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MOTION FOR SUMMARY JUDGMENT

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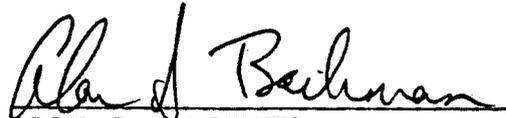
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set forth in Plaintiff's Memorandum in support of Motion for Summary Judgment on file herein and the affidavit of Kenneth E. May attached hereto as Exhibit "A" and by this reference incorporated herein. Said Memorandum and affidavit establish that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment in its favor as a matter of law.

DATED this 25th day of August, 1987.

DAVID L. WILKINSON
Attorney General



ALAN S. BACHMAN
Assistant Attorney General

MAILING CERTIFICATE

This is to certify that a copy of the foregoing
Motion for Summary Judgment was mailed postage prepaid this
25th day of August, 1987 to:

C. Van Drunen, Esq.
Suite 800, Boston Building
Salt Lake City, UT 84111

A handwritten signature in cursive script, appearing to read "Alan S. Bachman", is written over a horizontal line.

ALAN S. BACHMAN
Assistant Attorney General

DAVID L. WILKINSON
Attorney General
DONALD S. COLEMAN, USB #0695
Chief, Physical Resources Division
ALAN S. BACHMAN, Oregon State Bar #78014
Assistant Attorney General
124 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 533-6684

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE DIVISION OF OIL, GAS AND MINING,)
)
)
) Plaintiff,) AFFIDAVIT OF
) KENNETH E. MAY
) IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)
 vs.) Civil No. C-86-09016
)
)
) SUMMIT MINERALS, INC., a
) Utah corporation; UTAH COAL
) AND ENERGY, INC., a Nevada
) corporation,
)
)
) Defendants.)

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

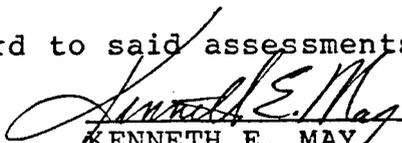
I, KENNETH E. MAY, being first duly sworn, do depose
and say that:

1. I am the Associate Director of the Division of Oil,
Gas and Mining and have been at that position for approximately
two years.

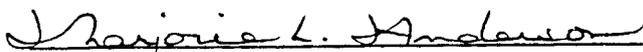
2. As part of my responsibilities I attend meetings and hearings of the Board of Oil, Gas and Mining, particularly in regard to mining matters as well as manage the mining aspect of the Division of Oil, Gas and Mining.

3. I have and am familiar with the enforcement actions of the Division and Board of Oil, Gas and Mining in regard to the above-named Defendants.

4. That I have read the Memorandum in Support of Motion for Summary Judgment prepared by Alan S. Bachman, Assistant Attorney General, and that the facts stated therein are true. That, in particular, it is true that the above-named Defendants failed to appeal any of the three assessment orders which are the subject of this case (C85-1-1-1, C85-1-2-1 and C-85-6-2-1) and at no time have said defendants deposited any funds in escrow in regard to said assessments.


KENNETH E. MAY
Associate Director
Division of Oil, Gas and Mining

SUBSCRIBED AND SWORN to before me at Salt Lake City
this 24th day of August, 1987.


NOTARY PUBLIC

Residing at Salt Lake City, Utah

My Commission Expires:

July 24, 1989

FACTS

1. The Division of Oil, Gas and Mining of the Department of Natural Resources and Energy in and for the State of Utah (hereinafter the "Division") is a regulatory and administrative body of the Board of Oil, Gas and Mining constituted under the laws and statutes of the State of Utah, and charged with the enforcement of the statutes and rules governing surface coal mining and reclamation operations pursuant to U.C.A. Sections 40-8-5, 40-10-2, and 40-10-6.

2. Summit Minerals, Inc., ("Summit Minerals") is a Utah corporation whose principal place of business is in Summit County, Utah. Summit Minerals is an owner, promoter, operator and developer of certain surface coal mining operations taking place on certain lands located in Summit County, Utah, more specifically described as follows:

The South half of the Northeast quarter and the North half of the Southeast quarter of Section 36, Township 3 North, Range 6 East, Salt Lake Base and Meridian.

