HC 73 BOX 28
VERNAL, UT 84078
435-789-1921 PHONE
435-789-1956 FAX

American Gilsonite Company

Fax

To:	Wayne Hedberg	From:	Kip Grubaugh
Fax:		Pages:	2
Phone:		Date:	9/4/02
Re:		CC:	

☐ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

Here is evidence of money deposited in escrow account. This was faxed to me by Advanced Title, the Escrow Agent. A copy is also being maided to me. If you'd like I can mail a copy of what I receive in the mail from the escrow agent. Let me know.

Kip

RECEIVED
SEP 03 2002
DIVISION OF
OIL, GAS AND MINING

RECEIVED

AUG 19 2002

DIV. OF OIL, GAS & MINING

PLEDGE AND ESCROW AGREEMENT

This Pledge and Escrow Agreement ("Agreement"), dated as of 09-03-02, 2002, is made and entered into by and among Del Brady of Advanced Title Company, as escrow agent (the "Escrow Agent"), American Gilsonite Company ("AGC"), an Oklahoma Corporation, and the State of Utah, Division of Oil, Gas & Mining (the "Division").

WHEREAS, AGC must provide the Division with financial assurances in the form of an approved reclamation bond, a self-bonding agreement, an escrow account or a certificate of deposit, in an amount sufficient to meet its reclamation obligations pursuant to its Permit No. M/047/010; and

WHEREAS, the State of Utah, Division of Oil, Gas and Mining has estimated AGC's current reclamation obligation as $514,00.00; and

WHEREAS, AGC has a surety bond with Travelers Property Casualty in the amount of $324,900.00 currently in place; and

WHEREAS, the Board of Oil, Gas and Mining (the "Board") has ordered that further reclamation obligations of AGC under the Permit No. M/047/010 shall be secured by a self-bonding/escrow agreement to cover that portion not covered by the existing reclamation bond as provided herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Security Interest. As partial surety for AGC's obligation to reclaim the Gilsonite mining operations located near Bonanza, Utah, pursuant to its Permit No. M/047/010, AGC hereby agrees to deposit $189,100.00 into a FDIC account(s) described below, held for the benefit of the Division. AGC also pledges, grants, assigns, transfers and sets over to the Division, and there is hereby created in favor of the Division, a first-lien security interest in and to all of AGC's right, title and interest in and to the Escrow Fund subject to this Pledge and Escrow Agreement as described herein.

2. Representations of AGC. In making the foregoing pledge and assignment, AGC hereby represents and warrants to the Division, that as of the date hereof:

a. AGC has the right and authority to enter into this Agreement and perform its obligations hereunder.

b. The execution and delivery of this Agreement by AGC and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceeding on the part of AGC is necessary to

authorize this Agreement or to consummate the transactions so contemplated hereby.

3. Appointment of Escrow Agent. AGC and the Division hereby appoint the Escrow Agent as escrow agent for the purposes set forth in this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties of the Escrow Agent set forth in this Agreement.

4. Deposit of Funds.

a. Within 5 business days of execution of this Agreement, AGC will make an initial deposit in the amount of $47,275.00 into a FDIC insured money market accounts with the Escrow Agent, and will provide proof of the deposit to the Division within 10 days; and

b. Thereafter, AGC will make annual payments of $47,275.00 per year for three additional years until a total of one-hundred and eighty-nine thousand, one-hundred dollars ($189,100.00) is in escrow for the benefit of the Division. The final $47,275.00 payment, may be reduced by the operator, by the amount of accrued interest, so that the total deposited amount equals $189,100. All escrow moneys shall be held in a federally insured (FDIC) account or accounts. If or when the money in escrow exceeds the amount which is federally insured, a second federally insured account shall be opened to hold the balance of the escrow funds. Said payments shall be due on the 15th day of June each year. AGC will provide written proof to the Division within 10 days of each deposit.

