regarding these violations are provided in the Division's attached response. Unless these violations and civil penalties are addressed, it is unlikely that the Division will be able to make a finding that Bronco is eligible to receive the permit due to current violations of law, rule or regulation referred to in R645-300-132.

The options available to the Applicant to address the outstanding violations and to challenge AVS ownership and control determinations are set out in R645-300-132.110 through - 132.150.10. If Bronco wishes to discuss these procedures the Division will do its best to expedite such a review.

If you have any questions, please call me at (801) 538-5325.

Sincerely,



Daron R. Haddock
Coal Program Manager

DRH/skc

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

February 17th, 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.

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.

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.

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).

TECHNICAL MEMO

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).

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.

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.

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.

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. .

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

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."

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).

State Cessation Order CO12147 (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.

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

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 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.

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.

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.

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.

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.

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 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.

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.

A. Eligibility requirements of R645-300-132:

TECHNICAL MEMO

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:

- (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.

(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 (DOGM Permit #C/007/0020). Violation 20 is State Cessation Order CO12147 (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.

(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 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.

(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.

(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).

(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.

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:

TECHNICAL MEMO

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.

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 6th, 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 29th, 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.

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 16th, 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.