This property described in this paragraph hereinabove shall be hereinafter referenced herein as the "subject land". The subject mining operation is known as the Black Hawk Mine. Summit Minerals claims the right to mine the coal located on the subject land as operator of a coal lease obtained by Utah Coal and Energy, Inc., and as the contract purchaser of the controlling interest in the stock of Utah Coal and Energy, Inc. Jack Higgins is the president, director and the registered agent of Summit

Minerals.

3. Utah Coal and Energy, Inc., ("Utah Coal") is a promoter, owner, operator and developer of certain surface coal mining operations taking place on the subject land and is a Nevada corporation whose certificate of authority was revoked by the State of Utah on November 30, 1980, but is doing business in the State of Utah. Utah Coal claims to be the lessee of certain coal rights located on the subject land. Jack Higgins is the president and director of Utah Coal.

4. Jurisdiction is invoked under U.C.A.(1953) Section 40-8-8(4), 40-10-20(4), 40-10-22(2a), (2b) and 78-3-4, as amended.

5. On November 12, 1985, a petition was filed with the Board of Oil, Gas and Mining by the Division seeking enforcement action by the Board against the defendants based upon defendants failure to obtain permits to engage in surface coal mining operations. After notice to the defendants, a hearing was held by the Board of Oil, Gas and Mining on December 5 and 6, 1985, to consider the aforesaid petition of the Division.

6. The Board on December 13, 1985 entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ("Order") a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein.

7. On March 1, 1986, the Board obtained an order and

judgment from the Third District Court for Summit County which upheld the Board's Order referred to hereinabove and awarded the Board civil penalties in the amount of \$9750.00. A copy of the default judgment entered therein is attached hereto as Exhibit "B" and by this reference incorporated herein. The Defendants have yet to pay any money towards this judgment.

ASSESSMENT ORDER C-85-1-1-1 BECAME FINAL

8. The Division issued Cessation Order C85-1-1-1 to Summit Minerals on March 1, 1985. A copy of said Cessation Order is attached hereto as Exhibit "C" and by this reference incorporated herein. The Division issued a proposed assessment on August 20, 1985 in the amount of \$3,240.00. Said proposed assessment was sent to Summit Mineral's authorized agent, Jack Higgins. A copy of said proposed assessment is attached hereto as Exhibit "D" and by this reference incorporated herein.

9. On December 2, 1985, an assessment conference was held for the purpose of reviewing the merits of the underlying Cessation Order and the proposed assessment. In attendance were counsel for the defendant Summit Minerals, an officer from Summit Minerals and the inspector from the Division who issued the Cessation Order.

10. On January 21, 1986, the assessment officer determined that the activities conducted by Summit Minerals amounted to "surface coal mining operations" as defined by U.C.A. 40-10-3(18)(a) and (b) (1983, as amended) and UMC 700.5 at pages 15 and 16. A finalized assessment for this violation in the amount of \$3,240 was issued on said date for C85-1-1-1. A copy of this finalized assessment is provided in Exhibit "E" attached hereto and by this reference incorporated herein. Summit Minerals was notified of its right to appeal the final assessment to the Board, but failed to do so.

11. At no time have Defendants deposited funds in escrow in order to perfect an appeal of the assessment under U.C.A. 40-10-20(3) and UMC-SMC 845.19 and 845.20.

ASSESSMENT ORDER C85-1-2-1 BECAME FINAL

12. The Division issued Cessation Order C85-1-2-1 to defendant Summit Minerals on August 15, 1985. A copy of said Cessation Order is attached hereto as Exhibit "F" and by this reference incorporated herein. This Cessation Order was issued on the basis that Summit Minerals had failed to comply with the prior Cessation Order and had still failed to comply with the applicable regulations.

13. The Division on October 2, 1985, issued a proposed assessment in the amount of \$17,250.00. Said proposed assessment

was sent to Summit Minerals authorized agent, Jack Higgins. A copy of said proposed assessment is provided in Exhibit "G" attached hereto and by this reference incorporated herein.

14. On December 2, 1985, an assessment conference was held for the purpose of reviewing the merits of the underlying Cessation Order and the proposed assessment. In attendance were counsel for Summit Minerals and the inspector from the Division who issued the Cessation Order.

15. On January 21, 1986, a final assessment for C85-1-2-1, in the amount of \$17,250.00, was issued. A copy of said final assessment is provided in Exhibits "E" and "H" attached hereto and by this reference incorporated herein.

16. Summit Minerals was notified of its right to appeal said final assessment to the Board, but failed to do so. On numerous occasions a demand for payment of the assessed penalty was made upon Defendant without any success.

