

0003

### Document Information Form

Mine Number: C/043/001

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Explanation:

PETITION FOR HEARING

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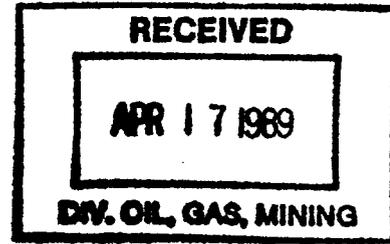
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0003

*LPA's file*

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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 Determination of  
The Division of Oil, Gas, and Mining  
to Forfeit the Collateral Bond of  
Johnell Limited Partnership Under  
UMC 800.50, Summit No. 1 Mine,  
Summit Minerals, Inc., Rev/043/001,  
Folder #3, Summit County, Utah.

PETITION FOR HEARING

Docket No. \_\_\_\_\_

Cause No. \_\_\_\_\_

Johnell Limited Partnership, with John L. Margetts as general partner, (hereinafter Johnell) by and through its undersigned attorney, Jack Fairclough, respectfully petitions the Board of Oil, Gas, and Mining (hereinafter Board), pursuant to Rule UMC 800.50 entitled Forfeiture of Bonds for a hearing as to a determination of the Division of Oil, Gas, and Mining (Division) to forfeit subject collateral bond.

Johnell respectfully requests that a hearing be set for this matter by the Board for May 25, 1989.

The basis of this Petition is set forth in the following statements of fact and issues.

STATEMENT OF FACTS

1. The mine concerned was operated by Utah Coal & Energy, Inc. with new mine entries apparently being made in 1974-75. It appears that no commercial mining of coal took place after August 3, 1977. Approximately 10 loads of coal were shipped to U&I Sugar Research Center between August, 1978 to November, 1978. When this coal was mined is not known but it is believed it was done prior to August 3, 1977.

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2. Bennett Leasing Company foreclosed its machinery leases and apparently took over the mining leases in 1982.

3. Bennett transferred the leases to Summit Minerals Inc. approximately November, 1984.

4. Approximately May, 1986 Zions First National Bank took over the leases in lieu of foreclosure and Zions transferred the leases to the Summit Directors.

5. Summit and Bennett never mined coal from the mine concerned and it is believed Utah Coal did not do so after August 3, 1977. Summit and Bennett never received permits to mine although they tried to obtain the same from the State.

6. On or about June 2, 1986 Johnell posted a reclamation bond for the purpose of enabling Summit to obtain a mining permit.

7. Bennett and Summit never performed any surface mining of coal nor of other materials.

8. On or about the fall of 1986 Summit had an agreement to sell gravel from the surface of the area to Park City wherein a profit of approximately \$600,000.00 would have been realized. The gravel was lying on the surface of the area and was basically there as a result of gravel slides that had covered the portals. Mark Moench, an Assistant Utah Attorney General, obtained an injunction for the Division precluding Summit from selling the gravel to Park City and it is understood and so stated that he notified Park City the sale could not proceed. Immediately thereafter Lorin Moench, Mark's father, sold Park City gravel from his own property which is near the mine area.

9. The gravel to be sold to Park City had been placed into piles in preparation for such sale and the work to gather the gravel into such piles was minimal and basically resulted, it is believed, from efforts to clean up the slide debris.

10. The gravel in the piles referred to above is still in its location at the present time.

11. It is believed and therefore stated that having no permits to mine, work by Summit and Bennett on the surface of the mine area has consisted solely of maintenance, clean up of debris and minimal use of surface areas. Such activities did not add to in any appreciable sense to the area as it existed prior to August 3, 1977. The entire area as it now exists is considerably improved as to appearance since 1977. Summit did inquire of the owners of the surface rights, the Boyers, as to whether or not Summit could clean up the building on the property, the bridge and the road. The Boyers refused this and stated those items and others had to be left in their current condition.

#### POINT I

The bond concerned does not permit the Division to require reclamation work for area conditions existing prior to August 3, 1977.

The bond does not state that it can be forfeited by the Division unless reclamation work is performed to reclaim surface areas impacted by mining work prior to August 3, 1977.

No coal mining is known to have occurred after August 3, 1977 by Utah Coal and certainly none was ever performed by Bennett or Summit.

