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Department of Water Resources
Eastern Region

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DEPT OF WATER RESOURCES
SOUTHERN REGION

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*Attorneys for Chapter 7 Trustee,
W. Donald Gieseke*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:

BEAL MOUNTAIN MINING, INC.,

Case No.: BK-N-98-30090-GWZ
Chapter 7

Jointly Administered With:

Case No.: BK-N-98-30091-GWZ
Case No.: BK-N-98-30094-GWZ
Case No.: BK-N-98-30096-GWZ
Case No.: BK-N-98-30097-GWZ
Case No.: BK-N-98-30098-GWZ
Case No.: BK-N-98-30099-GWZ
Case No.: BK-N-98-30100-GWZ
Case No.: BK-N-98-30102-GWZ
Case No.: BK-N-98-30103-GWZ
Case No.: BK-N-98-30104-GWZ
Case No.: BK-N-98-30105-GWZ

This Filing Also Affects:

☒ **Black Pine Mining, Inc.**

☐ Pangea Exploration, Inc.

☐ Pangea Gold Corporation

☐ Pangea Minerals, Inc.

☐ Pegasus Gold Montana Mining, Inc.

☐ Pangea Resource Explorations, Inc.

☐ Pegasus Gold Finance Corporation

☐ Pegasus Gold Financing, LLC

☐ Pangea International Holdings Corp.

☐ POV Corporation

☐ Zortman Mining, Inc.

**NOTICE OF HEARING ON TRUSTEE'S
MOTION TO SELL TWO WATER
RIGHTS LICENSES FREE AND CLEAR
OF ALL LIENS, CLAIMS, AND
INTERESTS AND FOR APPROVAL OF
BIDDING PROCEDURES AND BID
PROTECTIONS**

Hearing Date: September 20, 2022

Hearing Time: 2:00 p.m.

Estimated Time: 30 min.

PLEASE TAKE NOTICE that, on August 20, 2022, at ECF No. 1003, W. DONALD GIESEKE, Chapter 7 Trustee (the "**Trustee**") for the Bankruptcy Estate of Black Pine Mining,

1 Inc. ("Black Pine Mining" or "Seller") a debtor in the above-captioned administratively
 2 consolidated cases filed the TRUSTEE'S MOTION TO SELL TWO WATER RIGHTS
 3 LICENSES FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS AND FOR
 4 APPROVAL OF BIDDING PROCEDURES AND BID PROTECTIONS (the "Sale Motion").
 5 As set forth more fully in the Sale Motion itself, the Sale Motion requests that the Court enter
 6 an Order : (a) authorizing the Sale of two Idaho water rights licenses (defined as the "Licenses"
 7 in the Sale Motion) in the name of Black Pine Mining to Pilot Gold Inc. ("Pilot Gold" or the
 8 "Stalking Horse" or "Stalking Horse Bidder") or the successful bidder at the Auction
 9 ("Successful Bidder"), free and clear of all liens, claims and encumbrances, with the Stalking
 10 Horse's initial bid being \$215,000.00; (b) waiving the 14-day notice periods in Bankruptcy Rule
 11 6004(h); (c) finding the successful purchaser of the Assets a "good faith purchaser" under
 12 Section 363(m) of the Bankruptcy Code; and (d) granting certain related relief as described in
 13 the Sale Motion. Any opposition to the relief sought in the Sale Motion must be filed pursuant
 14 to Local Rule 9014.

15 **NOTICE IS FURTHER GIVEN** that the Sale Motion contains certain Bidding
 16 Procedures relating to the sale of the Licenses, including the Auction process proposed by the
 17 Trustee. If you wish to make a bid on the Licenses, you must review the Bidding Procedures
 18 carefully, as the Trustee is seeking approval and ratification of the Bidding Procedures at the
 19 Auction and Sale Hearing (defined below).

20 **NOTICE IS FURTHER GIVEN** that if you do not want the court to grant the relief
 21 sought in the Sale Motion, or if you want the court to consider your views on the Sale Motion,
 22 including the proposed Bidding Procedures and Auction, then you must file an opposition with
 23 the court, and serve a copy on the person making the Sale Motion *no later than 14 days*
 24 preceding the Auction and Sale Hearing date set for the Sale Motion, unless an exception applies
 25 (see Local Rule 9014(d)(3)). The opposition must state your position, set forth all relevant facts
 26 and legal authority, and be supported by affidavits or declarations that conform to Local Rule
 27 9014(c).

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If you object to the relief requested in the Sale Motion, you *must* file a WRITTEN objection with the Bankruptcy Court. You *must* also serve your written response on the person who sent you this notice. The opposition must state your position, set forth all relevant facts and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

If you do not file a written response with the Bankruptcy Court, or if you do not serve your written response on the person who sent you this notice, then:

- The court may *refuse to allow you to speak* at the scheduled hearing; and
- The court may *rule against you* without formally calling the matter at the hearing.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a telephonic hearing in the lead case of the above captioned administratively consolidated Bankruptcy Cases to consider the Sale Motion and conduct, if necessary, the Auction contemplated in the Sale Motion (“**Auction and Sale Hearing**”), with said Auction and Sale Hearing to be held on **September 20, 2022 at 2:00 p.m. before a United States Bankruptcy Judge, in the United States Bankruptcy Court, for the District of Nevada**, as may be continued from time to time as the Court orders.