17. At no time have Defendants deposited funds in escrow in order to perfect an appeal of the assessment under U.C.A 40-10-20(3) and UMC-SMC 845.19 and 845.20.

ASSESSMENT ORDER C85-6-2-1 BECAME FINAL

18. The Division issued Cessation Order C85-6-2-1 to Summit Minerals on November 4, 1985. A copy of said Cessation Order is provided as Exhibit "I" attached hereto and by this reference incorporated herein.

19. The Division, on December 5, 1985, issued a proposed assessment in the amount of \$2,020.00. Said proposed assessment was sent to Summit Mineral's authorized agent, Jack Higgins. A copy of said proposed assessment is provided in Exhibit "J" attached hereto and by this reference incorporated herein.

20. An assessment conference was not held for C85-6-2-1 for the reason that Summit Minerals must first request such a conference and failed to do so. The proposed assessment was finalized by an assessment officer on January 7, 1986, in the amount of \$2,020.00. A copy of said finalized assessment is provided in Exhibit "K" attached hereto and by this reference incorporated herein.

21. Summit Minerals was notified of its right to appeal the final assessment to the Board, but failed to do so.

22. On numerous occasions a demand for payment of said assessed penalty was made upon Summit Minerals with no success.

23. At no time have Defendants deposited funds in

escrow in order to perfect an appeal of the assessment under U.C.A 40-20-10(3) and UMC-SMC 845.19 and 845.20.

BOARD REQUESTED ATTORNEY GENERAL SEEK ENFORCEMENT

24. On October 23, 1986, the Division requested authority from the Board to use the office of the Attorney General to collect the outstanding penalties in a civil action in District Court pursuant to U.C.A. 40-10-20(4). The Board concluded that the Attorney General's Office should proceed to collect the assessed civil penalties.

ARGUMENT

I. THE IMPOSITION OF THE AFORESAID ASSESSMENTS BECAME FINAL ORDERS.

Under UMC-SMC 845.20, the final assessment becomes final if not timely appealed. Summit Minerals had thirty (30) days to appeal the assessments of civil penalty but failed to do so.

Thus, under UMC-SMC 845.20, the civil penalties assessed became due and owing within thirty (30) days of the receipt of the subject assessment conference report letters.

II. SUMMIT'S FAILURE TO TIMELY ESCROW THE FULL AMOUNT OF THE CIVIL PENALTY RESULTED IN A WAIVER OF ANY RIGHT OF APPEAL FROM THE FINAL ASSESSMENTS.

This Court lacks jurisdiction to hear this matter as a result of Summit's failure to timely escrow the final assessed civil penalty. Section 40-10-20(3) of the Utah Code Annotated provides, in part, that:

The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the board for placement in an escrow account. . . . Failure to forward the money to the board within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.
(Emphasis added.)

Although Utah has not interpreted this provision of this statute, the federal courts have had several opportunities to review identical language. In Graham v. Office of Surface Mining, 722 F.2d 1106 (3rd Cir. 1983), Graham appealed from a district court order granting summary judgment in favor of OSM for, inter alia, Graham's failure to escrow the amount of the civil penalty.

The circuit court upheld the constitutionality of 30 U.S.C. § 1268(c) [Surface Mining Control and Reclamation Act §

518(c)1, which contains language identical to U.C.A. § 40-10-20(3). The court stated:

We find, as has every other court which has considered this question, that the review procedures which were available to Graham without prepayment of the proposed penalty are more than sufficient to comply with due process requirements Graham, 722 F.2d at 1111 (emphasis in original).

The court determined that failure to prepay the civil penalty would foreclose Graham from access to court review:

Section 1268(c) provides for the "waiver of all legal rights to contest the violation or the amount of the penalty" upon failure to prepay the penalty into escrow. Graham, 722 F.2d at 1112, footnote 8 (emphasis added by court).

The court went on to affirm the district court's issuance of a summary judgment in favor of OSM.

The sixth and seventh circuit courts have made the same determination in Blackhawk Mining Co. v. Andrus, 711 F.2d 753 (6th Cir. 1983) and B & M Coal Corp. v. Office of Surface Mining, 699 F.2d 381 (7th Cir. 1983). In both of those cases, the constitutionality of prepayment as a prerequisite to appeal was upheld.

The meaning and constitutionality of U.C.A. 40-10-20(3) has therefore been judicially established through interpretation of similar statutes, and thus provides ample precedent for this Court to follow in deciding this issue.