No surface use of the area was made for mining purposes by Summit or Bennett. Minimal use of the surface area was made following August 3, 1977 only for clean-up efforts and maintenance of the road, building and bridge.

The only use of the surface area that could have resulted in other than clean-up efforts was the sale of gravel to Park City. This was prevented by

Division Counsel, Mr. Moench by an injunction. Up to that time the only work on the surface was to gather gravel in piles following slides occurring on the property that were Acts of God and not Summit or Bennett's fault. Efforts to clean up and restore the area after slides should not be construed as mining work nor should it form the basis for bond forfeiture.

The language of the bond is ambiguous and under rules of construction it should not be used by the Division to force reclamation work for surface activity not connected with mining that took place since the 1800's. It does not by its terms purport to require such reclamation. It also, by its terms, should not be found to require reclamation work when no permit was ever issued by the State and no mining work, below or above ground, took place after August 3, 1977 or June 2, 1986, the date of the bond.

#### POINT II

The bond concerned may not be properly forfeited because of an apparent conflict of interest existing herein on the part of Division Counsel

Had Summit been able to sell surface gravel resulting primarily from slide activity at the site caused by natural forces and resulting basically from its clean up efforts Summit would have been able to reclaim all areas concerned out of its own funds from the sale.

Mr. Mark Moench secured an injunction prohibiting said sale for the Division and he then, it is understood, notified Park City the sale could not be made. Almost simultaneously Mark's father, Lorin Moench, sold gravel from his own land to Park City.

The facts indicate Mr. Moench had a conflict of interest in this matter. Had the sale taken place there would be no need now to seek forfeiture by the Division of the Johnell bond.

Based on the foregoing it is respectfully requested that the Board find that the determination of the Division to forfeit the bond of Johnell in this matter is not proper and the same should be precluded.

Dated this 17th day of April, 1989.

  
Jack Fairclough  
Attorney for Johnell Limited  
Partnership  
242 South Sandrun Road  
Salt Lake City, Utah 84103  
(801) 363 9688

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing Petition for Hearing was mailed on the 17th day of April, 1989 to Ms. Barbara Roberts, Assistant Utah Attorney General, 124 State Capitol, Salt Lake City, Utah, 84114.

  
Jack Fairclough

Demolition and earthwork costs were determined from the Means Site Work Cost Data 1985. Revegetation costs are estimated from similar work on other coal operations. The inflation rate is based on Means Cost Data Index averaged over the past three years.

#### Demolition and Cleanup

Includes the cost of demolition and removal of the existing facilities on the site, excluding the two fabricated metal shops. Costs include the tipple, binwall, conveyors, mining equipment, utilities, scrap and other debris.

#### Slope and Highwall Reduction

Reduction of slopes along the bench cut to the west and along the highwall. Volume estimate based on backfill grading using dozers. Earthwork quantity based on rough estimate from existing contour map.

#### General Earthwork and Site Grading

Includes earthwork remaining for the rest of the site, finish grading for reclamation and topsoil distribution. Quantities based on rough estimate from existing contour maps.

#### Revegetation

Includes the cost of seeding, mulching and fertilization of the estimated 16 acres to be reclaimed.

#### Maintenance

Maintenance requirements for the site are for a period of 10 years after reclamation construction and include repair and maintenance for rills and gullies and for replanting local areas of incomplete or inadequate vegetation density.

#### SUMMARY

The disturbed area outlined on the map is a rough approximation and should be surveyed for a final determination of the disturbed area. Cost estimate is only a preliminary estimate for the bond amount and the approved reclamation plan would have to be prepared in order to provide a complete and comprehensive cost breakdown.

Based on the 16 acres of disturbed area, the adjusted cost per acre is \$7519 per acres, considerably less than the average of \$24,000 per acre as previously cited. However, this preliminary estimate is considered adequate based on current site specific information for the Black Hawk Mine.

The Preliminary cost estimate for the Black Hawk Mine should only be used until the applicant provides suitable information to complete the surety requirements of the Division. In consideration of the current interest and activity on the site, it will be to the advantage of both the State and Utah Coal and Energy to submit plans and details at the earliest possible date.