PLEASE TAKE FURTHER NOTICE that due to the COVID-19 pandemic, in person appearances at court hearings has been suspended. **The Auction and Sale Hearing will be conducted by teleconference, with a dial in number of (877) 873-8017, and Access Code 4994094#.** To participate in the telephone hearing, dial the Toll-Free Call-in Number and enter the seven-digit Access Code followed by the “#” key. You must dial in to the Auction and Sale Hearing at least five minutes before the Auction and Sale Hearing time above. You may be placed on hold until the courtroom deputy activates the conference call, or you may hear others speaking. Another hearing may be in progress; do not announce your presence until the courtroom deputy takes roll call or your hearing is called. If you have problems connecting or the courtroom deputy does not activate the call within 5 minutes after your scheduled hearing time, hang up and call the court at: 866-232-1266. For further information on the Bankruptcy

1 Court's COVID-19 updates, including information on telephonic and videoconference
2 participation at hearings, please visit <https://www.nvb.uscourts.gov/coronavirus/>

3 Full size copies of the Sale Motion and any related pleadings, may be obtained at the
4 United States Bankruptcy Court for the District of Nevada, C. Clifton Young Federal Building,
5 300 Booth Street, Reno, Nevada 89509, by visiting <http://www.nvb.uscourts.gov> (PACER
6 Account required), or by contacting Humphrey Law PLLC, Attn: L. Edward Humphrey, Esq.,
7 (775) 420-3500, ed@hlawnv.com, or via regular mail at 201 West Liberty Street, Suite 350,
8 Reno, Nevada 89501.

9 DATED: August 20, 2022.

HUMPHREY LAW PLLC

10
11 By: /s/ L. Edward Humphrey

12 L. Edward Humphrey, Esq.

13 Patrick O'Rourke, Esq.

14 *Attorneys for Chapter 7 Trustee,*

15 *W. Donald Gieseke*
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 W. Donald Gieseke

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In Re:

BEAL MOUNTAIN MINING, INC.,

This Filing Also Affects:

- ☒ Black Pine Mining, Inc.
- ☐ Pangea Exploration, Inc.
- ☐ Pangea Gold Corporation
- ☐ Pangea Minerals, Inc.
- ☐ Pegasus Gold Montana Mining, Inc.
- ☐ Pangea Resource Explorations, Inc.
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- ☐ Pangea International Holdings Corp.
- ☐ POV Corporation
- ☐ Zortman Mining, Inc.

Case No.: BK-N-98-30090-GWZ
 Chapter 7

**Jointly Administered Department of Water Resources
 Eastern Region**

Case No.: BK-N-98-30094-GWZ
 Case No.: BK-N-98-30096-GWZ
 Case No.: BK-N-98-30097-GWZ
 Case No.: BK-N-98-30098-GWZ
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 Case No.: BK-N-98-30102-GWZ
 Case No.: BK-N-98-30103-GWZ
 Case No.: BK-N-98-30104-GWZ
 Case No.: BK-N-98-30105-GWZ

**TRUSTEE'S MOTION TO SELL TWO
 WATER RIGHTS LICENSES FREE AND
 CLEAR OF ALL LIENS, CLAIMS, AND
 INTERESTS AND FOR APPROVAL OF
 BIDDING PROCEDURES AND BID
 PROTECTIONS**

Hearing Date: September 20, 2022
 Hearing Time: 2:00 p.m.

Estimated Time: 30 min.

W. DONALD GIESEKE, Chapter 7 Trustee for the Bankruptcy Estate of Black Pine Mining, Inc. ("Trustee" or "Seller") a debtor in the above-captioned administratively consolidated cases, by and through his counsel, hereby moves under section 363 of Title 11 of the United States Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy



• **State of Idaho Department of Water Resources
 Water Right License for Water Right No. 17-07132:**

Priority: October 6, 1988
 Max Diversion Rate: .91 CFS
 Max Diversion Volume: 658.1 AFA
 Beneficial Use: Mining (for ore processing, dust suppression, and support facilities).
 Point of Diversion: NENE, Sec.36, Township 15S, Range 29E, Cassia County, Idaho
 Place of Use: Township 15S, Range 29E, Sections 25, 26, 27, 34, 35, 36 (as further described in the License).
 Notes: Water Right is appurtenant to place of use.

• **State of Idaho Department of Water Resources
 Water Right License for Water Right No. 17-07140:**

Priority: May 10, 1992
 Max Diversion Rate: .29 CFS
 Max Diversion Volume: 209.7 AFA
 Beneficial Use: Same as Water Right No. 17-07132.
 Point of Diversion: Same as Water Right No. 17-07132.
 Place of Use: Same as Water Right No. 17-07132.
 Notes: Water Right is appurtenant to place of use; mining use shall be non-consumptive.

(collectively, the "Licenses"). Copies of the Licenses are attached as **Exhibit C** and **Exhibit D** hereto.

As discussed further below, after arms' length negotiations between Pilot Gold and the Trustee, Pilot Gold has submitted an offer to the Trustee of \$215,000.00 for the Licenses ("Stalking Horse Bid").

II. JURISDICTION AND BASIS FOR RELIEF

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Rules") and Local Rule 6004 of the United States Bankruptcy Court for the District of Nevada ("Local Rules"), for entry of an order:

- i. approving proposed auction and bid procedures (the "Bid Procedures") and proposed bid protections in connection with the sale (the "Sale" or "Sale Transaction") of certain Idaho water rights of Debtor Black Pine Mining, Inc. ("Black Pine Mining"), as more particularly defined below as the "Licenses";
- ii. approving the form and manner of notice of the Auction and the Sale Hearing (the "Auction and Sale Hearing Notice") attached hereto as **Exhibit A**; and,
- iii. entering an order (the "Sale Order"), substantially in the form attached hereto as **Exhibit B**.

