S0390020
cc: Peter

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SECRETARY, BOARD OF
OIL, GAS & MINING

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

In the Matter of the Petition by the Division of Oil, Gas and Mining for an Order: (1) Withdrawing Bryce H. Haas's Notice of Intention to Commence Small Mining Operations at the B&H Quarry, S/039/0020, located in portions of the east half of Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah; (2) Forfeiting Bryce H. Haas's surety for the B&H Quarry; (3) Authorizing the Division to complete reclamation at the B&H Quarry; and (4) Granting such further relief as the Board may deem just and reasonable under the circumstances.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Docket No.: 2013-038 Cause No.: S/039/0020

On March 26, 2014, the Board of Oil, Gas and Mining (**"Board"**) heard arguments In the Matter of the Petition by the Division of Oil, Gas and Mining (**"Division"**) for an Order: (1) withdrawing Bryce H. Haas's Notice of Intention to Commence Small Mining Operations at the B&H Quarry, S/039/0020, located in portions of the east half of Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah; (2) forfeiting Bryce H. Haas's surety for the B&H Quarry; (3) authorizing the Division to complete reclamation at the B&H Quarry; and (4) granting such further relief as the Board may deem just and reasonable under the circumstances.

The following Board members were present and participated in the hearing: Chairman Ruland J. Gill, Jr., Kelly L. Payne, Carl F. Kendell, Michael R. Brown, and Gordon L. Moon.

Assistant Attorney General Michael S. Johnson represented the Board.

The following members of the Division staff were present and appeared as witnesses for the Division: Paul Baker, Minerals Program Manager; and Peter Brinton, Environmental Scientist/Mining Engineer. Assistant Attorney General Kassidy J. Wallin represented the Division.

Mr. Haas did not appear or participate in the hearing. No attorney appeared or participated on behalf of Mr. Haas.

No other interested party appeared or participated in the hearing. There was no public comment presented to the Board.

NOW THEREFORE, the Board, having fully considered the testimony adduced and the exhibits received at the hearing, being fully advised, and good cause appearing, hereby makes and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On September 3, 2007, Bryce H. Haas submitted to the Division a Notice of Intention to Commence Small Mining Operations ("2007 NOI"). The 2007 NOI incorrectly indicated the mine was located in Section 32, Township 19 South, Range 2 East, SLBM, Sanpete County, Utah. The mine was named "Mayfield Quarry."

2. After submitting the 2007 NOI, but before receiving approval of it, Mr. Haas began mining and exploration activities at the Mayfield Quarry. Several acres were disturbed at the mine site.

3. On January 18, 2008, the Division sent a letter to Mr. Haas explaining that the 2007 NOI was incomplete due to several deficiencies. The letter from the Division further explained:

> Reclamation surety is required to be posted by all mining and exploration operations. The surety amount determined for this site is $20,700.00. . . . Since your exploration notice for this site has expired (exploration notices expire on November 30th, the year after the

> notice is submitted), there is to be no further mining or exploration activity at this site until a reclamation surety is provided. Continued operations may result in formal enforcement action being taken by the Division. Reclamation work only may continue until the Notice is complete and the surety approved.

(emphasis in original).

4. Even though Mr. Haas was notified that the 2007 NOI was incomplete and that the exploration notice for the Mayfield Quarry had expired, he continued mining activities at the Mayfield Quarry before receiving an approved NOI or a permit from the Division. Mr. Haas made no attempt to reclaim the disturbed acreage at the mine site.

5. On or about December 21, 2009, the Division discovered that Mr. Haas had been conducting additional mining activities at the Mayfield Quarry without an approved NOI, without a permit, without a reclamation contract, and without posting a reclamation surety. The Division sent a certified letter to Mr. Haas informing him that he would need to reclaim the Mayfield Quarry by March 31, 2010 or submit a reclamation surety in the amount of $20,700.00. Mr. Haas did not claim the letter, and the letter was returned to the Division.

6. On May 3, 2010, the Division issued a Cessation Order to Mr. Haas for violating Utah Code 40-8-13 and Utah Admin. Code R647-3-101(1). The Citation No. for the Cessation Order was MC-2010-61-01 ("2010 CO"). The 2010 CO ordered Mr. Haas to cease all mining activities at the Mayfield Quarry. It also directed Mr. Haas to submit a completed NOI, provide a reclamation surety—now in the amount of $25,000 (pursuant to Utah Admin. Code R647-3-111(6), the Division is authorized to determine and adjust bond amounts. From time to time, bond amounts will increase based on certain factors such as inflation and risk)—and execute a reclamation contract with the Division. In the alternative, Mr. Haas could complete reclamation of the site. Compliance was required by June 3, 2010.

7. On May 5, 2010, shortly after receiving the 2010 CO, Mr. Haas requested a Stop Work Conference to discuss the matter with the Division.

