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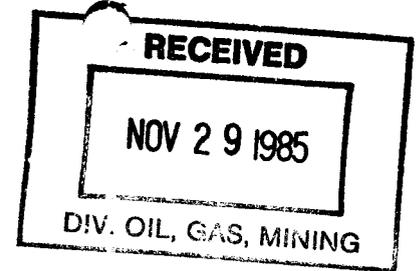
JACK HIGGINS AND SUMMIT MINERALS
INC.'s RESPONSE TO PETITION

cc:

File in: CI/043/001, 1985 Incoming

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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES AND ENERGY
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	*	JACK HIGGINS AND SUMMIT
ACTIONS AGAINST JACK HIGGINS; SUMMIT	*	MINERALS INC.'S RESPONSE
MINERALS INC.; SUMMIT ENERGY INC.; UTAH	*	TO PETITION
COAL AND ENERGY INC.; AND BENNETT	*	
LEASING COMPANY; AS OPERATORS OF THE	*	Docket No. 85-070
BLACK HAWK MINE IN SUMMIT COUNTY, UTAH	*	Cause No. INA/043/001

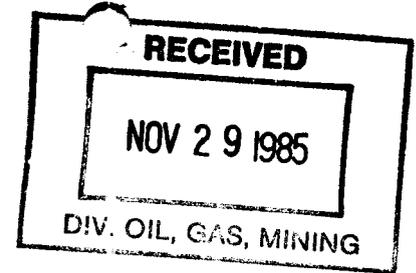
JACK HIGGINS AND SUMMIT MINERALS INC. ("Respondents") by and through their counsel, Hugh C. Garner & Associates, P.C., hereby respond to the Division of Oil, Gas & Mining's ("Division") Petition on file herein by admitting, denying and affirmatively alleging as follows:

1. Respondents admit that the Board has administrative jurisdiction over this matter.
 2. Respondents are without information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 3 of the Division's Petition and therefore deny same. Respondents admit, on information and belief, that notice of intent and mine reclamation plans were submitted by Utah Coal and Energy, Inc. ("Utah Coal") and that the Division informed Utah Coal by letter of June 14, 1978 that the plans were not complete. Respondents affirmatively allege
- & Mining ("Board") in a

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Refer to Record No. 0003 Date N/A
 In 1043/001, 1985 Incoming
 For additional information



BEFORE THE BOARD OF OIL, GAS AND MINING
 DEPARTMENT OF NATURAL RESOURCES AND ENERGY
 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	*	JACK HIGGINS AND SUMMIT
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1. Respondents admit that the Board has administrative jurisdiction over this matter.
2. Respondents are without information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 3 of the Division's Petition and therefore deny same. Respondents admit, on information and belief, that notice of intent and mine reclamation plans were submitted by Utah Coal and Energy, Inc. ("Utah Coal") and that the Division informed Utah Coal by letter of June 14, 1978 that the plans were not complete. Respondents affirmatively allege that the Board of Oil, Gas & Mining ("Board") in a

February 1, 1979 hearing granted tentative approval of Utah Coal's notice of intent and mine reclamation plan subject to posting a reclamation bond.

3. Respondents are without information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition and therefore deny same.

4. Respondents admit the allegations contained in the first sentence of paragraph 5 and are without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 and therefore deny same.

5. Respondents admit the allegations contained in paragraphs 6 and 7 of the Petition and affirmatively allege that the \$750.00 fine was paid. (See letter dated December 20, 1983 to Diane Nielson from Barbara Roberts, attached hereto as Exhibit "A".)

6. Respondents admit the allegations contained in the first sentence of paragraph 8 of the Petition. Respondents are without information sufficient to form a belief as to the truth of the allegations contained in the second and third sentences of paragraph 8 of the Petition and therefore deny same. As to the fourth sentence in paragraph 8 of the Petition, Respondents affirmatively allege that the subject mine is still inactive.

7. Respondents are without information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9, 10, 11 and 12 of the Petition and therefore deny same.