- a. authorizing the Sale of the Licenses to Pilot Gold Inc. ("Pilot Gold" or the "Stalking Horse" or "Stalking Horse Bidder") or the successful bidder at the Auction ("Successful Bidder"), free and clear of all liens, claims and encumbrances;
- b. waiving the 14-day notice periods in Bankruptcy Rule 6004(h);
- c. finding the successful purchaser of the Assets a "good faith purchaser" under Section 363(m) of the Bankruptcy Code; and
- d. granting certain related relief as described herein and in the Sale Order.

This Motion is based on the following Memorandum of Points and Authorities, the pleadings and papers on file herein, the attached exhibits, and any evidence and argument presented during the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE IDAHO WATER RIGHTS LICENSES

The Trustee desires to sell the following two water rights licenses as assets of Black Pine Mining, one of the debtors in the above-captioned administratively consolidated cases:

2. Venue is proper in this District under 28 U.S.C. §§ 1408(1) and 1409.

3. The bases for the relief requested herein are Section 363 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, Bankruptcy Rules 2002 and 6004, and Local Rule 6004.

III. GENERAL BACKGROUND

A. Pilot Gold, the Consolidated Bankruptcy Cases, and Reopening

4. Pilot Gold is in the mining business. It owns and presently is exploring and developing certain federal unpatented mining claims in Cassia County in southern Idaho (the "Beal Mountain Claims"). The Beal Mountain Claims were mined in the 1990's by Beal Mountain Mining, Inc. ("Beal Mining").

5. The "place of use" of the water that is subject to the Licenses is the Beal Mountain Claims, which are currently owned by Pilot Gold. The "point of diversion" of that water is the so-called "Black Pine Mine Well," which is situated on land that is adjacent to the Beal Mountain Claims, which land is presently under a 20-year mining lease to Pilot Gold from the Idaho Department of Lands. The well is accessed by a right-of-way granted by the BLM to Pilot Gold, and only Pilot Gold presently has access to that well.

6. In 1998, Beal Mining filed bankruptcy in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), commencing Case No. BK-N-98-30090-GWZ (the "Beal Mountain Bankruptcy Case"). See ECF No. 1.¹ Several other affiliated entities also filed for bankruptcy contemporaneously with the commencement of the Beal Mountain Bankruptcy Case, including Debtor Black Pine Mining. See Case No. 98-30091-gwz ("Black Pine Bankruptcy Case"). Several of the bankruptcy cases, including the Black Pine Bankruptcy Case, were administratively consolidated, with the Beal Mountain Bankruptcy Case being the "lead case."

7. The relevant cases here (i.e., the Beal Mountain Bankruptcy Case and Black Pine Bankruptcy Case) were converted to Chapter 7 in January 1999. See ECF No. 20; *see also* ECF No. 20 in Black Pine Bankruptcy Case.

¹ Unless otherwise noted, citations to "ECF No." refer to the docket entry numbers in the Beal Bankruptcy Case.

8. In August 2021, Pilot Gold determined that Black Pine Mining is the licensee of record under the Licenses and was one of the debtors in the consolidated Beal Mountain Bankruptcy Case. Pilot Gold further determined that Black Pine Mining had sold nearly all assets at issue in the administrative consolidated bankruptcy cases, but it had not administered the Licenses before the relevant bankruptcy cases were closed in December 2016. *See* ECF No. 971; *see also* ECF No. 64 in Black Pine Bankruptcy Case.

9. On September 3, 2021, Pilot Gold moved to reopen the Beal Mountain and Black Pine Bankruptcy Cases for purposes of administering the Licenses. *See* ECF No. 978; *see also* ECF No. 65 in the Black Pine Bankruptcy Case.

10. On September 20, 2021, the Bankruptcy Court entered orders reopening both the Beal Mountain Bankruptcy Case and the Black Pine Bankruptcy Case, with all filings to still occur in Beal Mountain Bankruptcy Case as the "lead case". *See* ECF No. 981; *see also* ECF No. 66 in the Black Pine Bankruptcy Case.

11. On October 19, 2021, the United States Trustee appointed the Trustee as successor trustee of over the Beal Mountain Bankruptcy Case and Black Pine Bankruptcy Case. *See* ECF No. 982; *see also* ECF No. 67 in Black Pine Bankruptcy Case. As such, the Trustee is authorized to sell the Licenses for the benefit of the Black Pine Mining bankruptcy estate and its creditors.

B. Pilot Gold's Initial Offer, Negotiations, and Stalking Horse Bid

12. In December 2021, on the basis of a valuation it obtained from WestWater Research, LLC—which valued the Licenses at \$100 per acre foot of annual diversion volume—Pilot Gold offered to pay \$86,780 for the Licenses ("Pilot Gold's Initial Offer") with the understanding that this would be the "stalking horse" offer in a sale process designed to determine if any higher and better offer might be made. A copy of the WestWater Research valuation is attached as Exhibit E ("WestWater Report").

13. On March 24, 2022, the Trustee filed an application with the Bankruptcy Court seeking to employ Idaho water rights attorney John Marshall to review the WestWater Report and work with consultants, if necessary, to determine the value of the Licenses. *See* ECF No. 989. The Bankruptcy Court granted the application on May 11, 2022. *See* ECF No. 999.

