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Date Sent: DEC. 4, 1985

Explanation:

BOYER'S' REPLY TO JACK HIGGINS
AND SUMMIT MINERALS INC.'S
RESPONSE TO PETITION

cc:

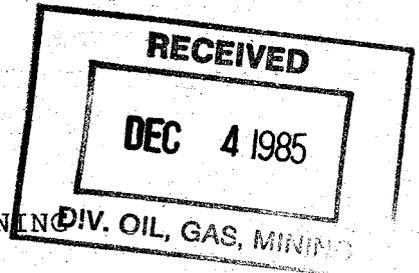
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Date _____ For additional information

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

* * * * *

IN THE MATTER OF THE PETITION)
OF THE DIVISION OF OIL, GAS)
AND MINING FOR AN ORDER)
REQUIRING CERTAIN ENFORCEMENT)
ACTIONS AGAINST JACK HIGGINS;)
SUMMIT MINERALS INC.; SUMMIT)
ENERGY INC.; UTAH COAL AND)
ENERGY INC.; AND BENNETT)
LEASING COMPANY; AS OPERATORS)
OF THE BLACK HAWK MINE IN)
SUMMIT COUNTY, UTAH)

BOYERS' REPLY TO JACK
HIGGINS AND SUMMIT MINERALS
INC.'S RESPONSE TO PETITION

Docket No. 85-070
Cause No. INA/043/001

* * * * *

Gary Boyer, Stephen Boyer and Joseph Laverne Boyer
(the "Boyers") hereby reply to the Response of Jack Higgins and
Summit Minerals as follows:

INTRODUCTION

The Bo
unbonded coal
August 4, 197
("Respondents")

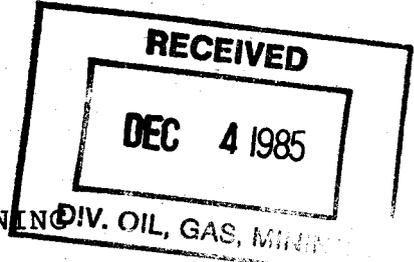
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For additional information

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the principal issue of concern to the Boyers (and, presumably,
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unbonded after at least nine years.

History has indicated that the operators of the Black
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Mine notes



BEFORE THE BOARD OF OIL, GAS AND MINING
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* * * * *

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Docket No. 85-070
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* * * * *

Gary Boyer, Stephen Boyer and Joseph Laverne Boyer
(the "Boyers") hereby reply to the Response of Jack Higgins and
Summit Minerals as follows:

INTRODUCTION

The Boyers own the land upon which an unpermitted,
unbonded coal mining operation has existed since at least
August 4, 1976. Jack Higgins and Summit Minerals Inc.
("Respondents") are now resisting the State's efforts to
require the mine to come into compliance with Utah law. As set
forth below, the position of Respondents fails to acknowledge
the principal issue of concern to the Boyers (and, presumably,
to the State), i.e., that the mine remains unpermitted and
unbonded after at least nine years.

History has indicated that the operators of the Black
Hawk mine have simply "put off" the State while they have

attempted to "promote" their mining operation to others. Thus, they have incurred no out-of-pocket costs and assumed no responsibilities for their continuing development. Unfortunately, if the "promotion" falls through, the State and the Boyers get left holding a bag that contains shell corporations, 20 acres of serious disturbance and no bond. The Board has to put an end to the States' role in this scenario.

The Division's enforcement Petition is welcome but it is overdue. And, it does not go far enough to remedy the continuing violation of Utah law. After nine years of noncompliance with Board orders, only prompt judicial action will get the attention of Respondents and the other named parties.

FACTS

The Boyers generally deny the affirmative allegations of fact by Respondents in the Response.

