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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.	ORDER Docket No. 89-009 Cause No. INA/043/001

Pursuant to the Petition of Johnell Limited Partnership ("Johnell"), and the Motion for Summary Judgment filed by the Division of Oil, Gas and Mining ("Division") this cause came on for consideration before the Board of Oil, Gas and Mining, Department of Natural Resources, in and for the State of Utah, on Thursday, June 22, 1989, in the boardroom of the Division of Oil, Gas and Mining of the Department of Natural Resources, 3 Triad Center, 355 West North Temple, Salt Lake City, Utah.

The following Board members were present and participated in the hearing:

Gregory P. Williams, Chairman
Judy F. Lever
James W. Carter
John M. Garr
Charles R. Henderson
Richard B. Larsen

Petitioner, Johnell, was represented by Jack Fairclough. Respondent, the Division, was represented by Barbara W. Roberts, Assistant Attorney General. Also present and participating was Patrick J. Garver, attorney for the surface landowners, referred to at the hearing as the "Boyers".

Now, therefore, having heard argument pursuant to Respondent's Motion for Summary Judgment and having fully considered the law as it relates to the undisputed facts, the Board hereby makes the following:

FINDINGS AND CONCLUSIONS

1. Due and regular notice of the time, place and purpose of the hearing was given to all interested parties in the form and manner and within the time required by the law and the rules of the Board.

2. The Board has jurisdiction over the matter covered by the hearing and over all parties interested therein and has jurisdiction to make and promulgate the Order hereinafter set forth.

3. On or about June 4, 1986, Petitioner, the Division and Summit Minerals, Inc. ("Summit") entered into a Collateral Bonding and Indemnity Agreement ("Agreement") wherein Summit agreed to be responsible for reclamation of the described disturbed areas of the Black Hawk Mine and whereby Petitioner provided a Trust Deed for certain real property as security for the Agreement, naming the Division as beneficiary.

4. Summit failed to reclaim the Black Hawk Mine and, under the Agreement, upon Summit's failure to reclaim the Mine, the Division declared the bond forfeited.

5. Petitioner filed a petition on April 17, 1989, requesting that the Board find the Division's actions in this matter to be improper and to preclude the Division from declaring the bond forfeited.

6. The Division filed a Motion for Summary Judgment on June 13, 1989, on the basis that there were no significant facts in contention and that the Agreement authorized the Division to cause the bond to be forfeited and that the Division was, therefore, entitled to judgment as a matter of law.

7. The parties agreed that the facts as stated in the Division's Memorandum in Support of Motion for Summary Judgment or in the Alternative Motion to Strike are not in dispute and the Board accepts those facts as true.

8. The Division's actions were proper and the Division has the authority to begin foreclosure proceedings in order to obtain the funds necessary to reclaim the Mine.

ORDER

It is therefore Ordered:

1. The Division's Motion for Summary Judgment is granted thereby upholding the Division's actions in causing the bond to be forfeited.

2. The Division is directed to proceed forthwith to conduct the foreclosure of the Trust Deed or a Trust Deed sale.

3. Nothing in this Order is intended to relieve any person, partnership, corporation, or any other entity who may be liable for reclamation of the Black Hawk Mine from that reclamation obligation. Nor is this Order intended to expressly or impliedly prevent the Division from seeking whatever additional funding for reclamation of the Black Hawk Mine as is necessary from any party the Division determines may have been involved in or had an interest in the Black Hawk Mine or any coal mining operations thereon including any person associated with Petitioner Johnell.

SO ORDERED this 20th day of July, 1989.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

GREGORY P. WILLIAMS, Chairman

APPROVED AS TO FORM:

Fred G Nelson
Assistant Attorney General

State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

January 26, 1989

(THIS LETTER WAS SENT TO THE FOLLOWING ATTACHED LIST)

11/20/97

Re: Determination By Division to Forfeit Collateral Bond Under UMC 800.50, Summit No. 1 Mine, Summit Minerals, Inc., REV/043/001, Folder #3, Summit County, Utah

This is to notify you that the Division of Oil, Gas and Mining ("Division") is hereby commencing a proceeding to forfeit the collateral bond under the Collateral Bonding and Indemnity Agreement, dated June 4, 1986 and attached as Exhibit "I".

