

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

IN RE EAGLE BUTTE MINE,
ALPHA WEST TFN6-1/152

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) Docket # 15-4801
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NOTICE OF BANKRUPTCY STAY

The Wyoming Department of Environmental Quality (DEQ), through its undersigned counsel, hereby notifies the Council of the entry of the attached *Stipulation and Order Concerning Debtor's Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming* by the United States Bankruptcy Court for the Eastern District of Virginia Richmond Division on October 8, 2015. Ex. A. The Stipulation and Order provides in part that “**any proceedings** relating to the Wyoming Substitution Demand or the Debtor’s self-bonding status, including the informal review process of WDEQ, shall be stayed.” Ex. A at 5 (emphasis added). The stay is not limited in its preclusive effect to the State of Wyoming and the DEQ, and the failure to abide by the order of the bankruptcy court could subject the Powder River Basin Resource Council or any other initiating individual or entity, including DEQ, to civil contempt proceedings.¹ Accordingly, these

¹ It is worth noting, that any complaint related to the entry of the order should have been addressed to the bankruptcy court during the lengthy objection period. The Powder River Basin Resource Council had actual notice of those proceedings and chose not to object to the entry of the order. It cannot circumvent the bankruptcy court after the fact in an effort to make up for this failure.

proceedings have been stayed by the Stipulation and Order, and no hearing or other action by the Council is permitted so long as the stay remains in place.

The DEQ requests that the Council enter an appropriate acknowledgment of the stay and cancel any scheduled proceedings in this matter immediately.

DATED this 13th day of November, 2015.

THE STATE OF WYOMING



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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2015, a true copy of the foregoing document was mailed, postage prepaid to the following:

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EXHIBIT A

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**STIPULATION AND ORDER CONCERNING DEBTORS' RECLAMATION
BONDING OF THEIR SURFACE COAL MINING OPERATIONS IN WYOMING**

Debtors Alpha Natural Resources ("ANR") and Alpha Coal West, Inc. ("ACW") and together with ANR, the "Debtors") and the State of Wyoming and the Wyoming Department of Environmental Quality ("Wyoming" or "WDEQ," and together with the Debtors, the "Parties") hereby stipulate and agree as follows:

RECITALS

WHEREAS, ANR through its wholly owned subsidiary ACW, operates two surface coal mines in Wyoming, known as Belle Ayr and Eagle Butte (collectively, the "Wyoming Mines");

WHEREAS, prior to commencing surface coal mining operation in Wyoming, the operator is required to obtain a mining permit and license from the WDEQ;



WHEREAS, applicable statutes in Wyoming require surface mine operators to post reclamation bonds to provide security for the state in the event the mine operator fails to fulfill its obligation to restore the property upon which mining operations have been conducted in accordance with specified standards and an approved reclamation plan. Over the last permit cycle, the Debtors' reclamation bonding requirements in Wyoming, calculated under standards established by WDEQ, have been set at approximately \$411 million;

WHEREAS, applicable statutes in Wyoming allow surface mine operators to "self-bond" their reclamation obligations if they meet specified financial and other criteria;

WHEREAS, the Debtors have been "self-bonding" their reclamation obligations under mining permit nos. 214 and 428 through self-bond nos. SBC 0128 and SBC 131 (the "Self Bonds") in Wyoming for 5 years;

WHEREAS, on March 17, 2010, ACW executed two Coal Self-Bond Indemnity Agreements (collectively, the "Indemnity Agreements") in favor of the WDEQ and the United States – Office of Surface Mining Reclamation and Enforcement ("OSMRE"), pursuant to which ACW agreed to indemnify OSMRE and WDEQ for, among other things, its obligations under the Self-Bonds;

WHEREAS, on March 17, 2010, ANR executed two Coal Self-Bond Corporate Guaranty (collectively, the "Guarantees"), pursuant to which ANR guaranteed, among other things, ACW's obligations under the Self-Bonds;

WHEREAS, on or about May 26, 2015, the WDEQ issued a demand (the "Wyoming Substitution Demand") to ACW stating, *inter alia*, that (i) ACW's right to "self-bond" would terminate by August 24, 2015 (the "Wyoming Posting Deadline"); and (ii) ACW is required by

the Wyoming Posting Deadline to post a reclamation bond or substitute collateral of approximately \$411 million to be allowed to continue mining operations in Wyoming;