ARGUMENTS AND AUTHORITIES

A. The History of Non-compliance of the Black Hawk Mine is Unprecedented.

The Division is charged with "... prohibit[ing] mining and exploration operations without a permit (Section 40-10-6 (4)) and is required to "...condition the issuance of a permit to commence or continue surface mining operations upon the posting of performance bonds" (Section 40-10-6 (7)). Utah law provides further that "No person shall engage in or carry out surface coal mining operations within the state unless that

person has first obtained a permit..." See Section 40-10-9 (1) Utah Code Ann.

The Division's Petition refers to at least ten orders of the Division or the Board, dating back to 1978, that have demanded compliance with the above provisions of Utah law. They have demanded an approved mining and reclamation plan and demanded an adequate surety arrangement. Seven years have passed since the first such order. No bond has been posted and no approved mining and reclamation permit is in place. The Respondents' continuing failure to comply with the law is unwarranted. The violations in question were and are clearly willful and knowing. Yet, the Division and the Board have never initiated any judicial action to enforce its previous compliance orders or collect the penalties imposed.

On August 4, 1976, 9-1/2 years ago, Ron Daniels noted, in a memorandum to the file of the Black Hawk Mine, "Since this mine is presently active and is apparently a reactivation, attempts will be made to get Mr. Cofferelli (sic) to file a mining and reclamation plan as soon as possible." While the Division certainly has made some "attempts", it has not succeeded despite a decade of trying. It is time for the Board to move promptly and decisively to enforce the law.

B. The Board Should Demand that the Parties Explicitly Take Responsibility for Past and Present Operations.

The Respondents generally contend that the unprecedented history of noncompliance is not their problem -- it

relates only to Utah Coal and Energy ("UC&E"). No doubt UC&E (and Bennett Leasing) contend that it is someone else's problem too.

Respondents should not be permitted to deny responsibility for the mine site while they occupy it, obtain its benefits and continue to "negotiate" with the State for permits and approvals, extensions of time to comply, etc. The past year and one-half has been marked by the repeated efforts of Respondents to point the finger for responsibility in other directions, and their unwillingness to admit that they are the responsible parties. Meanwhile, no bond is posted, no permanent mining and reclamation plan is submitted or approved, no penalties are collected, no assessment conferences are held, and operations at the mine continue unabated -- all to the detriment of the Boyers. If all of the parties walk away tomorrow (and they may), they will all no doubt continue to disclaim responsibility.

To identify all of the responsible parties, the Board should examine the facts: Respondent Higgins is an officer of both UC&E and Summit Minerals, Inc. ("Summit"). As such, he is personally responsible under the facts of these violations for all civil and criminal penalties imposed by the Board. See Section 40-10-20 (6). Respondent Summit claims to be the operator of UC&E's mine and purportedly is UC&E's controlling shareholder. Higgins and Summit collectively are in effective

control of both the mine site and UC&E. Other than Higgins and Summit, UC&E is and has been the only lessee or operator of the property since the early 1970's. Respondents have been dealing with the Division on their own behalf and on behalf of UC&E for a year and one-half. UC&E has been doing so for some nine years. Yet the parties continue to disclaim either knowledge of and/or responsibility for past and existing violations. It should not be the burden of the Boyers to prove who the responsible parties are for a long-existing operation.

The Board has the obligation to require the parties before it to identify the responsible parties today -- and then deal with such parties accordingly.

C. A Bond Should be Posted Today.

The fact that no bond has been posted in nine years should be a clear signal to the Board that no one is in fact willing to assume financial responsibility for the mine site. If parties will not or cannot assume financial responsibility, they have no business occupying the site for any reason or negotiating with the State. There is no rational basis for the Board to grant yet another extension of time to post a bond for reclamation. The bond should have been posted some nine years ago.