8. Respondents deny that Utah Coal "began operations at the Black Hawk Mine in August of 1984" as alleged in the first sentence of paragraph 13 of the Petition; Respondents are without information as to the remaining allegations in the first sentence of paragraph 13, and the second sentence of paragraph 13, and therefore deny same. Respondents based on information and belief admit the allegations contained in the third sentence of paragraph 13 and are without information pertaining to the fourth sentence of paragraph 13 and therefore deny same. Respondents admit the allegations contained in the fourth and fifth sentences of paragraph 13 in that Bennett Leasing Company is a Utah corporation and that Bennett Leasing, following foreclosure, became the controlling and majority shareholder of Utah Coal and Energy. Respondents deny that Bennett Leasing is currently the controlling shareholder of Utah Coal and deny the remaining allegations in the last sentence of paragraph 13. Respondents affirmatively allege that Summit Minerals Inc. is the owner of approximately 55.41% of the shares of Utah Coal and that Summit Minerals' ownership interest as represented by said shares is pledged to Bennett Leasing as security for performance of certain obligations owed to Bennett Leasing pursuant to an agreement for purchase of the assets and stock of Utah Coal by Summit Minerals Inc.

9. Respondents admit the allegations contained in paragraph 14 of the petition, except that Respondent Higgins alleges that his initial contact with the Division was with Joe Helfrich and Ron Daniels.

10. Respondents admit the allegations contained in paragraph 15 of the Petition.

11. Respondents admit the allegations contained in paragraph 16 of the Petition, and affirmatively allege that nowhere in the affidavit of Mr. Higgins referred to therein is there a representation that coal mining activity was being conducted on the property and, in fact, paragraph 5 of said affidavit recites: "The condition of the property indicates that no mining activity of any kind has occurred on the property for many years." Mr. Higgins' affidavit further states at paragraph 7, "Since April 1984 I have, on behalf of Utah Coal and Energy, repaired the bridge at the mine site, cleaned the mine site and equipment, and corrected federal mining violations."

12. Respondents allege that the inspection memo referred to in paragraph 17 of the Petition speaks for itself and affirmatively allege that the "unpermitted activities in progress" referred to in paragraph 17 were improperly characterized as coal mining operations or related to coal mining operations, and that at that period of time all operations being conducted on the property by Summit Minerals Inc. were in conjunction with the development of a sand and gravel operation authorized under an agreement with the mineral owners. Said agreement was reduced to writing in a sand and gravel lease, wherein the mineral owners warranted their title to said sand and gravel.

13. With regard to paragraph 18 of the Petition, Respondents deny that the two portals referred to in said paragraph were improperly back-filled, admit that a cessation order was issued to Higgins and affirmatively allege that the cessation order speaks for itself. Respondents deny all the remaining allegations contained in paragraph 18 of the Petition.

14. Respondents admit the allegations contained in sentence 1 of paragraph 19 of the Petition, Respondents are without information and belief as to the truth of the remaining allegations in said paragraph 19 and deny same. With regard to the allegations in paragraph 19, Respondents affirmatively allege that the operations observed by Mr. Kale were operations incidental to the development of the sand and gravel quarry.

15. Respondents admit the meeting between Mr. Higgins and Diane Nielson to discuss a resolution of the problems associated with this property. Respondents deny that Mr. Higgins agreed to cease all activities on the site and affirmatively allege that Mr. Higgins agreed not to perform coal related activities on the site; admit that Mr. Higgins agreed to provide the Division with updated site maps showing the disturbed area and affirmatively allege that Summit Minerals Inc. employed Dr. Benjamin Seegmiller who prepared and delivered to the Division a site map which is currently on file with the Division and further employed Mr. Dick Kopp, a consulting geologist, to prepare a reclamation plan and plan of operations for a future coal mining operation on the site. Respondents deny all remaining allegations contained in paragraph 20 of the Petition.

16. With regard to paragraph 21 of the Petition, Respondents admit the existence of a meeting of March 19, 1985 at the site; deny any violations of the Order, and admit the remaining allegations in paragraph 21 with the exception that Respondents deny that a deposit on a performance bond was discussed at the March 22 meeting.

17. With regard to the allegations in paragraph 22 of the Petition, Respondents reiterate that the activities noted in the August 13, 1985 inspection were all related to and in furtherance of a sand and gravel operation.

18. Respondents allege with regard to the allegations contained in paragraph 23 of the Petition that the Cessation Order referred to therein, Cessation Order C85-1-2-1, speaks for itself.