14. The Trustee and Trustee's general counsel consulted with Mr. Marshall and it was agreed that Mr. Marshall would retain Idaho water rights engineer Terry M. Scanlan, P.E., P.G., Principal Engineer at HDR Engineering, Inc., to analyze the Licenses. Mr. Scanlan provided his report on July 11, 2022. *See* Exhibit F ("Scanlan Report").

15. In the Trustee's view, the Scanlan Report makes at least four findings that call into question the conclusions set out in the WestWater Report and, correspondingly, the amount of the Pilot Gold's Initial Offer: (1) one of Licenses, 17-7132, is not a non-consumptive right as stated in the WestWater Report, and likely is highly consumptive based on normal uses of mining water rights; (2) there has been fairly significant groundwater development for irrigation in the valley below the mine in the past 10 years; (3) there are four monitoring wells in the vicinity that are showing groundwater level declines over the short period of record, meaning existing rights could be more valuable due a potential lack of new appropriations; and (4) the area in question is bordered to the west and the east by designated critical ground water areas, which are established for areas where pumping rates exceed natural recharge, again raising questions as to the availability of new appropriations.

16. Based on the Scanlan Report's findings, the Trustee consulted with Mr. Marshall and responded to Pilot Gold's Initial Offer with a counter of \$395,970.00. In response to the Trustee's counteroffer, counsel for Pilot Gold provided the Trustee with additional historical documentation in support of its position that Right 17-7132 is a non-consumptive right. *See* Exhibit G.

17. After continued arms' length negotiations, including the exchange of counteroffers back and forth, the Trustee and Pilot Gold agreed that Pilot Gold's Stalking Horse Bid for the Licenses would be \$215,000.00.

IV. THE PROPOSED BID PROCEDURES

18. In light of the circumstances of this case (including, for example, the nature and potential total value of estate assets, the prior closure of the Black Pine Bankruptcy Case and length of time since conversion of the administratively consolidated cases to Chapter 7, the nature of the Licenses at issue, and the COVID-19 pandemic and potential unavailability of in person

hearings), the Trustee is requesting that the Court follow certain bid procedures for the Sale of the Licenses with a proposed sale hearing date of September 20, 2022, at 2:00 p.m. ("Sale Hearing") or as soon thereafter as reasonably practicable. The following are the Trustee's proposed bid procedures in advance of the Sale Hearing ("Bid Procedures").

19. Participation Requirements. Unless otherwise ordered by the Court, to participate in the bidding/auction process, each person or entity (each, an "Interested Party") will be required to deliver (unless previously delivered) the following materials to the Trustee or Trustee's counsel: (a) a statement and factual support demonstrating to the Trustee's satisfaction that the Interested Party has a bona fide interest in purchasing the Licenses; and (b) sufficient information, as determined by the Trustee, to allow the Trustee to determine that the Interested Party has the financial resources and authorizations to complete a purchase of the Licenses, including financial disclosures acceptable to the Trustee in its business judgment and discretion. A party that delivers the foregoing information to the Trustee is hereinafter referred to as a "Potential Bidder".

20. Determination by the Trustee. The Trustee will determine whether any party is a Potential Bidder.

21. Due Diligence. The Trustee will coordinate all reasonable requests for additional information and due diligence information from Potential Bidders. In the event any such materials are in written form and have not been previously provided to any other Potential Bidder, the Trustee will be authorized to provide such materials to all Potential Bidders.

22. Bid Deadline. On or before three (3) business days prior to the proposed Sale Hearing, i.e., September 15, 2022 (the "Bid Deadline"), a Potential Bidder that wishes to make a bid at the Auction is required to deliver written copies of its bid to the Trustee and Trustee's counsel.

23. Bid Requirements. All bids must:

- a. identify the legal name of the Potential Bidder (including any equity holders or other financial backers, if the Potential Bidder is an entity formed for the purpose of consummating the Sale);

- b. provide that the Potential Bidder offers to purchase the Licenses at the purchase price stated in the bid;
- c. be a formal, binding and unconditional agreement that is not subject to any due diligence and is irrevocable unless the Potential Bidder is not the successful buyer at the Auction;
- d. include a commitment to close the transactions contemplated by the bid no later than thirty (30) days after the Sale Hearing;
- e. not entitle such Potential Bidder to a breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and that also includes a waiver of any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code; be accompanied by a good faith deposit amount of \$25,000.00, refundable if the Potential Bidder is not the successful bidder at the Auction ("Good Faith Deposit"); and, be received no later than the Bid Deadline.

24. A Potential Bidder must accompany its bid with:

- a. satisfactory evidence of available cash, a commitment for financing (not subject to any conditions) or such other evidence of ability to consummate the Sale as the Trustee may reasonably request;
- b. if the Potential bidder is an entity, a copy of a board resolution or similar authorization document demonstrating the Potential Bidder has the authority to make a binding and irrevocable bid on the terms proposed
- c. a statement of all prior connections, relationships, and/or affiliations, if any, that the Potential Bidder (and its owners, if an entity) have with the Black Pine Mining, the administrative consolidated Beal Mountain Bankruptcy Cases (including the administratively consolidated debtor Black Pine Mining), and/or Trustee that may be relevant under Section 363(m) of the Bankruptcy Code; and,
- d. any other documentation that is reasonably requested by the Trustee.