D. Judicial Enforcement Should be Authorized Today.

As has been the case for some seven years, Respondents will no doubt say judicial enforcement is not presently

required and request "more time" to comply with the law. They will ask for another 30 days for this and 60 days for that -- all the while deferring any instance where they will in fact be held accountable for the 20 acres of disturbance at the site on the Boyers' land. Whether or not "more time" is tacked on the end of the nine years of noncompliance, the Board should proceed with judicial enforcement today. Years of noncompliance and assertions of lack of responsibility are enough! The Attorney General may always settle or dismiss an enforcement action if the Respondents in fact perform as promised. Until judicial enforcement action is initiated, however, these proceedings clearly have no practical impact on the Respondents. At least ten previous orders of the Board have been ignored -- perhaps a court order will be more persuasive.

E. Respondents' Representations to the Board Should be Carefully Scrutinized.

Respondents request that the Board ignore years of noncompliance. This time their request is founded on the incredible representation that its operations on the site have all been "sand and gravel operations" rather than coal operations. See Respondents' Response to Petition at ¶¶ 12-21. This would be a more plausible position if it were consistent with the facts.

A chronology of events will put this contention in perspective. (References are to Exhibits to the Division's Petition, unless otherwise noted.)

1. February 28, 1985 -- The Division inspects the site and observes various unpermitted mining activities. Ex. H.
2. March 1, 1985 -- Division issues CESSATION ORDER 85-1-1-1. Ex. H.
3. March 1, 1985 -- Respondents are informed by the Division of the CESSATION ORDER. Despite the fact that they have no lease of the sand and gravel, they tell the Division that the activities are sand and gravel operations and that the Division has no jurisdiction over such operations. Ex. H. Mining continues.
4. March, 1985 -- Respondents seek permission from Boyers to remove sand and gravel -- it is refused. See Affidavit of Gary Boyer attached as Exhibit A.
5. May 15, 1985 -- Respondents seek a lease of the sand and gravel from the owners of the coal estate so that they have some arguable support for their earlier representations to the Division. See Exhibit B to this Response.
6. July 8, 1985 -- Higgins meets with the Boyers and assures the Boyers that he is conducting coal mining operations only, that any sand or gravel moved is solely for a staging area for the coal mining operation. Weeks later, Boyers find out that Higgins is telling the State a dramatically different story and sue him (and Summit) to enjoin illegal "sand and gravel operations." See Affidavit of Gary Boyer attached as Exhibit A.
7. August 14, 1985 -- Division issues CESSATION ORDER C85 1-2-1 to enjoin coal operations.
8. September 10, 1985 -- District Court enjoins further "sand and gravel operations." See ¶ 19 of Respondents' Response.
9. October 31, 1985 -- A Division inspection reveals still additional mining activities have occurred and finds numerous people employed on site. Another cessation order was then issued.

So that they could continue to develop the coal mine area, Respondents were concurrently telling the Boyers and the

Division directly opposite stories. To the Division, Respondents were a sand and gravel operation so that the Division would have no jurisdiction. To the Boyers, Respondents were a coal operation so that the Boyers could not enjoin those activities. Eventually Respondents got caught in their contradictory positions. Nevertheless, they went on mining.

The Board should not tolerate for a minute this type of behavior. Respondents never had any legal right to be a sand and gravel operation. More importantly, based upon their representations to the Boyers, they clearly never intended to mine sand and gravel, except as an incident of the development of their coal operation. Calling it a "sand and gravel operation" was an attempt to avoid the Cessation Orders -- no more -- no less.

Now Respondents have a new ploy. They claim that they are not a coal mining operation at all but instead are engaged merely in coal "exploration".

Accordingly, they now claim that they may again avoid or should further delay the permitting and bonding requirements of the Division. The Board should not permit this for a minute. Common sense dictates that the Board take note that this purported "exploration" of an 80 year old mine has denuded some 20 acres of Boyers property, creating a staging area for a coal mine in the process.

The Board has to require the Respondents to observe the law rather than avoiding it. While Respondents imaginative theories give it "arguable" positions to blatantly ignore the Board and the Division on a day-to-day basis, the big picture has not changed -- Utah law requires an approved mining and reclamation plan and bond, and none is in place. It appears that the State's view of the big picture is being clouded by "red herring" issues like "sand and gravel mining" or "exploration". It is time to get serious about enforcement of the law.