III. THE FAILURE TO SATISFY THE REQUIREMENT OF TIMELY ESCROWING OF CIVIL PENALTIES IS A JURISDICTIONAL DEFECT WHICH RENDERS SUMMIT'S APPEAL INVALID.

The U.S. Department of Interior Office of Hearings and Appeals decided a very similar issue in the case of TRI Coal Co. v. Office of Surface Mining, Docket No. IN 2-9-P, December 18, 1984, (M. Morehouse), affirmed, 85 IBLA 146 (1985). This case is attached as Exhibit "A" to this Memorandum.

In that case, TRI Coal failed to escrow the civil penalty before the expiration of the thirty-day period for perfecting appeals. Upon learning of this error, TRI Coal belatedly paid the penalty.

Administrative Law Judge Morehouse concluded that he "had no jurisdiction to review the merits of the petition for review, and it must therefore be dismissed." Id., at 2. Morehouse cited several cases which supported his finding that "prepayment of the amount of a proposed civil penalty by one seeking review of that penalty is essential to establish jurisdiction to entertain the petition." Id., at 3. In addition, Morehouse went on to say:

In the present case, there was prepayment by petitioner, however, the prepayment was not timely. The statute and the regulation specifically requires [sic] timely prepayment. Id., at 3 (emphasis added).

Whereupon, albeit reluctantly, Administrative Law Judge Morehouse dismissed the petition.

The Utah Supreme Court has consistently and axiomatically held that failure to timely perfect an appeal is a jurisdictional defect requiring dismissal of the appeal.

Proswood, Inc. v. Mountain Fuel Supply Co., 676 P.2d 952, 955

(Utah 1984). In that case, an attorney failed to file the docketing fee within the thirty days allowed for an appeal to the Supreme Court. A district court judge considered the circumstances to be "excusable neglect" under Rule 73 of the Utah Rules of Civil Procedure and allowed a 30-day extension to pay the docketing fee. The Supreme Court, however, determined that the district court had no authority to extend the filing period and dismissed the appeal for lack of jurisdiction. The court concluded that the "plain, unambiguous language" of the rule requires that two steps be performed within the thirty-day period, and that both must be timely performed or the appeal will be invalid.

U.C.A. § 40-10-20(3) requires only one step to perfect an appeal. The person appealing the fact or the amount of the assessed penalty must, within 30 days, "forward the proposed amount to the board for placement in an escrow account." The clear, unambiguous language of the statute provides that "failure to forward the money to the board within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty."

CONCLUSION

In this case, Defendants failed to appeal the assessments to the Board and failed to submit the funds in escrow in order to perfect any appeal therefrom. Thus, the assessments became final orders and no longer subject to appeal

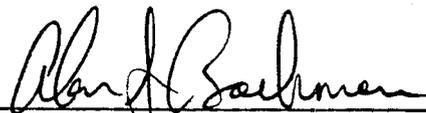
"A Motion for Summary Judgment can only be granted when there is no genuine issue as to any material fact...". Gadd v. Olsen, 685 P.2d 1041 (Utah 1984). The purpose of summary judgment is to avoid unnecessary trials where there is no issue as to any material fact and the moving party is entitled to judgment in its favor as a matter of law. Reagan Outdoor Advertising V. Lundgren, 692 P. 2d 776 (Utah 1984).

Since there is no dispute as to the failure to have effected appeals of the imposition of the assessments

and that such assessments have become final, Plaintiff is entitled as a matter of law to judgment in accordance with the relief requested in the Complaint on file herein.

DATED this 25th day of August, 1987.

DAVID L. WILKINSON
Attorney General

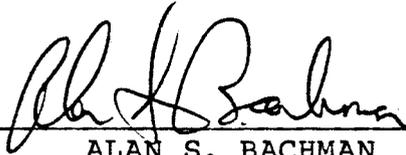


ALAN S. BACHMAN
Assistant Attorney General

MAILING CERTIFICATE

This is to certify that a copy of the foregoing Memorandum in Support of Motion for Summary Judgment was mailed postage prepaid this 25th day of August, 1987 to:

C. Van Drunen, Esq.
Suite 800, Boston Building
Salt Lake City, UT 84111


ALAN S. BACHMAN
Assistant Attorney General

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

---oo0oo---

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

IN RE: JACK HIGGINS, CESSATION :	Docket No. 85-055
ORDER C85-1-2-1, BLACK HAWK MINE,	Cause No. INA/043/001
SUMMIT COUNTY, UTAH	

