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C/015/025 Incoming

cc: Dana

John

Steve

#3215

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JUN 01 2009

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 DENIAL OF :  
THE APPLICATION FOR PERMIT : Docket No. 2009-007  
TRANSFER OF HIAWATHA COAL :  
COMPANY, INC. FOR THE BEAR :  
CANYON MINE C/015/0025, TASK ID :  
#3215 BY THE DIVISION OF OIL, GAS : Cause No. C/015/025B  
AND MINING DATED APRIL 2, 2009 :

HIAWATHA COAL COMPANY, INC.'S  
MOTION TO CONSOLIDATE TWO (2) PENDING REQUESTS  
FOR BOARD ACTION AND 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 consolidate the present request for Board action with its pending request for Board Action Docket No. 2009-006 (which is presently continued without date) and to continue without date hearing on those consolidated requests for the following reasons:

1. There are presently two (2) matters pending before the Board arising from two (2) separate requests for review of Division action filed by Hiawatha, *i.e.*, this action (hereafter called the "Pending Request") and a previous request styled IN THE MATTER OF THE REVIEW OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF MARCH 2, 2009 OF THE DIVISION OF OIL, GAS AND MINING CONCERNING ITS CESSATION ORDER OF FEBRUARY 5, 2009 FOR BEAR CANYON MINE, Docket No. 2009-006, Cause No. C/015/0025A (the "First Request.")

2. The substance of the First Request 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.

3. After the First Request was filed, but before a hearing was held, 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 denied the application of Hiawatha for transfer of the mining permit from C. W. Mining to Hiawatha.

4. The substance of the Pending Request is Hiawatha's contention that the April 2, 2009 Decision and the Division's denial of the permit was based upon inaccurate facts and a misunderstanding on the part of the Division of the legal effect of the Bankruptcy Court's "Memorandum Decision" of March 18, 2009 as well as a misunderstanding of the effect of the Memorandum Decision upon the Division.<sup>1</sup> It is also important to note that the Memorandum Decision and other bankruptcy court orders have been appealed to the Bankruptcy Appellate Panel ("BAP") of the Tenth Circuit Court of Appeals.

5. The effect of the April 2, 2009 Decision of the Division was that it made moot Hiawatha's request for agency action in the First Request because the arguments in the First Request were based upon the pendency of a complete application before the Division.

6. Based upon those facts, Hiawatha moved the Board to continue without date the hearing on the First Request, which was granted. Accordingly, hearing on the First Request has been continued without date.

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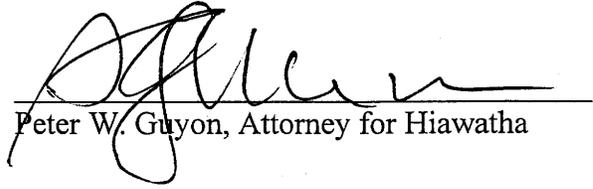
<sup>1</sup> A number of issues, including Hiawatha's operation of the Bear Canyon Mine have been raised in the US Bankruptcy Court for the District of Utah in a matter styled In re C W Mining and numbered 08-20105 (the "Pending Bankruptcy"), wherein the Memorandum Decision referred to was issued.

7. As part of its motion to continue the First Request, Hiawatha stated its intention to move to consolidate the appeal from the April 2, 2009 Decision (*i.e.*, the Second Request) with the pending matter (*i.e.*, the First Request), because if the appeal on the Second Request is successful, then the First Request would no longer be moot, and both matters could be heard simultaneously in one hearing, with no waste or duplication of time or resources, either for the Board or for any interested parties. Hiawatha by this motion fulfills its previous promises. Perhaps more importantly, however, is the fact that the Memorandum Decision and other rulings relied upon by the Division in its April 2, 2009 Decision in denying the permit to Hiawatha may be overturned on appeal, and there is no overriding reason to hear these matters until the basis for the Division's actions is resolved in the bankruptcy arena. If there is a change of circumstances in the meantime which dictates that either or both of the matters be set for hearing, the Board can re-set the hearing(s).

WHEREFORE, Hiawatha moves the Board (1) to consolidate the Second Request with the pending First Request, which has been stayed without date; and (2) to continue the Second Request without date so that the First Request and Second Request may be heard and resolved simultaneously, pending the resolution of the underlying dispute(s) in the bankruptcy court.

A proposed order is submitted concurrently herewith.

