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FILED
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SECRETARY, BOARD OF
OIL, GAS & MINING

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

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IN THE MATTER OF THE PETITION BY THE DIVISION OF OIL, GAS & MINING FOR AN ORDER AGAINST UNITED STONE & DESIGN, INC.: (1) WITHDRAWING OF THE UNITED STONE MINE'S, S/047/0079, NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS; (2) FORFEITING THE SURETY; (3) DIRECTING THE DIVISION TO COMPLETE RECLAMATION, AND AUTHORIZING A CIVIL SUIT TO RECOVER COSTS AND PENALITIES FROM UNITED STONE & DESIGN, INC. AND THE UNITED STONE MINE, S/047/0079; AND (4) TAKING ALL OTHER ACTIONS NECESSARY TO RECLAIM THE LANDS LOCATED AT S27, T12S, R20E; S29, T12S, R20E; AND S06, T13S, R20E, USBM, UINTAH COUNTY, UTAH.	**NOTICE OF AGENCY ACTION** DOCKET NO.: 2013-008 CAUSE NO.: S/047/0079

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RELIEF SOUGHT

The Division of Oil, Gas, and Mining ("Division"), through its attorneys, hereby petitions the Utah Board of Oil, Gas, and Mining ("Board") for an Order as follows: (1) formally withdrawing the Notice of Intent to Commence Small Mining Operations for the United Stone Mine; (2) declaring the cash total provided by the operator as reclamation surety, which is currently held by Zions Bank, account, to be forfeited to the Division; (3) directing the Division to complete reclamation of the United Stone Mine and authorizing the Division to file such further civil actions to recover reclamation costs together with all other costs, outstanding penalties or fines, and attorney fees associated therewith; and (4) to take such other actions as may be appropriate or necessary to reclaim the United Stone Mine and recover costs. The United Stone Mine is located at S27, T12S, R20E; S29, T12S, R20E; and S06, T13S, R20E, Uintah County, Utah.

BACKGROUND

The United Stone Mine ("United Mine") has a history of noncompliance that dates back to its inception. In 2004, the operator began mining without a Notice of Intention to Commence Small Mining Operations ("NOI"). This auspicious beginning led to the first of three Cessation Orders issued against the mine. During this time, the operator, United Stone & Design, Inc. ("operator" or "USD") failed to properly bond the operation despite the Division's accommodations and later failed to properly reclaim the operation after the Division revoked its NOI. As of this filing, the operator has continuously failed to provide the required bonding and despite the Division's best efforts to work with and accommodate the operator's needs, the United Mine remains inadequately bonded. There has been no mining conducted at the site

since termination of the surety in 2008and the operator has shown no inclination or ability to address the bonding deficiencies.

Therefore, the Division seeks three orders from the Board that will allow it to fully and properly reclaim the mine site. First, the Division seeks an order withdrawing the operator's NOI for the United Mine and to finish reclamation of the site. Second, the Division seeks an order forfeiting the existing surety money, which totals $3,900 plus interest. Third, the Division seeks an order permitting it to pursue the civil penalties in the appropriate District Court associated with Cessation Orders MC 2006-03-07-01; MC 2008-59-01; and MC 2008-59-02, which amount to $5020 to help offset the Division's reclamation costs.

JURISDICTION

1. This action is brought by the Division pursuant to its authority to enforce the provisions of the Utah Mined Land Reclamation Act ("Act"), Utah Code Annotated §§ 40-8-1 et seq. (2010).
2. Utah Code Annotated § 40-8-6(2) (2010) confers jurisdiction over this matter to the Board and empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.
3. Utah Code Annotated § 40-8-14(6)(1) (2010) provides that "if the operator of a mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, withdraw the approved NOI and declare any surety filed for this purpose forfeited."
4. Utah Administrative Code R647-3-112 (2010) empowers the Board to authorize the

Division to complete reclamation and recover all costs and expenses incurred, including the recovery of all civil penalties, including costs and attorney fees incurred in a civil action to recover the same.

NOTICE REQUIREMENTS

5. Pursuant to Utah Code Annotated § § 63G-4-204 -209 (2010), the Board hearing will be conducted formally.
6. The hearing will be held on March 27, 2013at 9:00 am. The Respondent or other persons with an interest in this matter may file a written response with the Board within 20 days of mailing of this Notice of Agency Action. Any party who fails to respond or to appear at said hearing may be held in default.
7. The name and addresses of all persons to whom Notice of Agency Action shall be given are attached as the CERTIFICATE OF SERVICE and by this reference incorporated herein.

STATEMENT OF THE FACTS

8. United Stone and Design, Inc. ("United Stone" or "operator") is a defunct Utah corporation that is no longer in good standing, with its principal place of business in Duchesne, Utah.
9. United Stone began commercial mining activity at the United Stone Mine sometime in 2004 without filing a Notice of Intention ("NOI") with the Division.
10. The United Mine is located in the S27, T12S, R20E; S29, T12S, R20E; and S06, T13S, R20E, USBM, Uintah County, Utah.

