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C/015/025 Incoming # 3213

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DIV. OF OIL, GAS & MINING

SEP 14 2009

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

SECRETARY, BOARD OF  
OIL, GAS & MINING

IN THE MATTER OF THE REQUEST FOR	:	
AGENCY ACTION OF HIAWATHA COAL	:	Docket No. 2009-006
COMPANY, INC., PETITION, FOR	:	(Consolidated with 2009-007)
REVIEW OF THE CESSATION ORDER OF	:	
THE DIVISION OF GAS, OIL AND MINING	:	
OF FEBRUARY 5, 2009 FOR THE	:	Cause No. C/015/025B
BEAR CANYON MINE	:	

HIAWATHA COAL COMPANY, INC.'S  
MOTION TO CONTINUE HEARING PENDING RESOLUTION  
OF UNDERLYING MATTERS

COMES NOW Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha" or "Petitioner") and moves the Board to continue to December 9, 2009 the hearing on the consolidated requests now pending before the Board 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 (the "First Request") and Action no. 2009-007 (the "Second Request") which were consolidated into the earlier number by this Board's ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONSOLIDATE TWO (2) PENDING REQUESTS FOR BOARD ACTION AND TO CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS (the "Board's Consolidation Order.")

2. The substance of the First Request (2009-006) 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. The substance of the Second Request (2009-007) 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> The Memorandum Decision and other bankruptcy court orders were appealed to the Bankruptcy Appellate Panel ("BAP") of the Tenth Circuit Court of Appeals, but the BAP has dismissed the appeal of the Memorandum Decision as interlocutory. Hiawatha is preparing to ask the court for certification under Rule 54(b) and intends to file a new appeal of that decision.

4. 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.

5. These consolidated matters were recently continued to the Board's regularly scheduled meeting on September 23, 2009, subject to further continuances as the parties may request or as the Board may deem appropriate, but because certain underlying disputes now pending in the US Bankruptcy Court remain unresolved, Hiawatha believes that the presently scheduled hearing would be a waste of time and resources for the Board, the parties, and counsel.

WHEREFORE, Hiawatha moves the Board to continue the consolidated matters so that the consolidated matters may be heard and resolved simultaneously, pending the resolution of the underlying dispute(s) in the bankruptcy court.

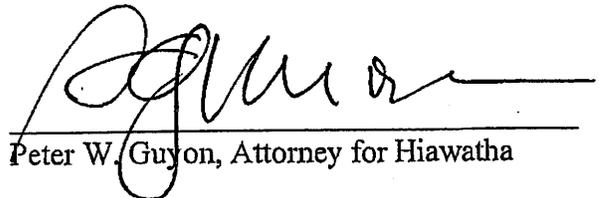
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<sup>1</sup> A number of issues, including Hiawatha's operation of the Bear Canyon Mine have been raised in the US Bankruptcy Court for the District of Utah in a matter styled In re C W Mining and numbered 08-20105 (the "Pending Bankruptcy"), wherein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

Without agreeing to the factual allegations of Hiawatha, the Division, through its counsel Steven F. Alder, joins in the instant motion.

A proposed order is submitted concurrently herewith.

Respectfully submitted this 14<sup>th</sup> day of September, 2009.

  
Peter W. Guyon, Attorney for Hiawatha

  
Steven F. Alder, Attorney for the Division

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 PENDING RESOLUTION OF UNDERLYING MATTERS to the following on this 14<sup>th</sup> day of September, 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  
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Salt Lake City, UT 84101  
also via email

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1594 West North Temple, Suite 1210  
P.O. Box 145801  
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Michael N. Zundel, et al.  
Prince Yeates & Geldzahler  
Attorney for Chapter 7 Trustee  
Kenneth A. Rushton  
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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  
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Pamela Brown, Forest Supervisor  
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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  
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DATED this 14<sup>th</sup> day of Sept, 2009.



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

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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., PETITION, FOR : (Consolidated with 2009-007)  
REVIEW OF THE CESSATION ORDER OF  
THE DIVISION OF GAS, OIL AND MINING :  
OF FEBRUARY 5, 2009 FOR THE : Cause No. C/015/025B  
BEAR CANYON MINE :

ORDER ON  
HIAWATHA COAL COMPANY, INC.'S  
MOTION TO CONTINUE HEARING PENDING RESOLUTION  
OF UNDERLYING MATTERS

Based upon HIAWATHA COAL COMPANY, INC.'S MOTION TO  
CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS, the  
Division's joinder in said motion and good cause appearing,

IT IS ORDERED that this matter, which is consolidated with No. 2009-007, is  
hereby continued to the Board's regularly scheduled meeting on December 09, 2009, subject to  
further continuances as the parties may request or as the Board may deem appropriate.

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

THE BOARD OF OIL GAS AND MINING

By: \_\_\_\_\_  
Douglas E. Johnson, Chair

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS to the following on this \_\_\_\_ day of September, 2009:

Hiawatha Coal Company, Inc.  
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Utah Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
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Secretary  
Board of Oil, Gas and Mining  
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599 West Price River Road  
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Bureau of Land Management  
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440 West 200 South, Suite 500  
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DATED this \_\_\_\_ day of September, 2009.

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