19. Respondents admit the allegations and summary of the meeting of August 22, 1985 as contained in paragraph 24 of the Petition. Respondents affirmatively allege that the attorneys for Mr. Higgins explained that Summit Energy Inc. was to be the coal operator and that Summit Minerals Inc. was the sand and gravel operator. By way of explanation, since the Order of September 10, 1985 in the Third District Court of Summit County in the matter of Gary Boyer, et al. v. Jack Higgins, et al., the principals of Summit Minerals Inc. have decided to use Summit Minerals Inc. as the corporate entity for development of the Black Hawk mine and not form a separate corporate entity for that purpose.

20. With regard to paragraph 25 of the Petition, Respondents affirmatively allege that Mr. Moench's letter attached as Exhibit "K" to the Petition speaks for itself.

21. With regard to paragraph 26 of the Petition, Respondents admit that the Third District Court of Summit County ruled that the Boyers owned the sand and gravel and that the gravel lease to Summit Minerals Inc. did not give Summit Minerals Inc. any rights to the sand and gravel resource on the property. Respondents further admit that the court's ruling effectively barred Respondents from occupancy or operations relating to sand and gravel. Respondents deny the allegations contained in the final sentence of paragraph 26.

22. Respondents admit the allegations contained in paragraph 27 of the Petition.

23. Respondents admit the allegations contained in paragraph 28 and affirmatively allege that Respondents by letter of November 26, 1985, have responded to the deficiencies outlined in the letters of October 28, 1985, November 5, 1985. (A copy of said letter dated November 26, 1985 and addressed to Mr. Lowell P. Braxton, is attached hereto as Exhibit "B".)

24. Respondents admit the allegations contained in paragraph 29 of the Petition. Respondent affirmatively alleges that it has cured a number of the outstanding defects in the permit application, has provided the Division with required supplemental information and

will continue to supplement the record as required.

25. With regard to paragraph 30 of the Petition, Respondents are without information sufficient to form a belief as to the truth of the allegations contained in sentence 1 and 2 of paragraph 30 and therefore deny same. With regard to the observations of Mr. Kale, Respondents affirmatively allege as to subparagraph (a) of paragraph 30 that said sand and gravel was removed based upon the request and representations of Mr. Blonquist, the operator of the coal mine across the highway and south of the Black Hawk Mine operation. Mr. Blonquist represented to Mr. Clayton Timothy and Mr. Jack Higgins of Summit Minerals Inc. that Faye Boyer, one of the surface owners, had told Mr. Blonquist that he could use certain amounts of sand and gravel for his operations. It was based upon this request that Summit Minerals Inc. removed sand and gravel from the storage area and delivered it to Mr. Blonquist. Summit Minerals received no payment for said sand and gravel.

26. With regard to subparagraphs (b) and (c) of paragraph 30, Respondents admit the allegations contained therein. Respondents affirmatively allege that said structures were built in accordance with plans prepared by Summit Minerals' consulting engineers, Vaughn Hansen and Associates and that it was Respondents' belief that construction of said structures was necessary prior to the granting of an exploration

permit and that same could be constructed without the written approval of the Division.

27. With regard to subparagraph (d) of paragraph 30, Respondents admit the allegations contained therein. Respondents affirmatively allege that said coal portal was cleared in order to get coal samples from both the floor and ceiling of the portal in order to provide accurate information to the Division in support of Summit's application for an exploration permit. Respondents admit the allegations contained in the final sentence of paragraph 30 and affirmatively allege that said Cessation Order has been vacated due to the fact that all activity has ceased.

RESPONSE TO COUNT I

28. Respondent realleges and incorporates by reference its responses to paragraphs 1 through 30 of the Petition.

29. Respondents admit that they have failed to post the required reclamation bond pursuant to the September 17, 1985 Order of the Board. Respondents deny that they had any responsibility to comply with the Order of January 23, 1980 and affirmatively allege that the reclamation bond ordered in the January 23, 1980 Order was the sole responsibility of Utah Coal and Energy pursuant to its plan of operations, which plan of operations, on information and belief, was never instituted.

Further, Respondents submit that §40-10-20(5) U.C.A. does not empower the Board to assess a civil penalty.

Respondents further deny that they have "willfully and knowingly" violated a final Order of the Board and affirmatively allege that they have done everything in their power to comply with that Order as explained in the letter of November 26, 1985, attached as Exhibit "B".