25. The Trustee will, in its business judgment and discretion determine, whether a bid received from a Potential Bidder will be deemed a qualified bid ("Qualified Bid") and such party a qualified bidder ("Qualified Bidder").

26. The Trustee may value a Qualified Bid based on any and all factors that the Trustee deems pertinent, including, among others:

- a. the amount of the Qualified Bid, including non-cash consideration, if any;
- b. the value to be provided to the Trustee under the Qualified Bid, including the potential net economic effect upon the Black Pine Mining's bankruptcy estate if the bid were accepted;
- c. contingencies with respect to the sale and the ability to close on a basis acceptable to the Trustee, and any incremental costs to the Trustee in closing delays; and
- d. any other factors the Trustee and/or Court may deem relevant.

27. Auction. If at least one Qualified Bidder, in addition to the Stalking Horse, makes a Qualified Bid by the Bid Deadline, the Trustee will ask the Court to proceed with an auction at the Sale Hearing (the "Auction"). The Trustee submits that only (a) Qualified Bidders and (b) Potential Bidders who submitted a bid that satisfies the requirements of a Qualified Bid and who are invited by the Trustee in its discretion to participate in the Auction, should be eligible to participate in the Auction.

28. The Trustee proposes the Auction take place at the United States Bankruptcy Court, District of Nevada, via telephonic and/or Zoom hearing as set forth in the Auction and Sale Hearing Notice attached as Exhibit A, or at such other date and time as the Court may direct.

29. Unless otherwise ordered by the Bankruptcy Court, only the Stalking Horse, Qualified Bidders, and Potential Bidders, will be eligible to participate in the Auction.

30. At the Auction, participants will be permitted to increase their bids and improve their terms; provided that any such increased or improved bid or combination of bids must be a Qualified Bid (except that the Bid Deadline will not apply). In the event the Licenses go to

Auction, the Trustee proposes that the opening overbid amount should be \$235,000.00, which is the amount of the Stalking Horse Bid plus \$20,000.00 (the "Minimum Overbid").

31. The Trustee proposes that after the Minimum Overbid is satisfied, bid increments for any additional bids start at a minimum \$5,000.00 over the last bid.

32. Only bona fide secured creditors with a demonstrably valid lien on the Licenses will be allowed to credit bid at the Auction in the amount of their valid lien.

33. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified Bidders will be held in escrow and/or trust by the Trustee and will not become property of Black Pine Mining's bankruptcy estate unless released from escrow pursuant to further order of the Bankruptcy Court. The Trustee will retain the Good Faith Deposits of the Successful Bidder(s) until the closing of the Sale Transaction unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposit of any party other than the Successful Bidder will be returned no later than the first Business Day following the closing of the Sale Transaction unless otherwise ordered by the Bankruptcy Court. At the closing of the Sale Transaction contemplated herein, the Successful Bidder will be entitled to a credit for its Good Faith Deposit (not including interest accrued thereon).

34. The Trustee believes that the proposed Bidding Procedures provide an appropriate framework for selling the Licenses and will enable the Trustee to fully review, analyze, and compare all bids received to determine which bid is in the best interest of the Debtors' bankruptcy estate.

35. The Trustee will not accept the bid of the Stalking Horse without first subjecting the Licenses to public sale. If another party timely submits a Qualified Bid to pay more for the Licenses than the Stalking Horse has offered, plus the Break-up Fee (defined below), then the Trustee will hold the Auction and thereafter consummate the sale of the Licenses to the Successful Bidder. If no other party submits a Qualified Bid, then the Trustee will cancel the Auction and consummate the sale of the Licenses to the Stalking Horse.

V. NOTICE OF THE PROPOSED SALE

36. Bankruptcy Rule 6004 provides that "[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k), and, if applicable, in accordance with §363(b)(2) of the Bankruptcy Code. See Fed. R. Civ. P. 6004(a). Subsections (a)(2), (c)(1), (i), and (k) of Rule 2002, read together, require the movant to give all creditors and certain other parties "at least 21 days' notice by mail" of the sale of and the time and place of the auction. Under Fed. R. Bank. P. 2002(c), this notice must include the date, time, and place of the Auction and Sale Hearing, and the deadline for filing any objections to the relief requested in this Motion.

37. Nevertheless, Local Rule 9014(a)(1) states that, "[a]ll motions which are required to be set for hearing, whether by statute, rule, or court order, shall be set so that at least twenty-eight (28) days' notice of the hearing of the motion is given."

38. Substantially contemporaneously with filing of this Motion, the Trustee will file and serve the proposed Auction and Sale Hearing Notice by first-class mail, postage prepaid upon the following parties: (a) the office of the United States Trustee for the District of Nevada (the "U.S. Trustee"); (b) the Trustee's master service list maintained in these administratively consolidated cases, which includes all known creditors; (c) applicable taxing authorities, including the Internal Revenue Service, and Idaho and Nevada taxation departments; (d) the Idaho Department of Water Rights ("IDWR"); and (f) all parties requesting notice in the above captioned administratively consolidated chapter 11 cases. In addition, the Trustee will serve a reduced size copy of this Motion (double sided, four pages per side) on the foregoing persons and the Auction and Sale Hearing Notice will indicate that full-size copies of this Motion and any future sale documents, if applicable, can be obtained from the Trustee or the Trustee's counsel.