8. On May 12, 2010, a Stop Work Conference was held at the Mayfield Quarry in Sanpete County, Utah. The Hearing Officer assigned for the Stop Work Conference was Dana Dean, Associate Director for the Division. In attendance for the Division were Paul Baker (Minerals Program Manager) and John Rogers (Environmental Scientist). Also in attendance were Mr. Haas and Mr. Bill Christiansen (landowner).

9. At the hearing, Mr. Haas indicated that he did not have enough money to post a reclamation surety. He explained that he would have to sell the product he already had extracted, and also mine and sell additional material in order to come up with the money. In addition, Mr. Christiansen indicated that he wanted mining to continue on the property. Mr. Christiansen also indicated that he wanted some of the equipment left on the property after reclamation, and wanted the road and pad area to remain after the conclusion of mining.

10. On May 17, 2010, after considering the evidence presented at the Stop Work Conference, the Hearing Officer issued the Findings, Conclusions, and Order in the matter (the "Stop Work Order"). The Hearing Officer upheld the 2010 CO, but made the following allowances: Mr. Haas could (1) "transport and sell any on-site product already packaged for sale[;]" and could (2) "package and transport any ***loose*** product." The Stop Work Order made clear that "Mr. Haas may not loosen any rock, and may not advance the face" except for a small corner area that could be "squared up."

11. The Stop Work Order declared that the CO would be fully terminated when either (1) reclamation surety of $25,000.00 was posted along with a completed NOI and a signed

reclamation contract; or (2) reclamation was complete at the site. In the event Mr. Haas failed to fulfill one of these two requirements by June 3, 2010, he would be subject to a $750 per day fine.

12. On June 2, 2010—one day before compliance with the CO and Stop Work Order was due—Mr. Haas submitted to the Division a new Notice of Intention to Commence Small Mining Operations ("2010 NOI"). The 2010 NOI changed the name of the mine to the "B&H Quarry," located in Section 32, Township 19 South, Range 2 East, Sanpete County, Utah.[1] It listed the operator as Mr. Haas, a sole proprietor.

13. Also on June 2, 2010, Mr. Haas also executed a Small Mine Reclamation Contract and provided a $10,000.00 check as a portion of the reclamation surety required for the project. The $10,000.00 check was deposited with the Utah State Treasurer on June 8, 2010 for the benefit of the Division in an interest-bearing escrow account at Zion's First National Bank, Account No. 8912020.

14. On June 28, 2010, the Division approved the 2010 NOI. On June 29, 2010, the Division issued a permit for the B&H Quarry under several conditions. Page two of the permit provided: "Since the $10,000 surety bond was posted on June 2, 2010, you may mine the 'corner' and square up the face as described in the . . . Stop Work Order. *The mine may not advance any further until the full reclamation surety is posted. The reclamation of the previous disturbance must be completed immediately.*"

15. On April 14, 2011, the Division issued a Proposed Assessment for the 2010 CO. The Assessment Officer, Lynn Kunzler, noted that "[a]pproximately 7.5 acres have been disturbed by this operation. The operator has been operating a mining operation for about 2.5 years after the Division had notified him in writing that there was to be no additional mining operations until

[1] As the map attached to the Notice of Intention indicates, the mine is actually located in Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah. This is the same mine site as the Mayfield Quarry indicated in the 2007 NOI.

the site was properly permitted and bonded." The Assessment Officer explained that Mr. Haas "had received both written and verbal warnings regarding the need to have this site permitted and bonded in order to conduct operations. The operator also had 2 other quarries permitted with the Division. Conducting or continuing operations at this site demonstrates a high degree of negligence." The Assessment Officer determined a penalty of $3,740.00.

16. The Assessment Officer advised Mr. Haas that he could request review of either the fact of the violation, the proposed penalty, or both, as long as a request for an informal conference was made within 30 days—by May 16, 2011.

17. Mr. Haas did not request a formal or informal review of either the fact of the violation or the proposed penalty by May 16, 2011.

18. Also on April 14, 2011, the Division issued a Failure to Abate Cessation Order, Citation No. MC-2011-65-01 ("2011 FTACO") to Mr. Haas for failing to properly abate the 2010 CO. The 2011 FTACO ordered Mr. Haas to either (a) properly permit and provide adequate surety for the B&H Quarry; or (b) complete reclamation of the mine site. The 2011 FTACO did not provide an abatement deadline.

19. On August 15, 2011, the Division received notice that Mr. Haas filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Utah. Mr. Haas was granted a discharge in the bankruptcy proceedings.

20. On October 15, 2013, the Division filed the Notice of Agency Action at issue in this matter. The relief requested in the Division's Notice of Agency Action includes: "(1) withdrawing Bryce H. Haas's Notice of Intention to Commence Small Mining Operations at the B&H Quarry, S/039/0020, located in portions of the east half of Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah; (2) forfeiting Bryce H. Haas's surety for the B&H

Quarry; (3) authorizing the Division to complete reclamation at the B&H Quarry; and (4) granting such further relief as the Board may deem just and reasonable under the circumstances."