Respectfully submitted this 28<sup>th</sup> day of May, 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 20<sup>th</sup> day of May, 2009:

Hiawatha Coal Company, Inc.  
ATTN: Elliot Finley, Pres.  
Post Office Box 1240  
Huntington, UT 84528  
also via email

Lon Jenkins, Esq.  
Attorney for Lyndon Insurance  
Jones Waldo Holbrook and McDonough  
1170 South Main Street #1500  
Salt Lake City, UT 84101  
also via email

Utah Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Michael N. Zundel, et al.  
Prince Yeates & Geldzahler  
Attorney for Chapter 7 Trustee  
Kenneth A. Rushton  
175 East 400 South  
Salt Lake City, UT 84111  
also via email

Secretary  
Board of Oil, Gas and Mining  
Utah Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Pamela Brown, Forest Supervisor  
Forest Service  
Manti-La Sal National Forest  
599 West Price River Road  
Price, UT 84501

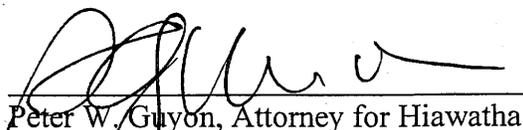
Steven F. Alder, Esq.  
Kevin Bolander, Esq.  
Assistant Utah Attorneys General  
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1594 West North Temple, Suite 300  
Salt Lake City, Utah 84114  
also via email

Kent Hoffman, Deputy State Director  
Bureau of Land Management  
State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101

Michael S. Johnson, Esq.  
Stephen Schwendiman, Esq.  
Assistan Attorneys General  
Utah Board of Oil, Gas & Mining  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84116

DATED this 20<sup>th</sup> day of May, 2009.

F. Mark Hansen  
Attorney for Joseph Kingston and  
Rachel Young  
431 North 1300 West  
Salt Lake City, UT 84116  
also via email

  
Peter W. Guyon, Attorney for Hiawatha

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

IN THE MATTER OF THE DENIAL OF :  
THE APPLICATION FOR PERMIT : Docket No. 2009-007  
TRANSFER OF HIAWATHA COAL :  
COMPANY, INC. FOR THE BEAR :  
CANYON MINE C/015/0025, TASK ID :  
#3215 BY THE DIVISION OF OIL, GAS : Cause No. C/015/025B  
AND MINING DATED APRIL 2, 2009 :

(Proposed) ORDER ON  
HIAWATHA COAL COMPANY, INC.'S  
MOTION TO CONSOLIDATE TWO (2) PENDING REQUESTS  
FOR BOARD ACTION AND TO CONTINUE  
HEARING WITHOUT DATE PENDING RESOLUTION  
OF UNDERLYING MATTERS

Based upon HIAWATHA COAL COMPANY, INC.'S MOTION TO  
CONSOLIDATE TWO (2) PENDING REQUESTS FOR BOARD ACTION AND TO  
CONTINUE HEARING WITHOUT DATE PENDING RESOLUTION OF UNDERLYING  
MATTERS and good cause appearing,

IT IS ORDERED as follows:

1. This matter (the "Pending Request") is consolidated with the pending  
matter styled IN THE MATTER OF THE REVIEW OF THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER OF MARCH 2, 2009 OF THE DIVISION OF OIL,  
GAS AND MINING CONCERNING ITS CESSATION ORDER OF FEBRUARY 5, 2009 FOR  
BEAR CANYON MINE, Docket No. 2009-006, Cause No. C/015/0025A (the "First Request");  
and

2. The consolidated matters are continued without date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

THE BOARD OF OIL GAS AND MINING

By: \_\_\_\_\_  
Its authorized signatory

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing (Proposed) ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING WITHOUT DATE PENDING RESOLUTION OF UNDERLYING MATTERS to the following on this 28<sup>th</sup> day of May, 2009:

Hiawatha Coal Company, Inc.  
ATTN: Elliot Finley, Pres.  
Post Office Box 1240  
Huntington, UT 84528  
also via email

Lon Jenkins, Esq.  
Attorney for Lyndon Insurance  
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Pamela Brown, Forest Supervisor  
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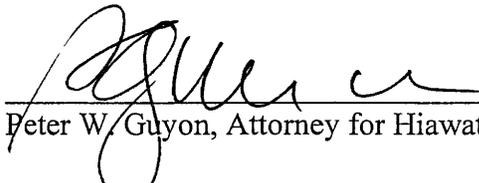
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Kent Hoffman, Deputy State Director  
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Michael S. Johnson, Esq.  
Stephen Schwendiman, Esq.  
Assistan Attorneys General  
Utah Board of Oil, Gas & Mining  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84116

DATED this 28<sup>th</sup> day of May, 2009.

F. Mark Hansen  
Attorney for Joseph Kingston and  
Rachel Young  
431 North 1300 West  
Salt Lake City, UT 84116  
also via email

  
Peter W. Guyon, Attorney for Hiawatha

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