39. The proposed Auction and Sale Hearing Notice served pursuant to the above paragraph will specifically note that the date and time of the Sale Hearing. Further, the proposed Auction and Sale Hearing Notice states that if the Court schedules the Sale Hearing for any date and time other than September 20, 2022 at 2:00 p.m. (Pacific Time), or sets any objection deadline

contrary to what is stated above, parties receiving the Notice will be served an additional Notice providing the date(s) and time(s) as set by the Court.

40. The proposed Auction and Sale Hearing Notice includes, among other things, the proposed date, time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the Sale proposed herein, and will otherwise comply with Fed. R. Bank. P. 2002(c).

41. The Trustee proposes that, in accord with Bankruptcy Rule 6004(b), the deadline for objecting to approval of the proposed Sale and relief sought herein be Tuesday, September 6, 2022.

42. Under Bankruptcy Rule 2002(a) and (c), the Trustee is required to notify its creditors of the proposed Sale, disclosure of the time and place of the Auction, the terms and conditions of the Sale, and the deadline for filing any objections thereto. The notices prepared by the Trustee contain the type of information required under Bankruptcy Rule 2002, and other relevant information. This information will enable interested parties to participate in the Sale process, the Auction, and the Sale Hearing if they so choose. Thus, the Trustee submits that adequate notice of the Sale Motion, the Bid Procedures, and the Sale Hearing has been or will be provided. See, e.g., *In re Delaware & Hudson Ry.*, 124 B.R. 169, 180 (Bankr. D. Del. 1991) (the disclosures necessary in a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

43. Based on the foregoing, the Trustee believes that selling the Licenses in the manner set forth herein is in the best interest of the estate and creditors of Black Pine Mining and that the methods and notice described above constitute adequate notice of the proposed Sale of the Licenses.

VI. MATERIAL TERMS OF THE PROPOSED SALE TO THE STALKING HORSE

44. Absent a better offer, the Trustee will sell the Licenses to Pilot Gold under terms and conditions set forth in a Water Asset Purchase Agreement, substantially in the form attached as Exhibit H (the "WAPA").

45. The material terms of the WAPA are as follows:

1. Purchased Assets

The "Purchased Assets" under the WAPA are the Licenses. See Exhibit H (WAPA) at p. 2, ¶ 1.1.

2. Consideration

Upon receiving deed to the Licenses, Pilot Gold will pay \$215,000.00 to the Trustee, with credit being given for any deposit. *Id.* at p. 2 ¶ 2.1.

3. "AS-IS" Transaction

As stated in the WAPA, Pilot Gold acknowledges that the Trustee will transfer the Licenses "as is, where is, and if is," and that the Trustee will give no warranty of any kind with respect to the Licenses. *Id.* at p. 6 ¶ 7.

4. Deposit

Pilot Gold will deposit \$20,000.00 in immediately available funds with Trustee's counsel within fourteen (14) calendar days of the filing of this Motion, to be released to the Trustee at closing if Pilot Gold is the successful purchaser. If the contemplated sale is not closed, but instead the WAPA is terminated by the Trustee, the deposit may be forfeited under the following conditions:

- If there has been a material breach by Purchaser, which breach Purchaser has failed to cure within fourteen days following its receipt of written notice thereof from Seller;
- If any condition precedent of Seller specified in Section 4.1 of the WAPA shall not have been satisfied or waived and shall have become impossible to satisfy, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Seller; or
- If the Closing Date shall not have occurred on or before 5:00 p.m. Prevailing Mountain Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Seller's failure to meet its obligations hereunder, including without limitation using all diligent and commercially reasonable efforts to obtain approval of the Sale Order by the dates set forth herein.

Or, if the contemplated sale is not closed, but the WAPA is terminated by Pilot Gold, the deposit may be forfeited if the WAPA is terminated by Pilot Gold other than for any of the following reasons:

- The Sale Order is not entered by the Bankruptcy Court by one hundred eighty (180) days of the filing of this Motion;

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- If the Sale Order does not become a Final Order within 60 days after its entry;
- If there has been a material breach by Seller, which breach Seller has failed to cure within fourteen (14) calendar days following its receipt of written notice thereof from Purchaser;
- If any condition precedent of Purchaser specified in Section 4.2 shall not have been satisfied or waived or, in the reasonable judgment of Purchaser, shall have become reasonably unlikely to be satisfied, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Purchaser; or
- If the Closing Date shall not have occurred on or before 5:00 p.m. Prevailing Mountain Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Purchaser's failure to meet its obligations hereunder.

VII. STALKING HORSE BID PROTECTIONS

In addition to the above terms, the Trustee and the Stalking Horse Bidder have agreed on customary bid protections (the "Bid Protections") as follows:

Break-Up Fee. The Trustee acknowledges that the Stalking Horse Bidder's negotiation and agreement to enter into the WAPA has required a substantial investment of management and legal time and a significant commitment of resources, and that the negotiations and Stalking Horse's willingness to serve as the Stalking Horse Bidder have provided value to the Trustee, the estate, and its creditors. Therefore, subject to Bankruptcy Court approval, the Trustee will pay Pilot Gold a Break-up Fee (expense reimbursement) of up to \$15,000 (the "Break-up Fee") if the Licenses are sold to any entity other than Pilot Gold or any of its affiliates at the Sale Hearing.