5. Disbursement of Funds.

a. If during this escrow period the Division approves AGC's reclamation efforts and reduces AGC's reclamation obligations, the Division may allow AGC to withdraw such monies from the Escrow Account in excess of the amount then required to meet AGC's then existing liabilities.

b. Upon an Order of the Board finding that disbursal of the escrowed funds is necessary to complete the reclamation obligations under the approved permit and reclamation contract, the Escrow Agent shall disburse all escrowed funds to the Division without further consent from AGC. AGC agrees and irrevocably instructs the Escrow Agent that neither AGC, nor any person claiming an ownership interest in the escrowed funds, shall have the authority to prevent the Escrow Agent from carrying out the Board's Order to transfer funds to the Division.

c. Upon disbursement of all of the Escrowed Funds and earnings thereon, if any, this Agreement shall be deemed to have been terminated.

6. Interest. All interest earned by the monies in the Fund shall accumulate to the benefit of the Fund until the Escrow Agreement contains $189,100.00. After the Fund contains $189,100, all interest shall continue to accumulate in the account(s) unless AGC instructs the Escrow Agent to regularly disburse the accrued interest to AGC. Notwithstanding that accrued interest may be distributed to AGC, in no event shall the Funds held in escrow be less than

$189,100, except as allowed by section 5.

7. Agent's Duties. All parties hereto understand and agree that the Escrow Agent is not a principal, participant, or beneficiary of the underlying transaction which necessitates this Agreement.

8. Concerning Escrow Agent. The following provisions shall control with respect to the rights, duties, liabilities, privileges, and immunities of Escrow Agent:

a. Escrow Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Escrow Agreement. All references in this Escrow Agreement to other agreements or permits, including the Permit No. M/047/010, are for the convenience of the parties hereto other than Escrow Agent, and Escrow Agent shall have no duties or obligations with respect thereto. Escrow Agent shall have no implied duties beyond the express duties set forth herein.

b. Escrow Agent, in acting hereunder, may assume the genuineness of any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

c. It is the intention of the parties to this Escrow Agreement that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

9. Standard of Care. The Escrow Agent shall have no liability under, or duty to inquire beyond the terms and provisions of this Agreement, and it is agreed that the Escrow Agent's duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever, except for willful misconduct or gross negligence.

10. Resignation. The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their addresses set forth herein, at least thirty days prior to the date specified for such resignation to take effect. Upon the effective date of such resignation, the escrowed funds hereunder shall be delivered to such person as may be designated in joint written instructions to the Escrow Agent from AGC and the Division, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. The Escrow Agent's sole responsibility during the period after written notice of resignation is given and before the effective date of resignation shall be to keep safely all escrowed funds and to deliver the same to such persons designated in such joint written instructions or in accordance with the directions of a final Order of the Board.

11. Indemnification. AGC agrees to defend, indemnify and hold the Escrow Agent

harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent or its obligations under this Agreement. The Division agrees to hold Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement.

12. Fees. The fee of the Escrow Agent to serve as Escrow Agent hereunder will be $50.00 for the first twelve month period, payable in advance and due upon execution of this Escrow Agreement and $25.00 for each twelve month period thereafter in which this Agreement is in effect, payable at the beginning of such period. AGC shall pay such fees and all reasonable expenses of the Escrow Agent incurred hereunder, including reasonable attorney's fees incurred in connection with Agreement and the performance of the Escrow Agent's duties hereunder. Except as otherwise noted, such fee covers account acceptance, set up, and termination expenses plus usual and customary related administrative services such as safekeeping and distribution of funds specified herein. Activities requiring excessive administrator time or out-of-pocket expenses shall be deemed extraordinary expenses for which related costs, transaction charges, and additional fees will be billed (after delivery of prior notice of such charges to AGC) at the Escrow Agent's standard charges for such items. The Division shall not be liable for such fees. However, in the event AGC fails to pay such fees, the Division shall be provided notice in writing and a reasonable opportunity to pay the fees, either directly or from the escrowed funds and residual amounts to keep this Pledge and Escrow Agreement in full effect.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (without regard to the principles of conflicts of law embodied therein).