The property subject to forfeiture is described in the Trust Deed, dated June 2, 1986, attached as part of Collateral Bond, Exhibit "I", and noted as Exhibit "C" of that agreement.

Forfeiture is necessary due to the fact that Summit Minerals, Inc. failed to reclaim in accordance with the Utah Coal Mining and Reclamation Act, Utah Code Annotated §40-10-1 et seq., (1953, as amended), and the Mined Land Reclamation Act, Utah Code Annotated §40-8-1, et seq., (1953, as amended) (hereinafter collectively referred to as the "Act") and implementing regulations. The letter of the Division dated February 26, 1988, Notice of Permit Denial, is attached as Exhibit "II".

All of the collateral may be necessary to fulfill the reclamation obligation as the reclamation cost may exceed the value of the property. In the event the amount forfeited is insufficient to pay the full cost of reclamation, the operator shall be liable for the remaining costs. The Division will seek all applicable legal remedies for such excess amount.

Forfeiture of the property may be avoided if within 30 days of receipt of this letter, you have reached an agreement with the Division as to reclamation of the mine in accordance with Underground Coal Mining Rules, UMC 800.50 A.2.(i); or the surety has been authorized to complete reclamation in accordance with UMC 800.50.A.2.(ii). If this is your desire, please contact Kenneth E. May, Associate Director, Mining, immediately. A copy of UMC 800.50 is attached as Exhibit "III".

You have a right to appeal this forfeiture action of the Division to the Board of Oil, Gas and Mining. Such an appeal must be in writing and filed with the Board no later than 30 days from the date of receipt of this letter. Upon filing such a request, the Board will schedule the matter for hearing.

If no request for appeal is filed, or if the conditions of UMC 800.50.A.2 are not met within the 30 day period, the Division will proceed with legal action to obtain and sell the property; proceeds will then be used for reclamation of the site.

Best regards,

Dianne R. Nielson

Dianne R. Nielson
Director

cl
Attachments
cc: K. May
A. Bachman
S. Linner
R. Harden
BT45/145-146

NOTE: Mr. Margetts, Mr. Higgins, Mr. Ira Ferrell, and Ms. Pamela M. Higgins are to be personally served as well as receiving certified notice.

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 530Mr. John L. Margetts
171 Third Avenue, Terrace Falls #413
Salt Lake City, Utah 84103Dear Mr. Margetts:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 538Johnell Ltd. Partnership
2182 Berkeley Street
Salt Lake City, Utah 84109 Dear Gentlemen:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 531Summit Minerals, Inc.
221 West 2100 South
Salt Lake City, Utah 84115 Dear Gentlemen:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 532Clayton Timothy, Resident Agent
Summit Minerals, Inc.
Chalk Creek Road
Upton, Utah 84017 Dear Mr. Timothy:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 533John L. Higgins, President and Chairman of the Board
Summit Minerals, Inc.
221 West 2100 South
Salt Lake City, Utah 84115 Dear Mr. Higgins:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 534Mr. Ira Ferrell III, Vice President
Summit Minerals, Inc.
221 West 2100 South
Salt Lake City, Utah 84115 Dear Mr. Ferrell:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 535Ms. Pamela M. Higgins, Secretary/Treasurer
Summit Minerals, Inc.
2783 Holiday Ranch Loop Road
Park City, Utah 84060 Dear Ms. Higgins:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 536Mr. Keith Bates, Director
Summit Minerals, Inc.
940 Donner Way, No 690
Salt Lake City, Utah 84108Dear Mr. Bates:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 537Mr. George F. Bishop, Director
Summit Minerals, Inc.
1294 Millbrook Way
Bountiful, Utah 84010 Dear Mr. Bishop:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 526Mr. Steve Ellingson, Director
Summit Minerals, Inc.
221 West 2100 South
Salt Lake City, Utah 84115 Dear Mr. Ellingson:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 525Mr. Earl Gritton, Director
Summit Minerals, Inc.
2470 South 1500 East
Salt Lake City, Utah 84106Dear Mr. Gritton:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 524Mr. Hugh Hintze, Director
Summit Minerals, Inc.
140 University Street
Salt Lake City, Utah 84102 Dear Mr. Hintze:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 523Mr. William Pulsipher, Director
Summit Minerals, Inc.
2230 South 2200 East
Salt Lake City, Utah 84109Dear Mr. Pulsipher:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 522Mr. Roger Richards, Director
Summit Minerals, Inc.
1644 East 10770 South
Salt Lake City, Utah 84092 Dear Mr. Richards:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 527Backman Title Company
McIntyre Building
68 South Main
Salt Lake City, Utah 84101Dear Gentlemen:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 528Mr. David S. Christensen, Trustee
124 State Capitol
Salt Lake City, Utah 84114 Dear Mr. Christensen:

CERTIFIED RETURN RECEIPT REQUESTED
P 879 596 529Mr. Lynn Larsen
10 East South Temple, Suite 500
Salt Lake City, Utah 84133 Dear Mr. Larsen:

Exhibit "I"

COLLATERAL BONDING AND INDEMNITY AGREEMENT

THIS COLLATERAL BONDING AND INDEMNITY AGREEMENT entered into by and between Summit Minerals, Inc.(hereinafter referred to as "Summit") and Johnell Limited Partnership (hereinafter referred to as "Johnell"), and the State of Utah by and through the Department of Natural Resources, Division of Oil, Gas and Mining (hereinafter referred to as "the Division").

W I T N E S S E T H

WHEREAS, Summit is interested in obtaining a Permit from the Division to conduct surface coal mining activities and operate the Blackhawk Coal Mine in Summit County, Utah, as an underground coal mine under the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1, et seq., 1953, as amended and the Mined Land Reclamation Act, Utah Code Ann. § 40-8-1, et seq., 1953, as amended (hereinafter collectively referred to as the "Act") and implementing regulations; and

WHEREAS, Summit has been found to have conducted surface coal mining operations at the Blackhawk Mine and is thus required to post a reclamation Bond pursuant to the Order of the Board of Oil, Gas and Mining ("Board") issued in Cause No. INA/043/001, Docket No. 85-070 , on December 13, 1985 ("Order"). A copy of the Board's Order is attached hereto as Exhibit A; and

WHEREAS, Summit wishes to provide a bond under Collateral Bonding Rule UMC 800.21(c), in the amount of One hundred and twenty thousand three hundred dollars ($120,300.00)

in order to cover the cost of reclamation as outlined in the reclamation bond report dated March 21, 1985, a copy of which is attached hereto as Exhibit B; and

WHEREAS, John L. Margetts, a member of the board of directors of Summit, has agreed to provide a parcel of real estate to serve as collateral in order that Summit may submit a Reclamation Bond in compliance with the requirements of the Act and the Board's Order; and

WHEREAS, John L. Margetts, by and through Johnell, a Utah limited partnership, in which Mr. Margetts is a General Partner, has provided a Trust Deed covering certain real property described therein, naming the Division as Beneficiary, as collateral to secure this Collateral Bonding and Indemnity Agreement. A copy of the Trust Deed is attached hereto as Exhibit C; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Summit does hereby agree to be held and firmly bonds to the Division for the sum of One hundred and twenty thousand three hundred dollars ($120,300.00) for the timely performance of reclamation responsibilities for the disturbed area designated in Exhibit B in lawful money of the United States. By the submission of this Collateral Bonding and Indemnity Agreement, Summit binds itself, its successors and assigns, jointly and severally, by these presents.

