S/023/0058
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SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

In the matter of: reclamation at the Paradise mine, operated by Bonnie Birch Jensen, located twelve miles southwest of Levan in Juab County, Utah.	**Findings of Fact, Conclusions of Law, and Order** Docket No. 2015-021 Cause No. S/023/0058

The foregoing Notice of Agency Action filed by the Division of Oil, Gas and Mining (Division) seeking reclamation of the Paradise mine, operated by Bonnie Birch Jensen, and located twelve miles southwest of Levan in Juab County, Utah came on for hearing before the Utah Board of Oil, Gas and Mining at its regularly scheduled hearing on the 24th day of June, 2015 in the

main auditorium of the Department of Natural Resources building, 1594 West North Temple, Salt lake City, Utah 84116, at approximately 3:35 p.m.

The following Board members were present and heard the matter: Chris D. Hansen, Carl F. Kendall, Susan S. Davis, Michael R. Brown, Gordon L Moon, Richard Bordan, and Ruland J Gill, Jr., Chair. Michael Johnson, Assistant Attorney General, represented the Board.

Paul Baker, lead of the minerals program manager for the Utah Division of Oil, Gas and Mining, provided testimony and John Robinson Jr., Assistant Attorney General, was counsel for the Division. Neither Bonnie Birch Jensen, Dee Jensen, nor any other person appeared at the hearing to respond to the NOAA or filed an objection. Upon motion by Mr. Robinson, a default against Bonnie Birch Jensen was entered.

FINDINGS OF FACT

1. In March of 1998, Bonnie Birch Jensen (Jensen) filed a Notice of Intention to Commence Small Mining Operations (NOI) for the Paradise mine (a/k/a Peat Humus mine).

2. The Paradise Mine is located on private land owned by Max Williams.

3. The Paradise Mine is located roughly twelve miles southwest of Levan in Juab County, Utah; specifically, in the southeast ¼ of the southeast ¼ of section 35, Township 15 South, Range 2 West, Salt Lake Meridian.

4. Under the NOI, Jensen is listed as the operator of the mine and provided an address as 680 East Capitol Boulevard, Salt Lake City, Utah 84103.

5. The Division approved the NOI, assigned it permit no. S/023/0058, and granted several variances requested by the operator.

6. Throughout the late 1990s and early 2000s, the Paradise mine was in and out of compliance with the applicable regulations. The Division typically needed to specifically request annual reports and payment of annual fees, often more than once, before Jensen complied.

7. In 2003, the Utah Legislature revised the law to include bonding requirements for small mines.

8. The Division advised Jensen twice in 2006 that she must post a reclamation surety under Utah law.

9. In February 2007, the Division again advised Jensen that she needed to post an adequate reclamation surety to assure proper reclamation of the Paradise site and warned her that a Cessation Order and an associated civil penalty would follow if they failed to either post a surety or reclaim the site.

10. Jensen did neither. Thus, the Division terminated the permit to mine by letter dated December 23, 2009. The letter also ordered Jensen to reclaim the site.

11. Since 2009, the Division has issued both a Cessation Order (CO-2010-42-04) and a Failure to Abate Cessation Order (MC-2014-42-04). There are outstanding fines totaling $23,028 associated with these violations.

12. Jensen failed to take any action to reclaim the mine site and abandoned equipment including a dredging machine, an associated drag line, and fuel drums remain on the site.

13. The mine site is an environmentally sensitive wetland tributary to the Sevier River and is also home to several species on the Utah Sensitive Species List.

14. Lastly, because the site is not reclaimed, Jensen owes back permit fees since they were last paid in 2006 . Therefore, she owes the Division for eight years of fees, totaling $1200.

15. During the time period that the NOI has been in place, the Division has corresponded with Bonnie Birch Jensen and Dee Jensen by mail to the 680 East Capitol Boulevard address.

16. The Division was unable to serve a copy of this Notice of Agency Action upon Bonnie Jensen at the 680 East Capitol address via personal service by the Sherriff's Office; the Sheriff's return of service indicates that she is no longer living at that address.

17. Attempts to locate Bonnie Jensen by contacting neighbors to the mine, by internet search, and other inquiries have failed to provide information regarding her current address, place of employment or other means of providing notice of this action.

18. The landowner, Max Williams, has provided written consent for the Division to enter his land and remove the equipment.