Approval of the modest Expense Reimbursement proposed is well grounded. Courts in this district generally defer to the business judgment of the trustee on such matters if the proposal is aimed at maximizing the value of the assets sold. See *In re Village Hotel Investors, LLC*, Case No. 08-13043-LBR (Bankr. D. Nev. June 19, 2009) (breakup fee and expense reimbursement, "fair and equitable, reflecting the exercise of [Trustee's] considered business judgment, and are reasonably required in order to maximize the value received for the sale of the Assets."); see also *In re Xyience Inc.*, Case No. 08-10474-MKN (Bankr. D. Nev. March 6, 2008) (breakup fee of \$40,000 appropriate as exercise of debtor's business judgment).

The Expense Reimbursement proposed to the Stalking Horse relates to the WAPA, and would be an administrative expense of Debtor's estate with priority over any and all

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administrative expenses specified in Sections 503(b) and 507(b) of the Bankruptcy Code. See 11 U.S.C. § 503(b)(1)(A); see also *Microsoft Corp. v. DAK Industries, Inc.* (*In re DAK Industries, Inc.*), 66 F.3d 1091, 1094 (9th Cir. 1995).

By participating in the due diligence process, reopening the case, conducting negotiations with the Trustee in good faith, and agreeing to the proposed WAPA, the Trustee submits that the Stalking Horse has helped the Trustee establish a baseline bid, including terms and a baseline price, that should serve as a guide for other potential bidders. The Trustee believes such efforts will ultimately benefit Black Pine Mining's bankruptcy estate and, as an exercise of business judgment, that the Stalking Horse should be reimbursed (up to a maximum of \$15,000.00) for its efforts in creating what may potentially be an active auction environment (the "Break-up Fee").

Over-bid Protection. The Stalking Horse bid is \$215,00.00, and the Break-up Fee is \$15,000.00. Therefore, the sum of those two amounts plus a \$5,000.00 overbid, which is \$235,000.00, is the Minimum Overbid the Trustee submits should be entertained.

VIII. INFORMATION REQUIRED BY LOCAL RULE 6004(b)

The following information is provided in compliance with Local Rule 6004(b):

1. A copy of the proposed WAPA is attached as Exhibit H.
2. To the best of the Trustee's knowledge, after a reasonable investigation, there are no known lienholders with an interest in the Licenses to be sold under this Motion.
3. A copy of the proposed form of Sale Order is attached as Exhibit B.
4. At this time, there has been no request has been made for the appointment of a consumer privacy ombudsman. If such becomes necessary, the Trustee will supplement this Motion accordingly.
5. Material terms of the WAPA are set forth above in Section VI above.
6. Local Rule 6004(6) does not apply in this Chapter 7 case. Nevertheless, the Trustee states:
 - a. Based on the Trustee's information and belief, the Sale is not to an insider.
 - b. Based on the Trustee's information and belief, the Stalking Horse Bidder has not entered into any agreements with the Debtor's key management or key employees regarding compensation or future employment.

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- c. The proposed WAPA does not include an express release of any claims belonging to, or against, the estate.
- d. An auction is contemplated.
- e. Unless waived, the deadline to close the proposed sale is as soon as reasonably practicable following entry of an Order approving the Sale, but no later than 60 days following entry of said Order.
- f. The Stalking Horse Bidder is required to make a good faith deposit of \$20,000.00. Any proposed overbidders at the Auction are required to make a \$25,000 refundable deposit.
- g. No interim agreements with the Stalking Horse Bidder, related to management or otherwise, have been made.
- h. The Trustee does not propose to release any sale proceeds on or after the closing, or make any definitive allocation of sale proceeds, except as may be necessary to satisfy any liens and encumbrances required to be paid under Section 363(f) of the Bankruptcy Code.
- i. The sale proposed herein is not made in conjunction with a plan of reorganization confirmed under Section 1129 of the Bankruptcy Code and Trustee does not currently seek to have the sale declared exempt from taxes under 11 U.S.C. § 1146(a).
- j. The Sale proposed herein does not propose to sell all of the Debtor's assets and the Trustee maintains the same access to the books and records as held prior to the Sale.
- k. There are no provisions in the WAPA that propose to sell or otherwise limit whatever rights the Trustee may have to pursue avoidance claims under Chapter 5 of Title 11 of the United States Code.
- l. There are no provisions of the WAPA or the Sale that limit the Purchaser's successor liability.
- m. The sale does not propose to sell any property subject to a possessory leasehold interest within the meaning of Local Rule 6004(b).
- n. The proposed Bidding Procedures contemplate the allowance of credit bidding of allowed secured claims only. As of this filing, the Trustee submits there are no known secured claims against the Licenses.
- o. This Motion requests relief from the 14-day stays imposed by Fed. R. Bank. P. 6004(h).

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IX. LEGAL AUTHORITY AND ARGUMENT

A. The Proposed Sale of the Licenses Should Be Approved Under Section 363(b) of the Bankruptcy Code.

A trustee, after notice and a hearing, may use, sell, or lease property, other than in the ordinary course of business, 11 U.S.C. § 363(b)(1). A trustee's application of its sound business judgment in the use, sale, or lease of property is subject to great judicial deference. *See, e.g., Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005) ("The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances. . . . Ordinarily, the position of the trustee [or debtor in possession] is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection."); *Walter v. Sunvest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) ("[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . whether the proffered business justification is sufficient depends on the facts of the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike.") (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Fed. Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (finding that "a court should approve a debtor's use of assets outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction").