11. In 2006 the Utah Administrative Code R647-3 was amended to require small mine operators to submit an adequate surety along with a Notice of Intention for all mines smaller than five acres.
12. The Division issued a Cessation Order, MC2006-03-01-01 ("CO 1"), to United Stone for failing to have a NOI for the United Mine. CO 1 ordered United Stone to submit a NOI to the Division by July 31, 2006 and a surety after the NOI was determined to be complete, but no later than August 7, 2006. Per the terms of CO 1, the timely filing of the NOI and surety would offset the penalty associated with the cessation order.
13. The operator submitted the NOI on August 2, 2006.
14. On August 15, 2006 the Division informed United Stone that the NOI as submitted for the United Mine was deficient for a variety of reasons. The operator failed to provide adequate information identifying the operator, a location map, operations, and area of disturbance among other things. The Division extended the deadline until September 15, 2006 to allow the operator gather the required information.
15. On October 6, 2006 the Division informed United Stone that the amount of surety for the United Mine was $12,000 and extended the abatement deadline for CO 1 to October 16, 2006.
16. On December 21, 2006 the abatement deadline for CO 1was extended to January 16, 2007.
17. On February 20, 2007, the abatement deadline for CO 1 was extended again until March 16, 2007.
18. On March 7, 2007 the Division informed United Stone that it received a copy of a certificate of liability insurance issues by Service Insurance Agency. The certificate

identified a reclamation bond for the United Mine. However, the Division required the original executed surety reclamation bond. The Division also attached a standard reclamation contract for United Stone's principal, Mr. Justin Farley, to sign and return.

19. On March 16, 2007 Mr. Farley signed and returned the reclamation on behalf of United Stone to the Division, but did not provide the original reclamation bond document.
20. On March 19, 2007 the Division extended the abatement deadline for CO 1 to April 2, 2007 because it was still waiting to receive the original reclamation bond document.
21. On April 6, 2007 the Division issued Cessation Order MC2007-03-01-01 ("CO 2") to United Mine because United Stone failed to provide the original documentation that the Division was seeking under CO 1.
22. Throughout April, 2007 the Division and the operator engaged in discussion aimed at establishing a payment schedule that would allow the operator pay the $12,000 surety through incremental payments because the Division rejected the certificate of liability insurance that the operator originally offered as a surety. The terms of the payment schedule required a $1,200 down payment and twelve monthly payments of $900, which were due on the last day of each month beginning on May 31, 2007. The funds were to be held by Zions Bank in account no.: 811985. On May 2, 2007 the Division received a signed copy of the payment schedule from United Stone and the first payment of $1,200.
23. On May 21, 2007 the Division formally approved the United Mine's NOI and reclamation surety and permitted United Stone to conduct mining operations at the mine.
24. On June 11, 2007 the Division informed United Stone that it was still awaiting the $900 due on May 31st per the terms of the payment schedule. United Stone was given until June 18, 2007 to submit the $900.

25. On September 26, 2007 the Division informed United Stone that it had failed to make the August payment of $900.
26. The operator failed to make the required September and October payments of $900 each.
27. On November 20, 2007 the Division demanded that the outstanding balance of $7,200 be paid in full immediately.
28. On December 28, 2007 the Division responded by letter to a series of emails from Mr. Farley of United Stone, who claimed that each of the missing payments had been made, but were purportedly returned with letters informing him that there was no longer any place to apply the payments.
29. On January 8, 2008 the Division formally prohibited any mining activity at the United Mine's because the operator failed to submit the full surety balance. It also demanded that United Stone complete reclamation by June 1, 2008. The Division promised to waive the reclamation requirement if the outstanding $7,200 was paid in full before the June 1st deadline.
30. On June 16, 2008 the Division issued Cessation Order MC2008-59-01("CO 3") to United Stone for failing to furnish and maintain a reclamation surety. CO 3 required the operator to make the full payment within two weeks, which United Stone failed to do.
31. On July 22, 2008 a Division Assessment Officer determined that the proposed penalty associated with CO 3 to be $2,200. A copy of this determination was mailed to United Stone.
32. On November 13, 2008 the Division issued Cessation Order MC2008-59-02 ("CO 4") to USD for its failure to abate CO 3. CO 4 required the immediate cessation of all mining

related activity at the United Mine. The Division also withdrew the operator's NOI and required reclamation work to be completed within ninety days.

33. On May 20, 2009 the Division's Assessment Officer totaled a proposed assessment penalty of $6,000 against United Stone for failing to abate CO 4.

34. On October 20, 2009 the Division released its final assessment for penalties associated with violating CO 4. The Division reduced the penalty total from $6,000 to $1,500 because the operator undertook some reclamation work during June, 2009. On April 14, 2010 the Division informed United Stone about its intention to seek a forfeiture order from the Board in the amount of $3,900 paid to and held by the Division under the payment agreement. It also informed United Stone about its intention to seek permission from the Board to pursue civil penalties in a civil court associated with CO's 2 ($1320), 3 ($2200), and 4 ($1500), which total $5,020.