F. The Appropriate Relief in this Case is Clear.

The Board should proceed with every option available to it to obtain immediate compliance with the permitting and bonding requirements of Utah law. Specifically, at a minimum, the Board should enter an order providing:

1. Declare that the Black Hawk Mine is in violation of § 40-10-9 of the Utah Code in that it is, and has since 1976 been, an unpermitted, unbonded surface coal mining operation.

2. Declare that each of the named parties is or has been an operator of the Black Hawk Mine, or is otherwise responsible for its operation, and that each is jointly and severally liable for the reclamation of all existing disturbance at the Black Hawk Mine.

3. Order each such person or operator to submit a reclamation bond relating to all existing disturbances in an amount of not less than \$120,300.00 within five days.

4. Order the named parties to submit a complete mining and reclamation plan within 20 days, and an additional surety relating thereto (in an amount to be determined by the Division) immediately thereafter.

5. Order the named parties, in view of their repeated failure to cease surface coal mining operations when directed by the Board, to cease any and all occupancy of the Black Hawk mine site until an approved mining and reclamation plan, and additional surety relating thereto, is in place.

6. Direct the Division to promptly proceed with assessment conferences and any and all additional administrative steps necessary to levy and collect appropriate civil and/or criminal penalties relating to the following three outstanding cessation orders:

1. 85C-1-1-1 (3-1-85)
2. 85C-1-2-1 (8-14-85)
3. 85C-1-3-1 (10-31-85)

7. Assess a civil penalty of \$10,000.00 against all of the named parties as a result of their knowing and willful failure of such parties to obtain a mining and reclamation permit and/or timely file a reclamation bond as directed in the following orders of the Board:

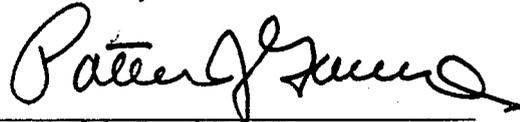
1. Compliance Order (11-29-78);
2. Continuance Order (2-1-79);
3. Abatement Order (2-28-79);

4. Cessation Order (12-19-79);
5. Order No. ACT/043/001 (1-23-80);
6. Mined Land Reclamation Agreement (9-2-80); and
7. Temporary Relief Order (9-17-85).

8. Authorize the Attorney General to immediately file an action to enforce strictly the terms of this Order and those noted in the preceding paragraph.

If Respondents are financially responsible and legitimate operators they will welcome prompt enforcement of the law. If not, they will no doubt continue to seek to delay having it apply to them.

Respectfully submitted this 4th day of December, 1985.



PATRICK J. GARVER
of and for
PARSONS, BEHLE & LATIMER
Attorneys for the Boyers
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, UT 84147-0898

0578Q

Certificate of Service

I hereby certify that on the 4th day of December, 1985, I caused to be personally hand-delivered a true and accurate copy of Boyers' Reply to Jack Higgins and Summit Minerals Inc.'s Response to Petition to:

A. John Davis, Esq.
310 South Main, Suite 1400
Salt Lake City, Utah 84101

James L. Christensen, Esq.
215 South State, Suite 800
Salt Lake City, Utah 84111

Mark Moench, Esq.
Utah Attorney General's Office
326 State Capitol Building
Salt Lake City, Utah 84114



EXHIBIT A

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

* * * * *

IN THE MATTER OF THE PETITION)
OF THE DIVISION OF OIL, GAS)
AND MINING FOR AN ORDER) AFFIDAVIT OF GARY BOYER
REQUIRING CERTAIN ENFORCEMENT)
ACTIONS AGAINST JACK HIGGINS;)
SUMMIT MINERALS INC.; SUMMIT)
ENERGY INC.; UTAH COAL AND) Docket No. 85-070
ENERGY INC.; AND BENNETT) Cause No. INA/043/001
LEASING COMPANY; AS OPERATORS)
OF THE BLACK HAWK MINE IN)
SUMMIT COUNTY, UTAH)

