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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 Request for Agency Action by Uintah County for release from a written contract provided as surety for the Uintah County Mine, M/047/0022, Uintah County, Utah.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Docket No. 2015-010 Cause No. M/047/0022

The Request for Agency Action came on for hearing before the Utah Board of Oil, Gas and Mining ("**Board**") at its regularly scheduled hearing on February 25, 2015 at 10:00 a.m. in the auditorium of the Department of Natural Resources, 1594 West North Temple Street, Salt Lake City, Utah. Board Members Chris D. Hansen, Michael R. Brown, Carl F. Kendall, Gordon L. Moon, and Ruland J. Gill, Jr., chair, were present and heard the matter.

The joint Petitioners, Uintah County ("County") and Utah Division of Oil, Gas, and Mining ("Division") appeared though their respective counsel Jonathan A. Stearmer, Chief

Deputy Uintah County Attorney, and Steven F. Alder, Assistant Attorney General. Tar Sands Holdings II, LLC ("TSH II") was represented at the hearing by its counsel Denise Dragoo, Snell & Wilmer, LLP. Paul Baker, Mineral Mining Section Director, Utah Division of Oil, Gas, and Mining testified on behalf of the Division. Jonathan A. Stearmer and Denise Dragoo, described the County and TSH II's history of involvement and activities at the Uintah County Mine, and summarized the agreements between them providing for transfer of the mine permit M/047/0022 from the County to TSH II and the replacement of the Board Contract with a bank account as surety for reclamation costs. No other persons made an appearance or participated in the hearing.

The Board having heard the testimony of the witness, reviewed the exhibits admitted at the hearing, considered the pleadings and arguments of counsel, and being fully advised does hereby make the following:

FINDINGS OF FACT

1. Uintah County filed its first application for a Notice of Intention ("NOI") for mining operations on May 2, 1988, claiming the County Mine had been in operation for more than 50 years previous to that date primarily as a source of asphalt for roads. The mine property was acquired by Uintah County in a tax sale and was thereafter operated by the County.

2. After the enactment of the Mined Land Reclamation Act in 1975, Uintah County questioned whether a mine operated by a county on county owned land required a permit and whether it should be required to post a reclamation surety but eventually the County agreed to obtain a permit, and submitted its NOI, but requested that a surety not be required.

3. In September, 1996 the NOI was amended and the County again requested that no surety be required. A hearing was held before the Board on October 23, 1996. At the hearing, the Board having received an Attorney General's opinion that bonding was required by the County, having reviewed the detailed analysis of the costs of reclamation and the financial

capacity of the County, entered an Order that a reclamation contract signed and approved by the County and the Board would serve as the surety under the statutory provision allowing for written agreements to be accepted as a form of surety. The amount was set at $146,400.00 escalated to 2001 costs.

4. In 2003 the County entered into an agreement with a private company called Crown Resources to operate on its lands. The Division agreed to reduce the County's reclamation liability to reflect a reduction in the amount of disturbed area that the County was required to reclaim under its agreement because of Crown Resources agreement to reclaim those lands. The Board approved a reduced surety amount of $115,900.00 (costs escalated to 2009).

5. In 2006, Crown Asphalt Ridge LLC ("Crown Asphalt") filed Notice of Intention M/047/0032 for a large mining operation on land immediately south of the County Mine. This mine was intended to develop the same geologic formation as the County Mine but in conjunction with a method of recovery that allowed for production of oil.

6. Between 2006 and 2011, mining operations by Crown Asphalt (and others under their authority) were allowed by the County to proceed with operations on lands within the County permit.

7. Crown Asphalt was not successful and in August 2011 filed for bankruptcy protection.

8. In November 2011, the bankruptcy court approved an auction sale, and at that sale an entity composed of creditors of the bankrupt, organized as Tar Sands Holding II, LLC purchased the real property, the on-site equipment, and the Crown Asphalt mine permit M/047/0032.

