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DIV. OF OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR :
AGENCY ACTION OF HIAWATHA COAL : Docket No. 2009-006
COMPANY, INC., PETITIONER, FOR :
REVIEW OF THE CESSATION ORDER OF :
THE DIVISION OF GAS, OIL AND MINING :
OF FEBRUARY 5, 2009 FOR THE : Cause No. C/015/0025A
BEAR CANYON MINE :

**HIAWATHA COAL COMPANY, INC.'S
MOTION TO CONTINUE HEARING WITHOUT DATE
PENDING RESOLUTION OF UNDERLYING MATTERS**

COMES NOW Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha" or "Petitioner") and moves the Board to continue without date the hearing presently scheduled before the Board on Wednesday, April 22, 2009 at 10:00 a.m. for the following reasons:

1. The matter presently scheduled for hearing is Hiawatha's contention that the Division of Oil, Gas and Mining (the "Division") improvidently or illegally issued its Cessation Order of February 5, 2009 (the "Cessation Order") in violation of the Division's own rules.
2. Hiawatha's contention is based in significant part upon the fact that it has pending before the Division a mining permit application that was complete even though Hiawatha had not yet secured a reclamation bond as required by Division rules. Indeed, Hiawatha's contention is that it falls within an exception created by R645-400-312 because Hiawatha's "operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations." [emphasis added] These issues were argued

before the Division, which resulted in a decision against Hiawatha which, in turn, resulted in the present action before the Board.

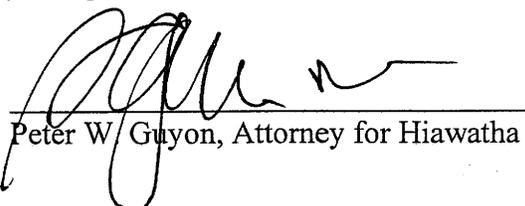
3. After this action was filed before the Board, the Division by letter dated April 2, 2009 issued its Decision regarding application for Permit Transfer for the Bear Canyon Mine C/015/0025, Task ID #3215 (the "April 2, 2009 Decision") wherein the Division purportedly denied the application of Hiawatha for transfer of the mining permit from C. W. Mining to Hiawatha. (Copy of the April 2, 2009 Decision attached)

4. The effect of the April 2, 2009 Decision is that it makes moot Hiawatha's request for agency action now pending before the Board because its arguments are based upon the pendency of a complete application before the Division.

5. Hiawatha intends to appeal the April 2, 2009 Decision to the Board within the 30 days set forth in the April 2, 2009 Decision, but there is no reason to hear the matter now pending before the Board in its present posture, and to do so would be a waste of time and resources for all parties.

6. Hiawatha intends to move to consolidate the appeal from the April 2, 2009 Decision with the pending matter, because if the appeal on the April 2, 2009 Decision is successful, then the pending matter will no longer be moot, and both matters can be heard simultaneously in one hearing, with no waste of time or resources, either for the Board or for any interested parties.

Respectfully submitted this 14th day of April, 2009.


Peter W. Guyon, Attorney for Hiawatha

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING WITHOUT DATE PENDING RESOLUTION OF UNDERLYING MATTERS to the following on this 14th day of April, 2009:

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Secretary
Board of Oil, Gas and Mining
Utah Division of Oil, Gas & Mining
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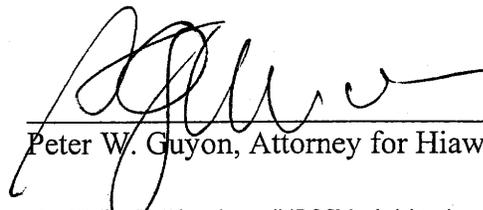
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DATED this 14th day of April, 2009.

F. Mark Hansen
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also via email


Peter W. Guyon, Attorney for Hiawatha
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JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

April 2, 2009

CERTIFIED RETURN RECEIPT REQUESTED
7004 2510 0004 1824 9689

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Chris Jones
Prince, Yeates & Geldzahler
175 East 400 South #900
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SUBJECT: Decision regarding application for Permit Transfer for the Bear Canyon Mine C/015/0025, Task ID #3215

Dear Sirs:

On August 4, 2008, the Division received an application from Hiawatha Coal Company, Inc. (Hiawatha) for transfer of C.W. Mining's permit No. C/015/0025 (Bear Canyon Mine) to Hiawatha Coal Company. Notice of the intent to transfer the permit was made in the Emery County Progress on July 1, 2008, which was well before the Division received the transfer application. Thereafter, on August 8, 2008 the Division was advised of a bankruptcy proceeding and of the issuance of an order from the bankruptcy court restricting C.W. Mining from taking further actions to complete the transfer prior to notice and further hearings by the court.



While the bankruptcy proceedings continued, the Division proceeded to review Hiawatha's application. After several iterations, the required ownership and control information was provided. Since November 20, 2008, or earlier Hiawatha was advised that it must obtain a bond prior to Division approval and transfer of the permit. Despite numerous demands and extensions, no bond was provided and consequently Cessation Order #10034 was issued on February 5, 2009.

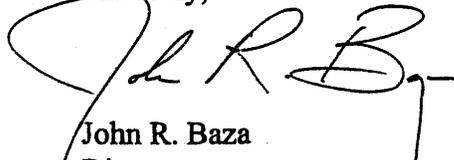
The Cessation Order allowed for abatement by Hiawatha in the event that it was able to provide the required surety, and if the Division approved transfer of the permit. The CO provided that such an approval of the transfer by the Division, if any, would be subject to all further orders of the bankruptcy court granting or denying approval of transfer of the permit from C. W. Mining Co. to Hiawatha.

On March 18, 2009 the bankruptcy court issued its Memorandum Decision in which it determined that the purported June 24, 2008 sale to Hiawatha was in violation of the court's prior Orders and that the assets of C.W. Mining, including the operating agreement and the permit, are property of the bankruptcy estate and subject to the trustee's rights to liquidate the assets of C.W. Mining and/or to assume or transfer the operating agreement and permit.

It is no longer possible for Hiawatha to complete the sale and transfer of the assets and mine permit pursuant to application submitted in furtherance of the June 24, 2008 sale agreement. Accordingly the Division does hereby deny the application for transfer of the Bear Canyon permit # C/015/0025 from C.W. Mining to Hiawatha.

You have the right to appeal this decision denying the transfer of the permit pursuant to Utah Code §40-10-30(1) and R645-300-211 Utah Administrative Code by filing a request for agency action in accordance with the Rules of the Board within 30 days of the notice of this decision.

Sincerely,


John R. Baza
Director