The conditions of the above obligations are such that:

1. Summit shall perform all duties and fulfill all requirements applicable to reclamation as set forth in the Act, and regulations adopted pursuant thereto, the Boards' Order, any subsequent order of the Board, and the conditions of any permit issued by the Division which allows Summit to conduct surface coal mining exploration and operations at the Blackhawk Mine site.

2. The liability under this Agreement shall continue until successful reclamation of the disturbed area as set forth in Exhibit A and in any subsequently approved Reclamation Plan for the Blackhawk Mine for a period of time and in the manner specified in the Act, regulations adopted by the Board, and in any Board order.

3. Summit does hereby agree to indemnify and hold the Division harmless from any claim demand, liability, cost, charge or suit brought by a third party, as a result of Summit's failure to abide by the terms and conditions of any Division approved Reclamation Plan for the Blackhawk Mine and from any failure to comply with the terms of this Agreement or any Board order.

4. Upon successful completion of part or all of the obligations secured hereby, Summit or Johnell may petition the Division for a final release of part or all of the obligations under this Agreement. Upon such petition, the Division shall timely conduct an inspection to ascertain whether the duties and obligations of Summit under the Act, regulations adopted pursuant thereto, any mining permit issued for the Blackhawk Mine or under

any Board order, have been fulfilled. If such duties and obligations have been fulfilled, the Division shall release Summit and Johnell from part or all of its obligations under this Agreement and shall file a notice of such release in the property records of Summit and Wasatch Counties.

5. By entering into this agreement, the Division does not represent that it has accepted the value of the collateral as indicated in the Summit/Johnell appraisal report. This Agreement shall be reviewed periodically by the Division, or reviewed upon petition by Summit or Johnell, in accordance with the Act and implementing regulations. The amount of liability under this Agreement may be adjusted upon written notice to Summit, if in the opinion of the Division, the cost of future reclamation has materially changed or the Collateral which secures this Bond is deemed insufficient to cover the cost of reclamation.

6. This Agreement may be terminated upon 90 days prior written notice to the Division if terminated by Summit or upon 90 days written notice to Summit if terminated by the Division. Upon such written notification, Summit will have 90 days to obtain an alternate form of bond acceptable to the Division to secure reclamation obligations as set forth hereunder or in any Board order for governing the Blackhawk Mine in the same amount as stated in this Agreement or amendments adjusting the amount thereto. If Summit is unable to obtain an alternate form of bond acceptable to the Division, this agreement will not be terminated and will continue until all obligations herein are fulfilled.

7. In the event reclamation becomes necessary under the Act, regulations enacted thereunder or under an order of the Board, the disturbed area as shown in Exhibit B will be reclaimed pursuant to the reclamation standards set forth under the Act, the regulations, any subsequent Board order or any reclamation plan submitted by Summit and approved by the Division prior to the date reclamation operations begin. Should Summit default under the terms of this contract or any Board order and fail to conduct any required reclamation, the Division will seek forfeiture of this bond pursuant to the Act, regulations or any Board order and begin foreclosure proceedings to sell the collateral hereunder to cover the cost of reclamation. It is expressly agreed by the parties hereto that in the event the proceeds from the sale of the collateral appear to be insufficient to pay for the expense of reclamation, the Division will seek to collect from Summit any deficiency between the proceeds from the sale of the collateral and the amount of this Bond.

SO AGREED this 4 day of June, 1986.

SUMMIT MINERALS, INC.

BY John D. Higgins

John D. Higgins, President

JOHNELL LIMITED PARTNERSHIP

BY John L. Margetts
John L. Margetts, General Partner

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

BY: Dianne R. Nielson
DR. DIANNE R. NIELSON
Director

APPROVED AS TO FORM:

Mark C. Moench
Assistant Attorney General

STATE OF Utah)
)ss:
COUNTY OF Salt Lake)

On the 4th day of June, 1986, personally appeared before me John L. Higgins who being by me duly sworn did say that he the said John L. Higgins is the President of Summit Minerals, Inc. and said Collateral Bonding and Indemnity Agreement was signed on behalf of said corporation by authority of its bylaws or a resolution of its board of directors and said John L. Higgins duly acknowledged to me that said corporation executed the same.