* * * * *

STATE OF UTAH)
: ss:
COUNTY OF SALT LAKE)

Affiant GARY BOYER, being first duly sworn, deposes
and says that:

1. I am a resident of Weber County, State of Utah.
2. I am one of the intervenors in the Division's
Petition proceeding. I am a co-owner (with other members of my
family) of the land that has been affected by the Black Hawk
Mine for the past ten years. I have personal knowledge of the
facts stated in this affidavit.
3. In March of 1985 I ran into Jack Higgins on my
family's property in the area that has been developed recently
as a staging area for a coal mine. Mr. Higgins indicated to me
that he would need to move a lot of sand and gravel in order to
open up a mining area and otherwise create useable space in

connection with a big coal mine that he was developing on our property. I advised Mr. Higgins that my family owned the sand and gravel and that he did not have permission to use or mine any of it.

4. In early July of 1985, I met with Mr. Higgins and my counsel, Patrick Garver, in the law offices of Parsons, Behle & Latimer. We were meeting to discuss Mr. Higgins' proposed coal mine, and how it might affect my family's use of our property. Mr. Higgins outlined his proposed plans for the area but noted that no activity of any kind was presently authorized because the "State has shut me down."

5. In view of Mr. Higgins' March comments about use of sand and gravel for his coal mine, my family had asked Mr. Garver to explain to Mr. Higgins in the July meeting that he had no right to use the sand and gravel. Mr. Garver did so. Mr. Higgins was adamant that he had no intention to mine or sell sand and gravel without our consent, but also said that he needed to move a lot of it to gain access to his mine.

6. At the July meeting, Mr. Higgins also suggested that we consider leasing him the sand and gravel. He said he thought he could sell it and help finance his mine. He said that "...he had to move it anyway for the mine." He never indicated any intention to develop a separate sand and gravel operation.

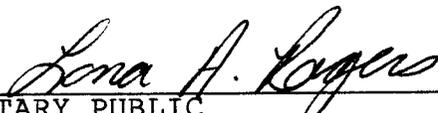
7. Despite some additional contacts with Mr. Higgins or his lawyers through Mr. Garver, I do not recall hearing any-

thing more about any purported intention to develop a separate sand and gravel operation until Mr. Garver attended a meeting at the Utah Division of Oil, Gas and Mining offices in late August. At that time Mr. Garver reported that Mr. Higgins lawyers were telling the State that Mr. Higgins and Summit Minerals were sand and gravel operators rather than a coal miners.

Further affiant sayeth naught.


GARY BOYER

Subscribed and sworn to before me this 4th day of December, 1985.


NOTARY PUBLIC
Residing at: Salt Lake Co. Ut.

My Commission Expires:

11-5-87

0584Q

2100 HOLLAND ROAD
PARK CO., UTAH 84060
JON HIGGINS
SAND and GRAVEL

EXHIBIT B

LEASE

This Sand and Gravel lease, notwithstanding the date of execution or dates of execution is made to be effective as of the 15 May 1985, by and between David S. Perry, Hazel C. Perry, Verl S. Perry, Nelda S. Perry, ~~John Higgins, Curtis L. Nielsen, Arville C. Nielsen and Ramona B. Nielsen~~ hereinafter referred to as "LESSOR" and Summit Minerals, Inc. a Utah Corporation, Hereinafter referred to as "LESSEE".

D.P. H.C.
A.C.N. R.N.
J.S.P. R.S.P.

Entry No. 239010
REQUEST OF John Higgins
ALAN SPRINGS, SUMMIT CO. RECORDER
FEE \$ 7.50 BY Summit Minerals
RECORDED 6-3-85 at 2:15 P.M.