14. Notices. Any notice, communication, or other delivery given under this Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, (c) sent via facsimile to 650-233-3707, or (d) sent by registered or certified mail, postage prepaid, as follows:

a. If to the AGC, to:

Ted Stevens
Vice President and General Counsel
American Gilsonite Company
2400 Sand Hill Road, Suite 201
Menlo Park, California 94025

Telephone: (650) 233-7166
Facsimile: (650)233-3707

b. If to the Division, to:

Lowell P. Braxton, Director
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Telephone: (801) 538-5340
Facsimile: (801) 359-3940

c. If to the Escrow Agent, to:

Del Brady
Advanced Title Company, Inc.
71 North 100 West
Vernal, Utah 84078

Telephone: 435-789-4944
Facsimile: 435-789-4950

d. With copies to:

A. John Davis
PRUITT, GUSHEE & BACHTELL
1850 Beneficial Life Tower
Salt Lake City, Utah 84111

Telephone: (801) 531-8446
Facsimile: (801) 531-8468

Attorney General's Office
Department of Natural Resources
1594 West North Temple, #300
Salt Lake City, Utah 84116

Telephone: (801) 538-7227
Facsimile: (801) 538-7440

Each notice or other communication required or permitted under this Agreement that is addressed as provided in this Section will (i) if delivered personally or by overnight express, be deemed given upon delivery; and (ii) if delivered by mail in the manner described above, be deemed given on the third business day after the day it is deposited in a regular depository of the United States mail. Any party from time to time may change its address for the purpose of notices to

that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

17. Taxpayer Identification. AGC's Employer Identification Number is

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date first written above.

ADVANCED TITLE COMPANY, INC
Escrow Agent

By: _____

Name: _____

Title: _____

UTAH DIVISION OF OIL, GAS & MINING, a Division of the Department of Natural Resources, State of Utah

By: _____

Name: _____

Title: _____

AMERICAN GILSONITE COMPANY, an Oklahoma Corporation

By: _____

Name: _____

Title: _____

06-03-2002 14:15 From-ADVANCED TITLE 4357894950 T-425 P.002/002 F-185

1674	ADVANCED TITLE CO, INC.	005860	8/26/2002	5344	
INITIAL DEPOSIT	8/26/2002	$47,275.00	$47,275.00	$0.00	$47,275.00
		$47,275.00	$47,275.00	$0.00	$47,275.00

#11562

ADVANCE Reclamation Escrow Initial Dep

AMERICAN GILSONITE COMPANY
29950 SOUTH BONANZA HWY.
BONANZA, UT 84008
(435) 789-1921

WACHOVIA BANK, N.A.
GREENVILLE, SOUTH CAROLINA
IN COOPERATION WITH & PAYABLE DESIRED AT
WELLS FARGO BANK, N.A.
4735-614134
67-1/633 DATE
8/26/2002

5344

AMOUNT
$47,275.00

PAY
Forty Seven Thousand Two Hundred Seventy Five Dollars And 00 Cents

TO THE ORDER OF
ADVANCED TITLE CO, INC.
71 NORTH 100 WEST
VERNAL UT 84078

OVER $10,000.00 REQUIRES TWO SIGNATURES

5344

AMERICAN GILSONITE COMPANY

1674	ADVANCED TITLE CO, INC.	005860	8/26/2002	5344	
			$47,275.00	$0.00	$47,275.00
			$47,275.00	$0.00	$47,275.00

#11562 Am Gilsonite

WELLS FARGO BANK
Transaction Record

Branch # 05212 06 Deposit #

Account Number 1009552629 Amount $47,275.00

Transaction # 052 0085
4:06pm 08/28/02 Credited: 08/28/02

Thank you, Darlene