Marjorie L. Anderson
NOTARY PUBLIC
Residing at: SLC, Utah

My Commission Expires:

July 24, 1989

STATE OF Utah)
)ss:
COUNTY OF Salt Lake)

On the 2nd day of June, 1986, personally appeared before me John L. Margetts who being by me duly sworn did say that he the said John L. Margetts, is the General Partner of Johnell Limited Partnership and said Collateral Bonding and Indemnity Agreement was signed in behalf of said Partnership by authority of its partnership agreement or an amendment thereto executed by all of the general partners.

Marjorie L. Anderson
NOTARY PUBLIC
Residing at: Salt Lake City, Utah

My Commission Expires:

July 24, 1989

STATE OF Utah)
)ss:
COUNTY OF Salt Lake)

On the 4th day of June, 1986, personally appeared before me Dr. Dianne R. Nielson, who being duly sworn did say that she for herself, that she, the said Dr. Dianne R. Nielson is the Director of the Division of Oil, Gas and Mining, Department of Natural Resources, State of Utah, and she duly acknowledged to me that said Division executed the foregoing Collateral Bonding and Indemnity Agreement by authority of law on behalf of the State of Utah.

Marjorie L. Anderson
NOTARY PUBLIC
Residing at: SLC, Utah

My Commission Expires:

July 24, 1989

Exhibit A
Collateral Bonding and
Indemnity Agreement

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

---ooOoo---

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 CO.; AS OPERATORS OF THE BLACK HAWK MINE IN SUMMIT COUNTY, UTAH	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Docket No. 85-070 Cause No. INA/043/001
IN RE: JACK HIGGINS, CESSATION ORDER C85-1-2-1, BLACK HAWK MINE, SUMMIT COUNTY, UTAH	Docket No. 85-055 Cause No. INA/043/001

---ooOoo---

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 ~~claim~~ plan.

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

Exhibit B
Collateral Bonding and
Indemnity Agreement

ESTIMATED RECLAMATION BOND
Utah Coal and Energy
Black Hawk Mine
INA/043/001, Summit County, Utah
March 21, 1985

Current Situation:

Presently, the Black Hawk Mine has no approved mine or reclamation plan and has not posted bond for the area. The Division must require that Utah Coal and Energy submit a mining and or reclamation plan for approval and post a performance bond for reclamation of the disturbed area under Part UMC 700 and Part Umc 800 of the Coal Mining and Reclamation Program, Chapter I.

Reclamation plans and maps currently on file with the Division are not adequate for approval and they do not include a detailed cost breakdown for reclamation activities on the site.

Initial Review and Cost Estimate:

Based on initial review of the maps and plans on file with the Division and on a site visit on March 19, 1985, the following assumptions have been made in determining a tentative bond amount for the Black Hawk Mine.

On the RECLAMATION AND MINE MAP FOR THE BLACK HAWK COAL MINE, a perimeter was deliniated to include the disturbed area for the site. Total area included in the disturbed area was calculated using a planimeter and is approximately 19 acres. Within the disturbed area, two metal fabricated buildings are included which according to the operator, are to remain for post mining land use. Consequently, the access road leading to these structures and the immediate area around the buildings would not have to be reclaimed. The estimated area for the roads and buildings is extimated at approximately 3 acres. Thus the area to be reclaimed would be approximately 16 acres. Without a detailed survey of the site and more detailed maps of the area, a more accurate determination of the disturbed area cannot be determined.