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Pursuant to the Petitions of the Division of Oil, Gas and Mining ("Division" or "Petitioner") and Gary Boyer, Stephen Boyer and Joseph LaVerne Boyer (the "Boyers"), these causes came on for hearing before the Board of Oil, Gas & Mining, ("Board"), Department of Natural Resources and Energy, State of Utah, on Thursday, December 5, 1985, at 10 o'clock a.m. in the Board Room of the Division of Oil, Gas & Mining, 355 West North Temple, 3 Triad Center, Suite 301, Salt Lake City, Utah. The following Board members were present and participated in the hearing:

Gregory P. Williams, Chairman
James W. Carter
John M. Garr
E. Steele McIntyre
Charles R. Henderson

The Board was represented by Barbara W. Roberts,
Assistant Attorney General for the State of Utah.

Appearances for the Division of Oil, Gas & Mining were
made by:

Dr. Dianne R. Nielson, Division Director
Kenneth May, Associate Director, Mining

The Division was represented by Mark C. Moench,
Assistant Attorney General for the State of Utah.

Respondents Jack Higgins and Summit Minerals, Inc.
("Summit Minerals") were not present but were represented by A.
John Davis and Thomas A. Mitchell of Hugh C. Garner and
Associates, 310 South Main, Suite 1400, Salt Lake City, Utah
84101.

Respondents Utah Coal and Energy, Inc. ("Utah Coal")
and Summit Energy, Inc. ("Summit Energy") were not present or
represented at the hearing.

Respondent Bennett Leasing Co. ("Bennett Leasing") was
represented by Mark S. Swan of Corbridge, Baird & Christensen,
215 South State Street, Suite 800, Salt Lake City, Utah 84101.

The Boyers were represented by Patrick J. Garver of
Parsons, Behle and Latimer, 185 South State Street, Suite 700,
Salt Lake City, Utah 84101.

Testimony was given on behalf of the Division by Joseph
C. Helfrich, Randy Harden, and Lowell T. Braxton; Gary Boyer on
behalf of the Boyers; and Richard Kopp on behalf of Jack Higgins
and Summit Minerals.

NOW, THEREFORE, the Board having fully considered the petitions of the Division and the Boyers and the testimony adduced and the exhibits received in said hearing, and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT AND

CONCLUSIONS OF LAW

1. Notice of the time and place for the public hearing was given to all parties according to law and the rules of the Board and no objection to said notice was heard.

2. The Board has jurisdiction over all matters covered by said petitions and over all parties named in the petitions.

3. At the hearing the petition of the Division in Docket No. 85-070 and of the Boyers in Docket No. 85-055 were consolidated for hearing.

4. The Boyers' motions to Intervene and file Boyers Reply to Jack Higgins and Summit Minerals' Response to Petition were granted.

5. The area at issue in the hearing was the Black Hawk Mine located in Section 36, T. 3 N. R. 6 E., Summit County, Utah.

6. The Board issued an order on January 23, 1980, which inter alia required that Utah Coal post a \$15,000 performance bond and submit a complete mining and reclamation plan by April 23, 1980, or pay a civil penalty of \$4250. Neither the bond nor a complete mining and reclamation plan has been filed with the Division by Utah Coal or any party acting on behalf of Utah Coal.

7. The Respondent Utah Coal knowingly and wilfully violated the Board's order of January 23, 1980, in that Utah Coal has failed to post a bond or file a complete mine plan and thus should be assessed a civil penalty in the amount of \$4250, which sum is due immediately from Utah Coal.

8. On August 14, 1985, Cessation Order C85-1-2-1 was issued to Jack Higgins based upon the failure of the operator of the Blackhawk Mine to abate Cessation Order C85-1-1-1 within the time provided therein.

9. On September 17, 1985 the Board issued an Order granting Mr. Higgins' Petition for Temporary Relief from the daily \$750.00 penalties imposed by C85-1-2-1 during the period September 9 to September 30, 1985. Although the Division terminated C85-1-2-1, the temporary relief Order required that Mr. Higgins file a reclamation bond in the amount of \$100,000.00 on or before September 30, 1985. Mr. Higgins failed to post a bond.