WHEREAS, the original Wyoming Posting Deadline of August 24, 2015 has been stayed by an order, unopposed by WDEQ, entered on July 29, 2015 in an appeal of the Wyoming Substitution Demand currently pending in the Sixth Judicial District Court of Campbell County, Wyoming. That stay, however, will expire upon the conclusion of an informal review process being conducted by WDEQ;

WHEREAS, the Debtors believe that they currently are in compliance with, and are continuing to fulfill, their ongoing obligations to perform reclamation under, applicable law and as required by 28 USC § 959(b), and anticipate remaining so for the duration of these chapter 11 cases;

WHEREAS, as a result of the commencement of these chapter 11 cases, Wyoming asserts that there are obligations due and owing by the Debtors under the terms of the Indemnity Agreements and Guarantees;

WHEREAS, the Debtors contend that they presently are unable to comply with the Wyoming Substitution Demand, but anticipate that either (a) they will be able to satisfy their reclamation bonding obligations to Wyoming upon confirmation of a plan of reorganization or (b) such obligations will be satisfied by a purchaser of one or both of the Wyoming Mines;

WHEREAS, as a result of the commencement of these chapter 11 cases, the Debtors assert that WDEQ is precluded under the Bankruptcy Code from seeking payments for amounts owing under the Indemnity Agreement and Guarantees, demanding additional collateral, taking actions that interfere with the Debtors' efforts to reorganize in these proceedings or revoking or refusing to renew Debtors' permits and/or licenses to operate coal mines in Wyoming due to the

Debtors' bankruptcy, financial condition or failing to provide collateral to secure the Debtors' reclamation obligations;

WHEREAS, WDEQ asserts that it is not precluded under the Bankruptcy Code from demanding additional collateral and revoking or refusing to grant, amend or renew the Debtors' permits and/or licenses to operate their coal mines in Wyoming due to the Debtors' failure to provide collateral to secure the Debtors reclamation obligations;

WHEREAS the Debtors' debtor in possession credit agreement dated as of August 6, 2015 (as it may be modified or amended, the "Credit Agreement") approved under the interim order (Docket No. 82) and any final further order approving the Debtors' postpetition financing (Docket No. 465) (collectively, and as modified or amended, the "DIP Order"), provides for, among other things, (a) a Bonding Carve-Out, which is a carve-out from the Term Facility Collateral in respect of the Bonding Superpriority Claim Amount with Superpriority Claim status entitling the authority making any applicable Bonding Request to receive proceeds of Term Facility Collateral first in priority before distribution to any Lender and (b) a Bonding Superpriority Claim, which is a Superpriority Claim granted solely in favor of a Bonding Beneficiary to satisfy a Bonding Request;¹

WHEREAS, the Debtors and WDEQ wish to resolve their disagreements as to the above matters as provided herein without any adjudication of any issue of law or fact;

NOW, THEREFORE, the Parties agree as follows, subject to Bankruptcy Court approval:

¹ All capitalized terms not otherwise defined in this paragraph have the meanings given to them in the Credit Agreement.

1. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period (as defined below), (a) the Debtors may satisfy the bonding requirements for their reclamation obligations without complying with the Wyoming Substitution Demand, (b) Wyoming shall have, pursuant to, as applicable, sections 105, 364 and 503 of the Bankruptcy Code and solely in the manner and to the extent as permitted as a “Bonding Superpriority Claim” under the DIP Order, an allowed superpriority claim having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code in the amount of \$61 million (the “Superpriority Claim”) against each of ANR and ACW to secure the Debtors’ reclamation obligations (provided that under no circumstances will Wyoming recover more than \$61 million on account of the Superpriority Claim) and (c) the Debtors agree that the Bonding Carve Out (and thus the Superpriority Claim) will not be terminated, as permitted under the DIP Order or otherwise, except as set forth in paragraph 6 below.

2. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period, (a) Wyoming shall not seek additional collateral or revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (b) Wyoming shall not seek to enforce the Indemnity Agreements or Guarantees or seek to revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ non-payment of obligations under the Indemnity Agreements or Guarantees and (c) any proceedings relating to the Wyoming Substitution Demand or the Debtors’ self-bonding status, including the informal review process of WDEQ, shall be stayed.