CONCLUSIONS OF LAW

1. The Utah Mined Land Reclamation Act, Utah Code §§ 40-8-1 to -23. grants the Board and Division "jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter." *Id.* § 40-8-5(1)(a).

2. The Act also gives the Board the power and the duty to hold hearings, issue orders based on those hearings, and "do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions." *Id.* § 40-8-6(2), (4).

3. This proceeding was conducted formally according to the provisions of the Board's administrative rules found in Utah Administrative Code Rule 641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

4. The Utah Mined Land Reclamation, Utah Code § 40-8-1 to -23, is designed to balance the necessity of extracting minerals required by society against the interests of safety, welfare, and subsequent land use. Its express purpose mandates reclamation of lands affected by mining. *Id.* § 40-8-3.

5. Utah Administrative Code Rule 647-3-109 details the reclamation requirements for small mine sites in order to protect public safety and welfare following completion of mining operations.

6. These reclamation standards require that all "deleterious materials," as defined in Utah Admin. Code R647-1-106, including things like oil, fuel, and engine coolant, be removed or neutralized and that all structures and equipment must be removed (or buried, in some cases) from the site including the mining equipment itself, as well as support equipment like fuel tanks.

7. After notice and an opportunity for a hearing, a mine operator that fails or refuses to reclaim the lands disturbed by mining operations is liable for costs of the reclamation work. Utah Admin. Code Rule 647-3-112.

8. Additionally, the Board may order that reclamation be conducted by the Division and order the Attorney General to collect the costs and expenses of reclamation, including attorney fees, from the operator in civil court. Utah Admin. Code R. 647-3-112.1 and 112.2.

9. Persons with property and legal interests that may be affected by this NOAA including the operator, the mineral owners, the surface landowners, and other named individuals associated with the mine are each "respondents" as defined under Utah Administrative Code Rule 641-100-200 and to avoid the entry of a default against them must filed and serve a written response within twenty (20) days of the service date of this Notice of Agency Action. Utah Admin. Code R. 641-104-141.

10. Under Utah Administrative Code Rules 641-104-131.600 and 641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

11. The Paradise mine, operated by Bonnie Birch Jensen, needs to be reclaimed to protect the people and the land of the State of Utah from the consequences of this unclaimed and abandoned mine site.

12. Bonnie Birch Jensen has not paid fees on the site for a number of years and has accrued an unpaid obligation of $1200 associated with these fees.

13. Bonnie Birch Jensen has also incurred significant civil penalties as a result of their failure to reclaim in the amount of $23,028.00.

14. Bonnie Birch Jensen and Dee Jensen are responsible for reclamation of the site and are liable for the costs of the reclamation work in an amount to be determined.

ORDER

The Board hereby Orders as follows:

1. The Division is authorized and directed to reclaim the Paradise (a/k/a Peat Humus) mine site including the removal of all equipment and deleterious materials and disposal of the same.

2. The Division and the Attorney General are authorized to take all necessary actions—including filing a civil action—to collect the costs of reclamation, all outstanding annual permit fees, and all penalties assessed against Bonnie Birch Jensen, or others associated with the mine site. The

Division and the Attorney General have discretion to proceed, or not proceed, with collection as they see fit, depending on the economics and efficacy of doing so.

3. These Findings of Fact, Conclusions of Law and Order are based exclusively on the evidence in the record of the adjudicative proceedings and constitute the signed written order setting forth the Board's decision and reasons in support thereof as required by Utah Administrative Procedures Act, Utah Code § 63G-4-208 and Utah Admin. Code Rule 641-109.

4. Notice of Right to Seek Judicial Review by the Utah Supreme Court or to Request Reconsideration. The Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code §§ 63G-4-401(3)(a) and 403. As an alternative to seeking judicial review, a party with interest may request that the Board reconsider this Order by filing a petition for rehearing within the later of twenty (20) days from the date the order is issued in accordance with the requirements of Utah Code § 63G-4-302 or within the deadlines for filing a request provided for by Utah Admin. Code R641-110-100.

5. The Board retains continuing jurisdiction over all of the parties and over the subject matter of this Cause, except to the extent jurisdiction may be divested by the filing of a timely appeal.

6. For all purposes, the Chairman's signature on a faxed or electronic copy of this Order shall be deemed to be the equivalent of a signed original.

ORDERED this 16th day of June, 2015.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Ruland J Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2015, I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Docket No. 2015-021 Cause No. S/023/0058, to be mailed by Email or via First Class Mail, with postage prepaid, to the following:

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