RESPONSE TO COUNT II

30. Respondents deny that they have repeatedly failed to cease mining operations and request that the Board provide Respondents a minimum of 30 days from the Board hearing on this matter in which to post a reclamation bond in the amount of \$100,000 as previously agreed upon by the Division.

RESPONSE TO COUNT III

31. Respondents affirmatively allege that in order to comply with the conditions established by the Division for issuance of an exploration permit, it is necessary that Summit maintain a physical presence on the premises in order to compile necessary information for inclusion in Summit Mineral's filings and to maintain the equipment and structures present on the premises. Respondents also allege that it is necessary that Summit maintain a presence on the property to discourage vandalism and maintain the existing run-off containment structures.

RESPONSE TO COUNT IV

32. Respondents submit that thirty days is an inadequate time in which to make the election set forth in paragraph 40 of the

Petition and that Summit Minerals is in fact proceeding with its application for an exploration permit.

33. With regard to paragraph 41 of the Petition, Respondent Summit Minerals Inc. objects to any contention that it should be jointly liable along with Utah Coal for penalties, if any, assessed for Utah Coal or failure to comply with the terms of the Board's Order of January 23, 1980. Summit Minerals has not entered into a sales agreement with Utah Coal, nor has it agreed to accept liability for the acts or omissions of Utah Coal occurring prior to 1984.

34. Respondents again affirmatively allege that pursuant to Section 40-10-20(5), a civil monetary penalty is inappropriate under the circumstances in that there was no willful violation of the final Order of September 17, 1985.

RESPONSE TO COUNT V

35. Respondents deny that the imposition of civil penalties is warranted under the circumstances of this matter.

36. Respondents deny each and every allegation contained in the Division's Petition not specifically admitted or denied herein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE AND REQUEST FOR RELIEF

The Division is making no claim against Respondent Jack Higgins and is not contending that Mr. Higgins is personally liable for the alleged acts or omissions of Summit Minerals Inc. Therefore, the

Board should order 1) that Mr. Higgins' name be stricken from the Division's Petition and all other pleadings filed in this matter and 2) that Mr. Higgins be dismissed as a party in this matter.

The Respondents, having fully answered the Division's Petition request that the Board deny the Division's requests for relief as framed in Counts 1 through 5.

DATED this 27th day of November, 1985.

HUGH C. GARNER & ASSOCIATES, P.C.



A. John Davis
Attorneys for Jack Higgins and
Summit Minerals Inc.
310 South Main Street, Suite 1400
Salt Lake City, Utah 84101
Telephone (801) 532-5660



*file this
by in CC: NON DENIERS
the
Utah Coal & Energy
JOE HELFANT*

THE ATTORNEY GENERAL *File # 7.*
STATE OF UTAH
DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN
Solicitor General

FRANKLYN B. MATHESON
Senior Assistant Attorney General

ROBERT R. WALLACE
Chief Trial Counsel

WILLIAM T. EVANS, CH
Human Resources Div
DONALD S. COLEMAN, CH
Physical Resources Div
STEPHEN G. SCHWENDIMAN, CH
Tax & Business Regulation Div
EARL F. DORRIS, CH
Governmental Affairs Div
PAUL M. WARNER, CH
Logan Div

TO: DIANNE NIELSON, Director
Division of Oil, Gas and Mining

FROM: BARBARA W. ROBERTS *BWR*
Assistant Attorney General

DATE: December 20, 1983

RE: Utah Coal & Energy, INA/043/001

Regarding your referral of this matter to the Attorney General's Office, pursuant to the Board Hearing of December 15, 1983, it has been determined that the penalties for violations N81-2-2-1 and Board Order ACT/043/001 of January 23, 1980 have been paid. An Order to this effect setting out the findings of the Board will be forthcoming. Please amend your records to reflect this determination.