9. TSH II intentions in purchasing these assets was to find a buyer that would operate the project. TSH II submitted a revised NOI for the Crown Asphalt permit M/047/0032

in the name of Asphalt Ridge 2 and negotiated with the County and the Division to resolve reclamation liability for the County permit M/047/0022.

10. On October 22, 2014 the Division issued a directive to TSH II requiring it to increase the current amount of its surety for the Asphalt Ridge 2 permit from $381,000.00 to $683,000.00 and requiring it to amend NOI M/047/0032 to include lands within the County Permit M/047/0022 required for future mining or to reclaim those areas.

11. On November 21, 2014 TSH II advised the Division that it had a prospective purchaser and was interested in concluding an agreement for bonding of the County permit.

12. The Division, the County, and TSH II have reached separate agreements resolving reclamation liability for the County permit and to allow TSH II to operate the two NOIs and apply to consolidate them into one mine permit.

13. Under the agreement between the County and TSH II, and after discussions with the Division, TSH II agreed to post a bond for the amount of the reclamation costs for the County permit in the sum of $185,259.00 including the surety of $115,900.00 and an increase of $69,359.00 to secure escalation costs for one additional year.

14. In addition to assuring the obligations to the County, TSH II also agreed to secure the increase in reclamation liability for the Asphalt Ridge 2 permit M/047/0032 in the amount of $376,000.00.

15. As of the date of the hearing TSH II provided the Division with executed account control agreements to secure reclamation liability for both permits under a controlled account with Zions Bank.

CONCLUSIONS OF LAW

16. The Board has jurisdiction over this matter pursuant to the Utah Mined Land Reclamation Act (the "Act"), Utah Code Ann §§ 40-8-1 to -23 (West 2013), which 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).

17. The Board has the power and the duty to hold hearings and issue orders based on those hearings and "[t]o 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). This proceeding is to be conducted formally according to the provisions of the Board's administrative rules found in Utah Administrative Code Rule R641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

18. The County has entered into an agreement with Tar Sands Holding II (TSH II) to assign and transfer to TSH II the Notice of Intention (NOI, or mine permit) for the County Mine M/047/0022. The agreement for the transfer of the permit provides that TSH II will assume responsibility for the reclamation liability from the County.

19. The reclamation surety provided by the County is in the form of a written agreement approved by the Board known as a Board Contract. The County desires to be released from its obligations under the Board Contract.

20. The Board has the "sole authority over the release, partial release, or adjustment of surety amount" for a such agreements; see Utah Code §40-8-14(3) and Utah Admin Code R647-4-113.7. Accordingly, the County has requested the Board to release its surety obligations under the Board Contract.

21. An adequate replacement surety in the total amount of $185,259.00 for the County Permit (M/047/0022) has been provided by TSH II and accepted by the Division; and the full surety for the Asphalt Ridge 2 Permit M/047/032 to secure the reclamation liability of $683,000.00 has been provided by TSH II and accepted by the Division.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law the Board hereby Orders:

A. Uintah County is fully and completely released from its obligations as guarantor of requirements set forth in the Reclamation Contract which was approved as the form of surety for the County Asphalt Mine (M/047/0022).

B. The Division is authorized to transfer the permit M/047/0022 from the Uintah County to TSH II.

Pursuant to Utah Admin. Code Rules R641 and Utah Code Ann. §63G-4-204 to 208, the Board has considered and decided this matter as a formal adjudication.

This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. §63G-4-208 and Utah Administrative Code Rule R641-109.

Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. §63G-4-208(e) - (g), 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 issued. Utah Code Ann. §§63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. §63G-4-302, 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 63G-4-301 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. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

> 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 the month.

Id. *See* Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. §63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that 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 party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

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

DATED this 17th day of March, 2015.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By: _____
Ruland J. Gill, Jr., Chairman

CERTIFICATE OF MAILING

I certify that I caused a true and correct copy of the above FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER to be mailed the 17th day of March, 2015, to:

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