21. A hearing was scheduled in order for the parties to present arguments to the Board about whether the relief requested by the Division should be granted. The matter was continued several times before it came before the Board for hearing on March 26, 2014.

22. Notices of the time, place, and purposes of the hearing were mailed to all interested parties, and were duly published in newspapers of general circulation as required by Utah Administrative Code Rule R641-106-100 (2014).

23. Copies of the Notice of Agency Action were mailed to all interested parties pursuant to Utah Administrative Code Rule R641-104-100.132.100. Additionally, Mr. Haas was personally served with a copy of the Notice of Agency Action and Administrative Summons on January 31, 2014 at 6000 S Duchesne, Rig 307 by a member of the Duchesne County Sheriff's Office. The Administrative Summons warned Mr. Haas that if he failed to file a Response, attend, or participate in the hearing, "the Board may enter a default against you and grant the relief requested by the Notice of Agency Action."

24. Mr. Haas failed to file a Response, attend, or participate in the hearing.

CONCLUSIONS OF LAW

25. Due and regular notice of the time, place, and purposes of the March 26, 2014 hearing was given to all interested parties in the form and manner and within the time required by law and the rules of the Board. Due and regular notice of the filing of the Notice of Agency Action was given to all interested parties in the form and manner and within the time required by law and the rules of the Board.

26. The Board has jurisdiction over the parties and subject matter of this Notice of Agency

Action pursuant to Chapter 8 of Title 40 of the Utah Code, and has the power and authority to make and promulgate the order herein set forth.

27. Bryce H. Haas, operator of Permit No. S/039/0020, has substantially failed to perform reclamation at the B&H Quarry and has failed to provide and maintain an adequate reclamation surety as required by the Division and by Chapter 8 of Title 40 of the Utah Code and the rules of the Board and the Division. Therefore, the Division has carried its burden to show that withdrawal of the Permit No. S/039/0020 is appropriate and warranted under the circumstances. *See* Utah Code § 40-8-16(2).

28. Bryce H. Haas, operator of Permit No. S/039/0020, has failed or refused to carry out the necessary land reclamation as outlined in the approved Notice of Intention, requested by the Division, and required by Chapter 8 of Title 40 of the Utah Code and the rules of the Board and Division. Therefore, the Division has carried its burden to show that the surety for Permit No. S/039/0020, specifically the deposit totaling $10,000.00, plus interest, held by the State of Utah for the benefit of the Division at Zion's First National Bank, Account No. 8912020, should be forfeited to the Division. *See* Utah Code § 40-8-14(6).

29. Bryce H. Haas, operator of Permit No. S/039/0020, has failed or refused to carry out the necessary land reclamation as outlined in the approved Notice of Intention, requested by the Division, and required by Chapter 8 of Title 40 of the Utah Code and the rules of the Board and Division. Therefore, the Division has carried its burden to show that reclamation should be conducted by the Division. *See* Utah Admin. Code R647-3-112.

ORDER

IT IS THEREFORE ORDERED that:

A. The Division's Notice of Agency Action in this matter is granted.

B. Permit No. S/039/0020 is hereby withdrawn.

C. The surety for Permit No. S/039/0020, specifically the deposit totaling $10,000.00, plus interest, held by the State of Utah for the benefit of the Division at Zion's First National Bank, Account No. 8912020, is hereby forfeited to the Division.

D. The Division is hereby authorized to conduct reclamation on the disturbed acreage previously covered under Permit No. S/039/0020, located in portions of the east half of Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah.

E. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code §§ 63G-4-204 through -208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

F. This Findings of Fact, Conclusions of Law, and Order is based exclusively upon evidence of record in this proceeding or on facts officially noted, as weighed and analyzed by the Board in the application of its expertise as set forth in Utah Code Ann. § 40-6-4(2)(a) through (e). This Order constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code §63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

G. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code section 63G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within thirty days after the date this Order is entered. Utah Code §§ 63G-4-401(3)(a), -403.

H. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Section 63G-4-302 of the Utah Code, entitled "Agency Review – Reconsideration," states:

> (1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63–46b–12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.
> (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.
> (2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.
> (3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.
> (b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id.

I. The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

> Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R. R641-110-100.

See Utah Administrative Code Rule R641-110-200 for the required contents of a petition for rehearing. The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure

before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within thirty days thereafter.

J. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

K. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ENTERED this 8th day of April 2014.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Ruland J. Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** for Docket No. 2013-038, Cause No. S/039/0020 to be mailed by Email or via First Class Mail with postage prepaid, this 8th day of April, 2014, to the following:

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