COUNT I
(Withdraw the Notice of Intention to Commence Mining Operations)

35. The Division hereby incorporates the allegations of paragraphs 1-34 hereof and further alleges as follows.

36. Utah Code Annotated § 40-8-6(4) (2010) authorizes the Board "to do all things and take such other actions within the purposes of this act as may be necessary to enforce its provisions."

37. As of this date, reclamation work at the United Mine has not been completed by United Stone despite repeated requests from the Division.

38. Such action was a breach of the terms of the account and legal action should be authorized to be taken by the Attorney General against United Stone, and others, if

warranted, to recover the amount of the surety as may be necessary to complete the required work in accordance with Utah Code Ann. § 40-8-14(6)(d).

39. Due to the failure of the Operator to provide the full amount required as a reclamation surety for over five years, the Board should withdraw the Notice of Intention.

COUNT II
(Declare the Reclamation Bonding Forfeited Order the Division to Reclaim the Lands disturbed by Mining and to Pursue All Things Necessary to Complete Reclamation)

40. The Division hereby incorporates the allegations of paragraphs 1-39 hereof and further alleges as follows.

41. Utah Code Ann. § 40-8-14(6) provides that if an operator of a small mining operation fails or refuses to reclaim as required by the statute and regulations, the Board may order the surety filed with the Division forfeited and may request the Attorney General to take necessary legal action to recover costs and expenses in a civil action brought against the operator.

42. UNITED STONE, as the signatory of NOI S/047/0079, is legally identified as the operator and registered agent of the United Mine under the NOI. The Respondent obtained and posted cash as surety for the reclamation of the lands mined under NOI S/023/0065 Zions Bank, Account No.: 811985, in favor of the Division for the amount of $3,900 plus interest.

43. Division inspections show the Respondent has failed to fully reclaim the land, placing it in default of Utah law, Division Rules, NOI S/047/0079, and the Reclamation Contract. The Respondent has received repeated notices of the default and failed to cure.

44. United Stone's inaction indicates that it no longer has the intent or resources to either continue mining operations at United Mine or honor its contractual obligations with the Division.

45. Accordingly, the cash funds held in Zions Bank, account No.: 8911985 for $3,800 should be forfeited in accordance with the terms of the surety bond as security for the reclamation of the site.

46. The Board should authorize the Division to use the $3,900 from the forfeited sureties to complete reclamation.

47. The Board should authorize the Division to take all actions necessary to recover any additional costs associated with completing the reclamation work, which includes reasonable attorney's fees and costs incurred by the Division and/or Board in the enforcement of this contract.

COUNT III
(Grant the Division Permission to Seek the Enforcement of the Civil Penalties Associated with the Applicable Cessation Orders in the Appropriate District Court)

48. The Division hereby incorporates the allegations of paragraphs 1-47 hereof and further alleges as follows.

49. Utah Code Ann. §40-8-9.1(4) allows for civil penalties arising under this chapter to be recovered in a civil action by the attorney general of Utah at the request of the board in any appropriate district court of the state.

50. The Division asks the Board to authorize it to collect the penalties associated with Cessation Orders MC2006-03-07-01 for $1320; MC2008-59-01 for $2200; and MC2008-59-02 for $1500, which total $5020.

51. The operator has made it abundantly clear that it is not willing to voluntarily comply with the Cessation Orders or to pay the penalties associated with them.

52. The Division seeks these penalties to help further offset the costs associated with reclaiming the United Mine because the operator failed to fully bond the operations conducted there.

PRAYER FOR RELIEF

WHEREFORE, the Division requests that the Board enter the following Order(s):

A. An order withdrawing Notice of Intention S/047/0079 due to the failure of the Respondent to provide an increased reclamation surety, satisfactorily perform reclamation of the land, or claim responsibility for reclamation costs associated with the United Mine.

B. An order finding that the operator, United Stone and Design, is in breach of the Reclamation Contract and obligation under the Act to reclaim, and permitting the Division to finish any outstanding reclamation work at the United Mine and allowing the Division to seek repayment for the outstanding reclamation work including any attorney and Board costs.

C. An order authorizing the Attorney General to pursue the civil penalties arising from the three Cessation Orders issued to United Stone and Design in the appropriate district court of the state.

D. An order authorizing the Division to take all other actions as may be appropriate or necessary to reclaim the United Mine and recover costs and such further relief

as the Board may deem just and equitable under the law and facts as may be adduced in the proceeding hearing.

Dated this 11th day of February, 2013.

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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the forgoing NOTICE OF AGENCY ACTION to be personally served or mailed first class mail, postage prepaid, the 11Th day of February, 2013, to:

UNITED STONE AND DESIGN

C/O JUSTIN FARLEY

P.O. BOX 99

DUCHESNE, UT 84021

ZIONS BANK

ATTN: RAELYNN DANIELS

ONE SOUTH MAIN ST

SALT LAKE CITY, UTAH 84133

MIKE JOHNSON

ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

BOARD OF OIL, GAS & MINING

[VIA EMAIL]

Julie Ann Carter