10. Summit Minerals, Summit Energy, Jack Higgins and Utah Coal have failed to comply with the terms of the Board's temporary relief Order dated September 17, 1985, in that they have failed to post the required reclamation bond. Pursuant to § 40-10-20, Utah Code Ann. (1981, as amended), the above-named persons or entities have wilfully and knowingly violated a final order issued by this Board and thus should be jointly and severally assessed a civil penalty of \$5,000, which sum is due immediately.

11. The operation of the Black Hawk Mine is in violation of § 40-10-9, Utah Code Ann. (1981, as amended) in that it is and since 1976 has been unpermitted and unbonded and has been engaged in surface coal mining operations

12. Jack Higgins, Summit Minerals, Summit Energy, and Utah Coal each is or has been an owner or operator of the Black Hawk Mine or has otherwise been responsible for and has exercised control over its operations, and has failed to obtain an approved mining and reclamation plan and bond and each of said parties is jointly and severally liable for reclamation of all existing disturbances.

13. Bennett Leasing is or has been an owner or operator of the Black Hawk Mine or has otherwise been responsible for or has exercised control over its operation and is jointly and severally liable for reclamation of all disturbances existing as of the date of Bennett Leasing's sale of the stock of Utah Coal to Summit Minerals.

14. With respect to the matter of a reclamation bond, Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy are responsible for posting a reclamation bond within ten days, such bond to be in the amount of \$50,000. Such parties are also responsible for posting an additional bond in the additional amount of \$70,300 within 30 days, in order that within 30 days the total amount of the bond will be \$120,300. Such bonds must be in a form and from a surety acceptable to the Board.

15. If said parties shall fail to post either or both bonds as ordered, appropriate action for enforcement to insure reclamation of the mine site is necessary. Until such time as acceptable bonds in the amount of \$120,300 have been posted, all respondents should, on the basis of a history of past violations of Division and Board orders, be barred from occupancy of the Black Hawk Mine property except for the purposes of maintaining the security of the property and equipment thereon, this provision to be effective to the maximum extent permitted by law.

16. During the 30-day period prior to the posting of the bonds, no respondent or person acting on their behalf should be permitted to occupy the property, except to the extent they may be directed to do so by the Division to accomplish the closing of the portal if the Division deems that action appropriate for safety reasons.

17. At such time as approved sureties in the amount of \$120,300 have been posted, Jack Higgins, Utah Coal and Energy, Summit Minerals, and Summit Energy shall be allowed to have such access to and occupancy of the mine area as may be required for the limited purposes of gathering data and information as may be necessary in order to file a mining and reclamation plan with the Division. Those parties should file such a plan within 90 days, and the bond amounts shall be adjusted in accordance with the mining and reclamation plan in accordance with normal practices upon filing of such a plan.

ORDER

IT IS HEREBY ORDERED as follows:

1. Pursuant to § 40-10-20, Utah Code Ann. (1981, as amended) the Respondent Utah Coal is assessed a civil penalty in the amount of \$4250 relating to the failure to comply with the Board's Order of January 23, 1980, which sum is due immediately from Utah Coal.

2. Pursuant to § 40-10-20(6), Utah Code Ann. (1981, as amended) Summit Minerals, Summit Energy, Jack Higgins and Utah Coal are jointly and severally assessed a civil penalty of \$5,000 relating to the failure to comply with the Board's Order of September 17, 1985, which sum is due immediately.

3. The civil penalties owed hereunder may be recovered in a civil action by the Attorney General of the State of Utah in any appropriate district court of the state, pursuant to § 40-10-20(4), Utah Code Ann. (1981, as amended).

4. Jack Higgins, Summit Minerals, Summit Energy, and Utah Coal are jointly and severally liable for reclamation of all existing disturbances.

5. Bennett Leasing is jointly and severally liable for reclamation of all disturbances existing as of the date of the sale of the stock of Utah Coal from Bennett Leasing to Summit Minerals.

6. Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy shall post a reclamation bond within ten days from December 6, 1985, such bond to be in the amount of \$50,000. Such

parties shall post an additional bond in the additional amount of \$70,300 within 30 days of December 6, 1985, in order that within 30 days the total amount of the bond will be \$120,300. Such bonds shall be in a form and from a surety acceptable to the Board.

7. If said parties shall fail to post either or both bonds as ordered, the Division is directed to take immediate appropriate action for enforcement of this Order. Until such time as acceptable bonds in the amount of \$120,300 have been posted, all respondents are barred from occupancy of the Black Hawk Mine property except for the purposes of maintaining the security of the property and equipment thereon, this provision to be effective to the maximum extent permitted by law.

