



OGMCOAL DNR <ogmcoal@utah.gov>

0250005 Coal Hollow Mine Task 5203 right of entry C. Burton Pugh 2014 lease.

Priscilla Burton <priscillaburton@utah.gov>
To: OGMCOAL DNR <ogmcoal@utah.gov>

Fri, Jul 29, 2016 at 11:29 AM

—— Forwarded message ——

From: **Priscilla Burton** <priscillaburton@utah.gov>
Date: Fri, Jul 29, 2016 at 11:23 AM
Subject: Re: Letter regarding Pugh
To: Bennett Bayer <bbayer@landrumshouse.com>

Hello Mr. Bennett,

Thank you for your explanatory letter.

Utah Coal Mining Rule R645-301-114.100 requires a description of right of entry documents by type and date of execution. Therefore, I requested any subsequent documents signed by both parties to extend the original 2004 Pugh lease beyond its ten year term. By your response, I understand that the lease renewal does not require additional documentation, rather the extension is inherent to the existing lease for the life of mine.

Sincerely,

Priscilla Burton, MS, CPSSc
Environmental Scientist III
Utah Division of Oil, Gas & Mining
Price Field Office
phone: [435-613-3733](tel:435-613-3733)

On Thu, Jul 28, 2016 at 3:57 PM, Bennett Bayer <bbayer@landrumshouse.com> wrote:

Priscilla,

Thank you for the phone call.

Here is the letter. If you need anything further, let me know.

Bennett



Bennett E. Bayer

Attorney

Landrum & Shouse LLP

106 West Vine Street | Suite 800 | Lexington, KY 40507

Office: [859.255.2424](tel:859.255.2424), Ext. [243](tel:859.255.2424) | Direct: [859.514.7243](tel:859.514.7243) | Fax: [859.233.0308](tel:859.233.0308)



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 **Burton Letter.pdf**
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Counsel:
Bridget M. Bush

July 27, 2016

Priscilla Burton
Utah Division of Oil Gas and Mining
319 N Carbonville Road, Suite C
Price, UT 84501-2351

RE: Alton Coal Development, LLC - Pugh Right of Access

Dear Ms. Burton:

You have requested Alton Coal Development, LLC "provide documentation of the C. Burton Pugh Lease beyond the initial 10 year term." In your "details," you referenced §2.03 and §2.04 of the lease being applicable to your inquiry.

The starting place for the answer to your inquiry begins with §2.03,

2.03 Continuation of Lease During Mining Operations. Notwithstanding any terms that may appear to be to the contrary, so long as ALTON COAL is engaged in Mining Operations, the term of this Lease Agreement shall be extended by and be coterminous with the period of Mining Operations and ALTON COAL shall remain possessed of the leasehold rights granted herein throughout the life of the Mining Operations until such time as ALTON COAL ceases the Mining Operations or surrenders the Leased Premises to PUGH. The initial or renewal term of this Lease Agreement shall be extended until such time as (i) ALTON COAL has had sufficient time to extract, mine and remove all "mineable and merchantable coal" from the LEASED PREMISES; or (ii) ALTON COAL has had sufficient time to extract, mine and remove all "mineable and merchantable coal" from those areas encompassing any Logical Mine Unit (LMU) or where the lands of the LEASED PREMISES are being mined by ALTON COAL in conjunction with, or as part of the Mining Operations being conducted upon other lands, whichever occurs LATEST, unless this Lease Agreement is sooner hereunder cancelled or terminated.

As the lease states within §2.03, "so long as ALTON COAL is engaged in Mining Operations, the term of this Lease Agreement shall be extended by and be coterminous with the period of Mining Operations and ALTON COAL shall remain possessed of the leasehold rights granted herein throughout the life of the Mining Operations."

First of all, there are ongoing mining operations to recover coal and the lease will continue until "ALTON COAL has had sufficient time to extract, mine and remove all "mineable and merchantable coal" from the LEASED PREMISES." The deep mine is located as part of the leased premises along with other surface operations conducted upon the Leased Premises. Additionally, the tippie is located on the surface. These ongoing Mining Operation will continue for the life of the mine, or at least the foreseeable future.

The operations being conducted on the Leased Premises hold the leasehold throughout the term of the operations beyond the initial term, as described within §2.03. Production royalties have been paid to the

Charles Landrum, Jr.
(1917-1990)
Weldon Shouse
(1915-2004)
Mark J. Hinkel
(1957-2015)

Of Counsel
Thomas M. Cooper
John H. Burrus



Priscilla Burton
July 27, 2016
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Lessor and will continue to be paid as due. In addition, Alton will be paying a minimum advance royalty under §2.04 due August 1.

Additional rights are further explained in §8.04.

8.04 Other Mining Operations. The coal contained in or upon the LEASED PREMISES may be part of a seam or deposit of coal which extends through other lands onto or become part of the LEASED PREMISES. ALTON COAL may desire or find it advantageous to conduct Mining Operations upon the LEASED PREMISES in conjunction with Mining Operations being conducted by ALTON COAL upon other lands. ALTON COAL shall have the absolute right to conduct Mining Operations upon the LEASED PREMISES in conjunction with, part of, or associated with other Mining Operations being conducted by AL TON COAL, even if not those operations are not located upon the LEASED PREMISES. ALTON COAL shall have the right to include the LEASED PREMISES as part of a Logical Mine Unit (LMU), a common mine plan, or part of a permit encompassing other lands, where the lands of the LEASED PREMISES are being mined by ALTON COAL in conjunction with or as part of the Mining Operations being conducted upon other lands.

Inasmuch as Mining Operations are conducted on the Leased Premises in conjunction with other lands, the activity also is subject to the additional provisions of §2.03.

The initial or renewal term of this Lease Agreement shall be extended until such time as . . . ALTON COAL has had sufficient time to extract, mine and remove all "mineable and merchantable coal" from those areas encompassing any Logical Mine Unit (LMU) or where the lands of the LEASED PREMISES are being mined by ALTON COAL in conjunction with, or as part of the Mining Operations being conducted upon other lands, whichever occurs LATEST, unless this Lease Agreement is sooner hereunder cancelled or terminated.

Even if Alton were not actively mining the property, which it is, §8.02 of the lease provides for the right to construct in, on or upon the leased premises and make sole and exclusive use of the tittle, which continues the leasehold throughout the life of the operation of the tittle and the Mining Operations being conducted upon other lands.

Please accept this as documentation to support the position the term of the lease continues beyond the initial ten year period. If you need anything further, please do not hesitate to contact me.

Sincerely,



BENNETT E. BAYER
Lexington Office
Telephone Extension 243
E-Mail: bbayer@landrumshouse.com

BEB/rmb