Due to the lack of detailed information concerning reclamation of the site, it is difficult to determine an accurate bond amount for the Mine. Initially, it was thought that using the average per acre cost for surface disturbance of underground coal mines in the State would be applicable for use as an interim bond amount. This average is estimated at $24,000 per acre, which would make the bond for the Black Hawk Mine approximately $384,000. However, due to site specific conditions, this estimate is could be considered excessive.

A rough breakdown of the costs for the site were made in order to determine a more realistic amount for the interim bond amount. Proceedures and unit costs used to determine the bond amount are similar to those used by the Division on other coal reclamation cost estimates.

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

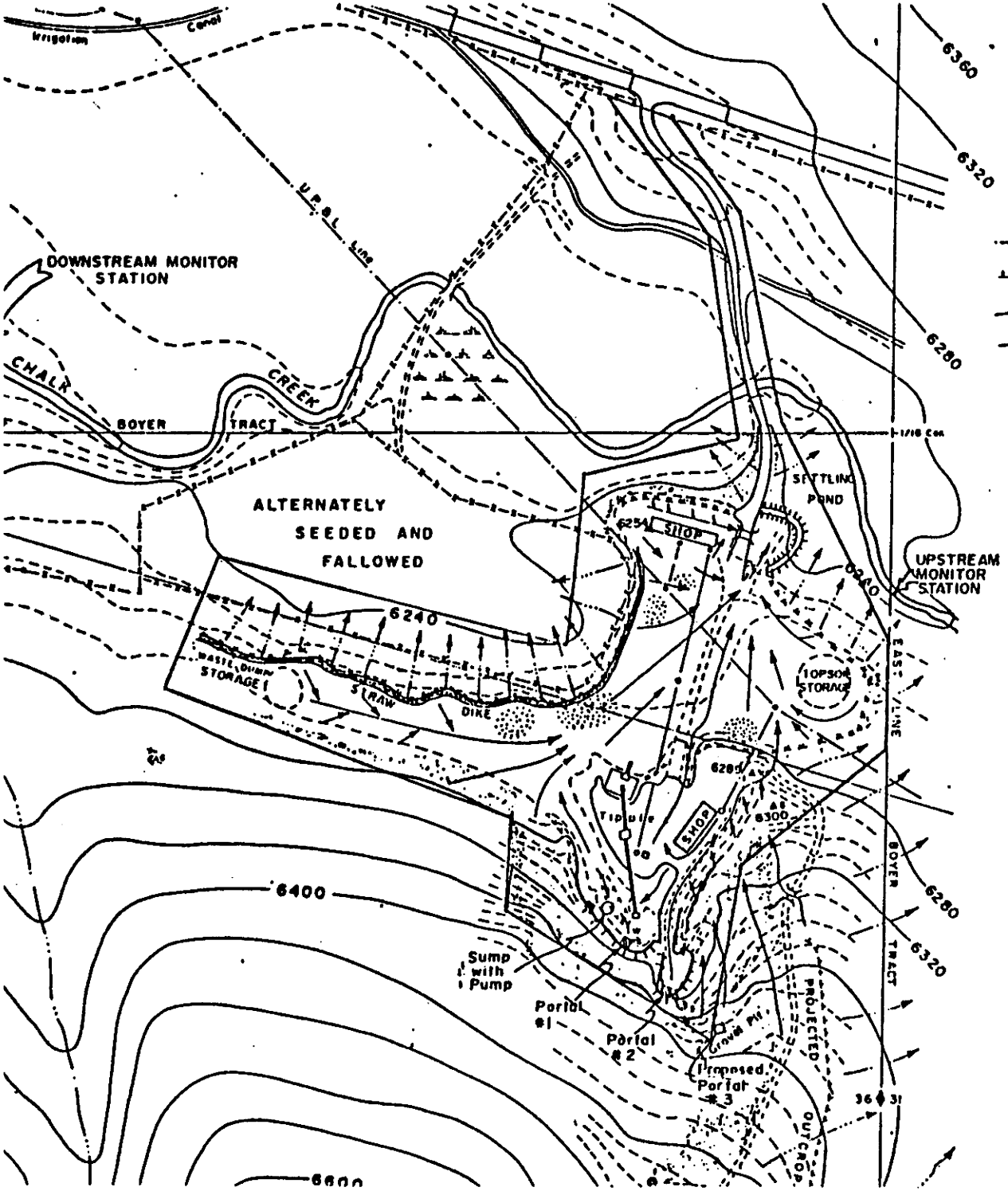
The disturbed area outlined on the map is a rough approximation and should be surveyed for a final determination of the disturbed area. Cost estimate is only a preliminary estimate for the bond amount and the approved reclamation plan would have to be prepared in order to provide a complete and comprehensive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