8. During the 30-day period prior to the posting of the bonds, those parties may occupy the property to the extent they may be directed to do so by the Division. We have in mind the closing of the portal if the Division deems that appropriate for safety reasons and if the Division so determines. Our order is not intended to prevent those parties from complying with such a determination.

9. At such time as approved sureties in the amount of \$120,300 have been posted, Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy shall be allowed to have such access to and occupancy of the property as may be required for the limited purposes of gathering data and information as may be necessary in order to file a reclamation plan with the Division.

Those parties are ordered to file such a plan within 90 days, and the bond amounts shall be adjusted in accordance with normal practices upon filing such a ^{plan} claim.

10. The effective date of this order shall be December 6, 1985, the concluding date of the hearing in this matter.

11. This is a final order of the Board.

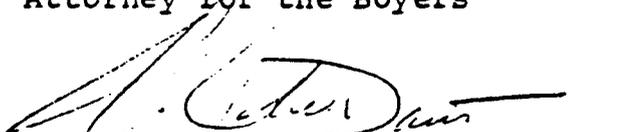
DATED this 13th day of December, 1985.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

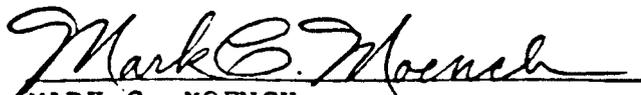
By: 
GREGORY P. WILLIAMS, Chairman

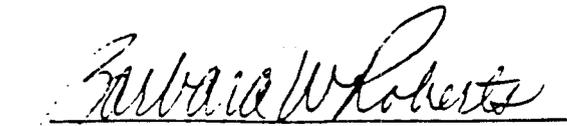
APPROVED AS TO FORM:


PATRICK J. GARVER, ESQ.
Attorney for the Boyers


JOHN DAVIS
Attorney for Jack Higgins and
Summit Minerals, Inc.


MARK SWAN, ESQ.
Attorney for Bennett Leasing Co.


MARK C. MOENCH
Assistant Attorney General
Attorney for the Division


BARBARA W. ROBERTS
Assistant Attorney General
Attorney for the Board

State of Utah
County of Summit
I, Douglas B. Bee
Summit County, St
foregoing is a full
of Default

EXHIBIT "B"

DIVISION OF OIL,
GAS AND MINING V.
SUMMIT MINERALS,
INC.

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Gene T
JCK Higgins
e.
d and
19 EB
Clerk
Clerk

In the matter of the
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IN WITNESS WHERE
affix the seal of said

By Douglas B. Bee
David L. Wilkinson Deputy Clerk

DAVID L. WILKINSON
Attorney General
DONALD S. COLEMAN, Bar No. 0695
Physical Resources Division
MARK C. MOENCH, Bar No. 2284
Assistant Attorney General
124 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 533-6684

No.
FILED
MAR 17 1985

Clerk of Summit County
BY.....
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

THE BOARD OF OIL, GAS AND
MINING, Department of Natural
Resources for the State
of Utah,

Plaintiff,

vs.

JACK HIGGINS, an individual,
SUMMIT MINERALS, INC., a Utah
Corporation, SUMMIT ENERGY,
INC., a Utah Corporation,
UTAH COAL AND ENERGY, INC., a
Nevada Corporation,

Defendants.

JUDGMENT ON DEFAULT

Civil No. 8696

In this action the Defendants, Jack Higgins, an individual, Summit Minerals, Inc., a Utah Corporation, Summit Energy, Inc., a Utah Corporation, Utah Coal and Energy, Inc., a Nevada Corporation, having been regularly served with process and having failed to appear and answer the Plaintiff's Complaint on

file herein, the legal time for answering having expired and the default of the said Defendants in the premises having been duly entered according to law, now upon application of said Plaintiff to the above-entitled Court, Judgment is hereby entered against said Defendants in pursuance of the prayer of said Complaint.

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, IT IS ORDERED, ADJUDGED AND DECREED that said Plaintiff do have granted and recover from said Defendant the following relief:

1. Plaintiff is entitled to a judgment against Utah Coal and Energy, Inc. in the amount of four thousand two hundred and fifty dollars (\$4,250).

2. Plaintiff is entitled to a judgment against all named Defendants for joint and several liability in the amount of five thousand dollars (\$5,000).