1. Lessor, for and in consideration of the sum of Ten Dollars (\$10.00) the receipt thereof is acknowledged by Lessor, the royalties provided and the covenants and agreements of the parties hereinafter contained does hereby grant, lease, let and demise unto the Lessee and and to the heirs, and assigns of Lessee, the sole and exclusive right to enter upon and take control and possession of the lands hereinafter described for the purpose of exploring, prospecting for, excavating pits holes, extracting, mining, processing, storing, transporting and removing therefrom sand and gravel that is or that may be found in, upon, or under the said lands located in Summit County, Utah, as follows to wit;

South 1/2 NE 1/4 & North 1/2 SE 1/4 Section 36 R6E T3N S. L. B. & M. containing 160 acres of land more or less hereinafter called the "Leased Land".

2. Lessor warrants that it is the owner of all mineral rights in and to the leased land with full right, power and capacity to enter into this lease. Lessor warrants that Lessee shall have unrestricted ingress and egress to the leased land and the use of so much of the surface as may be required for the mining of sand and gravel and the buiding of all necessary structures including but not limited to power lines housing, office, storage, weighing and transportation facilities.

3. The term of this lease shall be for a period of twenty (20) years and so long after as sand and gravel is produced from the leased lands or royalty payments under paragraph 4 of this lease are made.

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4. Lessee will pay to Lessor ~~or to the credit of Lessor in THE CENTRAL BANK & TRUST COMPANY of Provo, Utah~~ a royalty hereunder for sand and gravel produced and sold from the leased land during each calender month, as follows;

D.P. H.C.
A.C.N. R.N.
J.S.P. R.S.P.

a. Twenty five cents per ton (2000lbs.)

b. Royalty payments shall be made within 15 days following the end of any month when shipments are made.

c. Lessee agrees to pay a minimal annual payment ~~to the above named bank~~ of \$2400.00 per year. Payments shall be monthly in \$200.00 installments and the first payment will be due 1 June 1985. Production payments shall be credited against minimum annual payments.

D.P. H.C.
A.C.N. R.N.
J.S.P. R.S.P.

5. Lessee shall mine and develop the leased land in accordance with good mining practice and in conformity with applicable laws. Lessee shall maintain books and records and accounts and said records shall be available for Lessor review during normal business hours at Lessees place of business..

6. Lessee agrees to keep the leased land free from liens and encumbrances, arising from operations. Lessee shall hold Lessor harmless from all liability arising from operations on the leased land. Lessee agrees to hold Lessor harmless for damage to the surface except that area required for mining operations.

6. Failure of the Lessee to make timely payments of any sum do Lessor or failure of Lessee to correct any default hereunder within 60 days written notice by Lessor shall be cause for termination of this lease by Lessor. Provided that all payments due under this agreement are current Lessee shall have a period of six months to remove his equipment and machinery from the leased lands.

8. This lease may not be assigned or transferred without prior written consent of the Lessor, however Lessor shall not withhold approval of any assignment unduly. No change of ownership by either party shall materially change or alter the terms of this agreement. This lease shall be binding upon the parties hereto, their heirs, successors and assigns.

*signed in
act of
5/31/85
same date
Notary -
Springville, Ut.*

LESSOR

[Signature]
Hazel C. Perry

[Signature]
Neil S. Perry
[Signature]
Nelda J. Perry

[Signature]
Q. Nielsen
[Signature]
Ann Nielsen

LESSEE

Summit Minerals Inc.

[Signature]
President

BOOK 343 PAGE 268

[Signature]
Dated 12 May 1985

On the 23rd day of May 1985 personally appeared before me _____

[Signature]

the Lessors who have signed their names to the foregoing instrument, who duly acknowledge that they executed the same.

[Signature]
Notary Public

MARIE MORRISON
CLERK AND RECORDER
CANYON COUNTY