ESTIMATED RECLAMATION BOND
Utah Coal and Energy
Black Hawk Mine
INA/043/001, Summit County, Utah
March 21, 1985

1.	Demolition and Cleanup	Lump Sum		$5,000
2.	Slope & Highwall Reduction	$0.83/cy	25000 cy	$20,800
3.	General Earthwork and Site Grading	$1.56/cy	22,500 cy	$35,100
4.	Revegetation	$1500/ac	16 ac	$24,000
5.	Maintenance			
	Reveg. @ 10% of Item 4.		$2,400	
	Rills & Gullies @ 10% of Item 3.		$3,500	
				$5,900
	SUBTOTAL			$90,800
	10% CONTINGENCY			$9,100
	SUBTOTAL			99,900
	INFLATION @ 3.76%/YR FOR 5 YRS			$20,400
	TOTAL BOND ESTIMATE IN 1990 DOLLARS			$120,300



Elevation Point

Culvert

Graded Roads

Fence

Location of Drill Hole

Powerline Showing Location of Poles

Natural Edge of Bluff

Natural Drainage Pattern (Generalized)

Runoff Drainage Pattern in Area of Influence After Filling of Low Areas and Grading.

Areas to be Filled to Obtain Proper Drainage

Straw Dike

Retaining Wall

Settling Pond (See Plate 3 for Details of Construction)

Large Areas to be Seeded

40 Foot Contour

10 Foot Contour

ESTIMATED DISTURBED AREA - 19 ACRES
J.R.H. 3-20-85

FACILITIES TO REMAIN FOR POST MINING LAND USE
AREA - 3 ACRES

N

Exhibit C
Collateral Bonding and
Indemnity Agreement

TRUST DEED

THIS TRUST DEED is made this 2nd day of June, 1986, between JOHNELL, a limited partnership, as Trustor, whose address is 2182 Berkeley Street, Salt Lake City, Utah 84109, David S. Christensen, as Trustee, whose address is 124 State Capitol, Salt Lake City, Utah 84114, and THE STATE OF UTAH, Department of Natural Resources, Division of Oil, Gas and Mining, as Beneficiary, whose address is III Triad Center, Suite 350, Salt Lake City, Utah 84180-1203.

TRUSTOR HEREBY CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property situated in Wasatch County, State of Utah:

The North one-half of the Northeast one-quarter and the North one-half of the North one-half of the South one-half of the Northeast one-quarter of Section 24, Township 5 South, Range 4 East, Salt Lake Base and Meridian containing 52.89 acres, more or less.

EXCEPTING THE FOLLOWING:

(1) Excepting from Section 24, that portion of the following described tract which lies within Section 24: BEGINNING at the Northwest corner of Section 19, Township 5 South, Range 5 East, Salt Lake Meridian; thence East 5.32 chains to the lands of John G. Barratt; thence South 15°30' East 18 chains; thence South 61°30' East 12.12 chains; thence South 75° East 7.5 chains, more or less, to the Westerly line of a 4 rod road; thence West 31.59 chains; thence North 24.66 chains, more or less, to a point due West of the place of beginning; thence East 4.28 chains, more or less, to the place of beginning.