3. Defendants are liable for reclamation, and for posting of a reclamation bond, in a form acceptable to the Division of Oil, Gas and Mining, in the amount of one hundred twenty thousand three hundred dollars (\$120,300).

4. Defendants are further enjoined and barred from all occupancy of the Subject Land except for the purposes of maintaining the security of the site and equipment thereon.

5. The Order of the Board of Oil, Gas and Mining issued on December 13, 1985, in Docket No. 85-070/85-055, Cause

No. INA/043/001, is hereby affirmed consistent with the prayer
for relief requested by the Plaintiff.

Judgment rendered this 17 day of March, 1986.

Scott Daniel
DISTRICT JUDGE

DOGM

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

DIVISION OF OIL,
GAS AND MINING V.
SUMMIT MINERALS I

1588 West North Temple
Salt Lake City, Utah 84116
Telephone (801) 533-5771

CESSATION ORDER NO.C

From the STATE OF UTAH
To the Following Permittee or Operator:

NAME JACK HIGGINS
MINE BLACKHOLE SURFACE UNDERGROUND OTHER _____
COUNTY AND STATE SUMMIT, UTAH TELEPHONE 801-645-7565
MAILING ADDRESS: 2763 HENDRY PARK LOOP, PARK CITY, UTAH 84060
OSM MINE NO. _____ STATE PERMIT NO. UWA 10-13/001 MSHA I. D. NO. _____
CATEGORY OF OWNERSHIP: STATE FEE FEDERAL MIXED
CATEGORY OF OWNERSHIP: STATE FEE FEDERAL MIXED
DATE OF INSPECTION FEBRUARY 27TH, 19 85
TIME OF INSPECTION: FROM 2:30 a.m. to 3:30 a.m.
 p.m. p.m.
NAME OF OPERATOR (if other than permittee) _____
MAILING ADDRESS: _____

Under the authority of the Utah Coal Mining & Reclamation Act (Section 40-10-1 et seq., Utah Code Annotated), the undersigned authorized representative of the Director and Division of Oil, Gas & Mining has conducted an inspection of the above mine on the above date and has found that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This Order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, Utah Code Annotated, you are ordered to CEASE IMMEDIATELY the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe and workmanlike manner.

The undersigned authorized representative hereby finds that this Order does does not require cessation of mining expressly or in practical effect. For this purpose, "mining" means extracting coal from the earth or a waste pile and transporting it within or from the minesite.

This order shall remain in effect until it expires as provided on the reverse, or is modified, terminated or vacated by written notice signed by an authorized representative of the Secretary of the Interior.

Date of Service 3/1/85 Joseph C. Hefferich
SIGNATURE OF AUTHORIZED REPRESENTATIVE

Time of Service 2:50 a.m. p.m. JOSEPH C. HEFFERICH # 1
NAME AND I. D. NO.

Person Served with Notice JACK HIGGINS
PRINT NAME AND TITLE
NOTICE SENT VIA CERTIFIED MAIL # P 402457 377

Signature _____

IMPORTANT — PLEASE READ REVERSE OF THIS PAGE



STATE OF UTAH

Cessation Order No. C 85-1-1-1

Violation No. 1 of 1

Nature of Condition, Practice, or Violation

CONDUCTING UNDERGROUND COAL MINING ACTIVITIES WITHOUT DIVISION APPROVAL

Provision(s) of the Regulations, Act, or Permit Violated

UTAH CODE ANNOTATED 1955 SECTION 40-10-9

Check Appropriate Box:

- The condition, practice, or violation is creating an imminent danger to the health or safety of the public.
- The condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
- The permittee or operator has failed to abate Violation(s) No. _____ included in Notice of Violation No. N _____ within the time for abatement originally fixed or subsequently extended.

Operation(s) to be Ceased Immediately

ANY ACTIVITY ASSOCIATED WITH THE SITE DEVELOPMENT OF THE BLACKHAWK MINE

Affirmative Obligation(s) and Time for Abatement (if applicable)

CEASE ALL OPERATIONS IMMEDIATELY
SUBMIT A MINING AND RECLAMATION PLAN TO THE DIVISION OR RECURIM THE AREA KNOWN AS THE BLACKHAWK MINE IN ACCORDANCE WITH THE RECLAMATION REQUIREMENTS OF UTAH'S PERMANENT COAL REGULATORY PROGRAM WITHIN 60 DAYS, NO LATER THAN APRIL 30TH 1985.