BWR/dp

RECEIVED
DEC 21 1983

DIVISION OF
OIL, GAS & MINING

EXHIBIT "A"

LAW OFFICES OF
HUGH C. GARNER & ASSOCIATES
A PROFESSIONAL CORPORATION
SUITE 1400
310 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101

HUGH C. GARNER
A. JOHN DAVIS
WILLIAM G. STEHLIN
JOHN R. KUNZ
THOMAS A. MITCHELL
JOHN A. HARJA
JUDITH S. H. ATHERTON

(801) 532-5660

November 26, 1985

Mr. Lowell P. Braxton, Administrator
Mineral Resource Development & Reclamation Program
Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Summit Minerals Inc.
Coal Exploration Application
Black Hawk Project, Summit County, Utah

Dear Mr. Braxton:

I am writing in response to your letter of November 5, 1985 to Mr. Jack Higgins, President of Summit Minerals Inc. With regard to paragraph number 1 in your November 5 letter, I have enclosed for your review copies of the following documents which Summit Minerals believes establish its right as operator for Utah Coal and Energy to access across the surface of the land between the highway and the northern boundary of the leasehold:

- a. A copy of a Right-of-Way Agreement of May, 1971, between Lyle and Helen Boyer and William and Lorine Boyer and Coalville Coal Company;
- b. A Decree Settling Final Account and Report of Administrator, etc. In the matter of the Estate of Joseph H. Bover and Lois R. Bover, filed in the Fourth Judicial District Court of the State of Utah in and for Summit County, Probate Division, Probate No. 1770;
- c. An assignment of the Right-of-Way Agreement referred to in a. above from Joe Lyon, Jr. to C. G. Cafarelli;
- d. An assignment of said Right-of-Way Agreement from C. G. Cafarelli to Utah Coal and Energy, Inc.; and

- e. A letter opinion dated September 15, 1977 written by Andrew John Brennan, Attorney at Law, regarding the right of access from the State Highway to the Black Hawk Mine.

With regard to the requirements under paragraph number 2 of your letter of November 5, 1985, it is my understanding that Vaughn Hansen Associates, consultants and engineers for Summit Minerals Inc. have submitted to the Division designs and plans for run-off containment and sedimentation control. In addition, it is my understanding that Mr. Richard Kopp, consulting geologist, is still in the process of documenting proposed underground development. Finally, with regard to presentation of the approximate location of pre-1970 workings and 1970 through 1977 workings; as you know there is very little information pertaining to pre-1970 workings on this mine, and, as to workings undertaken in the 1970s, there is a dearth of accurate and reliable information relating to the workings by the prior owners of Utah Coal and Energy. This lack of information is one of the primary reasons Summit has decided to conduct exploration activities at the site prior to implementation of a large scale coal mining operation.

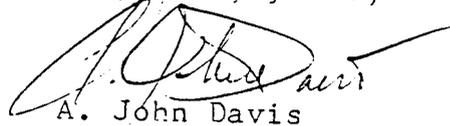
With regard to paragraph number 3 of your November 5 letter regarding bonding for post-SMCRA disturbances, Summit Minerals understands and accepts the Division's position that it cannot approve an exploration permit prior to adequate bonding. The Division must recognize that Summit Minerals has been diligently attempting to secure bonding satisfactory to the Division. In September, it was our firm belief that Bennett Enterprises would agree to post a reclamation bond because of their interest in the property. In fact, we were told by agents of Bennetts that they would post the bond. However, in October, Bennett Enterprises decided that bonding was the responsibility of Summit Mineral as the operator of the mine and withdrew their offer to act as a co-surety. Since that time, Summit Minerals has been engaged primarily in attempting to acquire secondary financing for planning and development of the Black Hawk mine. According to reports from Mr. Higgins those efforts have been successful, and Summit Minerals has received a commitment for complete financing of the Black Hawk Mine project. It is expected that the loan will be funded within the next 30 days, and, at that time, Summit will immediately file an appropriate self-bond and surety in the amount of \$100,000.

Summit would appreciate your keeping information concerning expected funding confidential until such time as final approval is received from the lender.

I believe it is clear from the foregoing that Summit Minerals remains firm in its intent to explore the Black Hawk property and eventually develop a plan of operations for full development of the prospect. Therefore, I think it is inappropriate and premature for the Division to conclude that Summit is not pursuing an exploration permit, and it is likewise inappropriate for the Division to terminate the review process at this time.

Thank you for your continued cooperation and consideration in this matter. I will keep you informed regarding Summit's financing. If you should have any additional questions or need further information please give me a call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "A. John Davis", with a long horizontal flourish extending to the right.

A. John Davis

AJD.mm

cc: Jack Higgins