(2) The West half of the Northwest quarter of the Northeast quarter of Section 24, Township 5 South, Range 4 East, Salt Lake Base and Meridian, containing 20 acres, more or less.

TOGETHER WITH all buildings, fixtures and improvements thereon and all water rights, rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto now or hereafter used or enjoyed with said property, or any part thereof;

FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by a Collateral Bonding and Indemnity Agreement of even date herewith, in the principal sum of One Hundred Twenty Thousand Three Hundred Dollars ($120,300.00), payable to the

order of Beneficiary at the times, in the manner and with interest as therein set forth, and payment of any sums expended or advanced by Beneficiary to protect the security hereof.

Trustor agrees to pay all taxes and assessments on the above property, to pay all charges and assessments on water or water stock used on or with said property, not to commit waste, to maintain adequate fire insurance on improvements on said property, to pay all costs and expenses of Collection (including trustee's and attorney's fees in the event of default in payment of the indebtedness secured hereby) and to pay reasonable trustee's fees for any of the services performed by Trustee hereunder, including a reconveyance hereof.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at the address hereinbefore set forth.

JOHNELL LIMITED PARTNERSHIP

By John L. Margetts
JOHN L. MARGETTS, General Partner

STATE OF UTAH)
:ss
County of Salt Lake)

On the 2nd day of June, 1986, personally appeared before me John L. Margetts, General Partner of JOHNELL LIMITED PARTNERSHIP, signer of the within instrument, who duly acknowledged to me that he executed the same on behalf of and by authority of said partnership.

Marjorie L. Anderson
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:
July 24, 1989

Residing at Salt Lake City, Utah

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Exhibit "II"

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

February 26, 1988

CERTIFIED RETURN RECEIPT REQUESTED
NO. P 402 457 047

Mr. John L. Higgins, President
Summit Minerals, Inc.
c/o Bennett Leasing Company
221 West 2100 South
Salt Lake City, Utah 84115

Dear Mr. Higgins:

Re: Permit Denial and Order to Reclaim, Summit Minerals #1 (Blackhawk) Mine, PR0/043/001, Summit County, Utah

Pursuant to the provisions of Section 40-10-14(2), the Division of Oil, Gas and Mining ("Division") hereby notifies you that your request for an extension of the abatement period for Notice of Violation NOV N87-13-2-1 is denied and that Summit's application for a reclamation permit for the Summit Minerals #1 (Blackhawk) Mine ("Mine") is disapproved. The specific reasons for disapproval include, but are not limited to, the following:

1. As is more fully set out in Attachment A, the permit application is not accurate and complete and does not demonstrate that Summit will comply with the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953, as amended) ("Act") and the Coal Mining and Reclamation Permanent Program, Regulations Pertaining to the Surface Effects of Underground Coal Mining Activities (1982, as amended) ("Rules").

2. As is more fully set out in Attachment A, the applicant has not demonstrated that reclamation, as required by the Act and the Rules, can be accomplished under the reclamation plan contained in the application.

3. Summit has failed to submit an adequate bond for the Mine.

4. The applicant is currently in violation of the Act and the Rules by its failure to remit payment for Cessation Orders C85-1-1-1, C85-1-2-1, and C85-6-2-1.

carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made and a transcript shall be made available on the motion of any party or by order of the Division.

H. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The Division shall also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

UMC 800.50 Forfeiture of Bonds

A. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

1. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

2. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

(i) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the "reclamation program" and a demonstration that such party has the ability to satisfy the conditions; or

(ii) the Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under Section 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of Section 800.13.

B. In the event forfeiture of the bond is required by this section, the Division shall:

1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid

forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful.

2. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

C. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability shall extend to the entire permit area under conditions of forfeiture.

1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Division to the party from whom they were collected.

UMC 800.60 Terms And Conditions For Liability Insurance

A. The Division shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the state of Utah certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

B. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

C. The policy shall include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

D. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the regulatory program and the requirements of this section.