3. This Stipulation and Order is without prejudice to (a) any claims or causes of action that Wyoming may assert over and above the Superpriority Claim against the Debtors on account of any obligation to perform reclamation, the Self-Bonds, the Indemnity Agreements or the Guarantees, including with respect to the amount of such claims and the priority of such claims or causes of action and (b) any defenses or objections to such claims by the Debtors or other parties, including with respect to the amount of such claims and the priority of such claims or causes of action, all of which are expressly preserved. Except as specifically set forth in paragraphs 1 and 2 above with respect to the Debtors' reclamation bonding obligations, the Debtors agree to comply with their reclamation obligations as required by applicable law, including 28 USC § 959(b).

4. Except as specifically set forth in paragraphs 1 and 2 above, nothing in this Stipulation and Order shall in any way limit or impair the rights of Wyoming (or WDEQ) to enforce all applicable environmental and reclamation laws and regulations, and none of the Parties waive or release any legal or factual argument, claim, doctrine or defense applicable to any dispute related thereto.

5. Nothing in this Stipulation and Order shall limit any rights of the Debtors to operate, not operate, idle, close, sell or otherwise dispose of their mines in Wyoming or any right of Wyoming to object to such action.

6. The Superpriority Claim shall terminate on the earlier of the date that (a) Wyoming or WDEQ breaches this Stipulation and Order, (b) OSMRE revokes, terminates, refuses to grant or amend or takes any other adverse action with respect to the Debtors' Wyoming mining permits or licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (c) a third-party replaces the

Superpriority Claim with collateral or bonding acceptable to WDEQ or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in accordance with applicable law becomes effective by its terms.

7. For purposes of this Stipulation and Order, "Compliance Plan Period" shall mean the earlier of the date that (a) the Superpriority Claim is terminated pursuant to paragraph 6 hereof; (b) the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code; (c) the lenders under the Credit Agreement exercise remedies against the Term Facility Collateral; or (d) January 31, 2017.

8. This Stipulation and Order is without prejudice to the rights of the Parties under applicable laws and regulations concerning the Debtors' bonding obligations subsequent to the Compliance Plan Period.

9. In the event that the Court does not approve this Stipulation and Order: (a) nothing contained herein shall be deemed to be a waiver of any claims or defenses or an admission of liability by any Party hereto; and (b) this Stipulation and Order shall be null and void, and all rights of the Parties prior to this Stipulation and Order shall be preserved.

10. Upon approval by the Court, the Parties are authorized and empowered to take all actions deemed necessary to implement the terms of this Stipulation and Order.

11. Nothing in this Stipulation shall modify, alter or otherwise affect the rights or remedies of the agent of the lenders under the Debtors' postpetition debtor in possession financing facility or be deemed to authorize the Debtors to violate the terms of such financing facility.

12. This Stipulation and Order sets forth the entire agreement and understanding by and among the Parties. No amendment, waiver or modification of any

provision of this Stipulation and Order shall be effective unless the same shall be in writing and signed by the Parties and approved by the Court.

13. This Stipulation and Order may be signed in counterparts which, when taken as a whole, shall constitute one and the same document; and facsimile or other electronic copies of signatures shall be deemed originals.

14. Each individual signing this Stipulation and Order on behalf of any Party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that he or she is authorized to execute this Stipulation and Order in his or her representative capacity with binding effect, as reflected below and on behalf of the Party indicated.

15. This Stipulation and Order shall be governed by and shall be interpreted in accordance with the laws of the State of Virginia, except to the extent the Bankruptcy Code applies, without regard to Virginia's rules governing conflicts of laws.

16. The Court shall retain jurisdiction (and the Parties consent to such retention of jurisdiction) with respect to any disputes arising from, or other actions to interpret, administer or enforce, the terms and provisions of this Stipulation and Order.

Alpha Natural Resources, Inc.

State of Wyoming and Wyoming Department
of Environmental Quality

By: /s/ Richard H. Verheij

By: /s/ James C. Kaste

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Dated: October __, 2015
Richmond, Virginia

Oct 8 2015

/s/ Kevin R. Huennekens

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: 10/8/15

WE ASK FOR THIS:

Respectfully submitted,

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**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III