In interpreting section 363(b)(1) of the Bankruptcy Code, courts have held that a transaction involving property of the estate generally should be approved where the debtor or trustee can demonstrate "some articulated business justification for using, selling, or leasing property outside of the ordinary course of business." *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *accord Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Walter*, 83 B.R. at 19-20; *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (approval where a sound business purpose exists). Among other factors, courts should consider the consideration to be paid, the

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the proposed Sale of the Purchased Assets free and clear of its asserted interest(s). *See In re Channel One Comm'ns, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

The Trustee submits that any claimed lien or other security interest in the Licenses, if any, will satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such interest will be adequately protected by either being assumed or paid at the time of Closing, or by having it attach to the net proceeds of the Sale, subject to any claims and defenses the Trustee may possess with respect thereto.

C. The Proposed Buyer is a Good Faith Purchaser under 11 U.S.C. § 363(m).

While there are no known liens or other encumbrances on the Licenses, a good faith finding under 11 U.S.C. § 363(m) is appropriate. A "good faith purchaser" is one who buys in "good faith" and "for value." *T.C. Investors v. Joseph (In re M Capital Corp.)*, 290 B.R. 743, 746-47 (9th Cir. BAP 2003). "Typically, lack of good faith is shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *Id.* at 746 (internal quotation and citation omitted). Here, to the best of the Trustee's knowledge, Pilot Gold is not an insider or otherwise personally connected with Black Pine Mining, and the Proposed Sale represents an arms-length transaction between the parties, made without fraud, or collusion, and no attempt has been made by either party to take any unfair advantage of the other.

D. Relief Under Bankruptcy Rule 6004(h) is Appropriate.

Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless that court orders otherwise." The Trustee requests that any order authorizing the transactions proposed herein be effective immediately by waiving the 14-day stay of Bankruptcy Rules 6004(h).

The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See Advisory Committee Notes to Bankruptcy Rule 6004(h).* Although the Bankruptcy Rules and Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 14-day stay, Collier suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to

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financial condition and needs of the debtor, the qualifications of the buyer, and whether a risk exists that the assets proposed to be sold would decline in value if left in the debtor's possession. *See Equity Funding Corp. of Am. v. Fin. Assocs. (In re Equity Funding Corp. of Am.)*, 492 F.2d 793, 794 (9th Cir. 1974) (affirming court's finding that the proposed sale of the debtor's assets would be in the best interest of the estate in light of impending deterioration of market value of debtor's assets).

It is the Trustee's business judgment that, after considering potential alternatives, the proposed Sale of the Purchased Assets to the Stalking Horse Bidder or the Winning Bidder is in the best interest of the Trustee, Black Pine Mining's estate, and its creditors.

B. The Licenses Should be Sold Free and Clear of any Liens, Claims, and Encumbrances.

Section 363(f) of the Bankruptcy Code expressly authorizes a trustee to sell property outside the ordinary course of business "free and clear of any interest in such property of an entity" if any one of the five following conditions is met:

1. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; and
4. such interest is in bona fide dispute; or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Because Section 363(f) of the Bankruptcy Code is written in the disjunctive, any one of these five conditions provides authority to sell the Licenses free and clear of liens. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988). Therefore, to the extent that any other party asserting an interest in the Licenses receives notice of the Motion and does not file a written objection hereto, such party should be deemed to have consented to

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close immediately, "where there has been no objection to the procedure." *See* 10 Collier on Bankruptcy, § 6004.10 (15th Ed. Rev.). Collier further suggests that if an objection is overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a stay pending appeal, unless the court determines that the need to proceed sooner outweighs the interests of the objecting party.

The Trustee respectfully requests that, upon entry of the Sale Order, the Court waive the 14 day stay requirements of Bankruptcy Rule 6004(h). The waiver of the 14-day stay imposed by this rule will allow the unopposed sale to close as soon as possible.

Consent to Jurisdiction

Pursuant to Local Rule 7008, the Trustee consents to the entry of a final judgment or order with respect to this Motion if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

RELIEF REQUESTED

The Trustee, in his business judgment, believes the Proposed Sale and procedure set forth herein are in the best interest of Black Pine Mining's bankruptcy estate and the WAPA is currently the best offer for the sale of the Licenses. The Trustee requests the Court enter an Order approving the sale of the Licenses on the terms and procedures described in this Motion and in the WAPA. The proposed form of Auction and Sale Hearing Notice is attached as Exhibit A and the proposed form of Sale Order is attached as Exhibit B.

DATED: August 20, 2022.

HUMPHREY LAW PLLC

By: /s/ L. Edward Humphrey, Esq.
L. Edward Humphrey, Esq.
Patrick O'Rourke, Esq.
Attorneys for Chapter 7 Trustee, W. Donald Gieseke

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EXHIBIT A

EXHIBIT A

L. Edward Humphrey, Esq. – NSB 9066
 Patrick O'Rourke, Esq. – NSB 13557
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 patrick@hlawnv.com
 Attorneys for Chapter 7 Trustee,
 W. Donald Gieseke

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

In Re:

BEAL MOUNTAIN MINING, INC.,

This Filing Also Affects:

[X] Black Pine Mining, Inc.

[] Pangea Exploration, Inc.

[] Pangea Gold Corporation

[] Pangea Minerals, Inc.

[] Pegasus Gold Montana Mining, Inc.

[] Pegasus Resource Explorations, Inc.

[] Pegasus Gold Finance Corporation

[] Pegasus Gold Financing, LLC

[] Pangea International Holdings Corp.

[] POV Corporation

[] Zortman Mining, Inc.

Case No.: BK-N-98-30090-GWZ
 Chapter 7

Jointly Administered With:

Case No.: BK-N-98-30091-GWZ

Case No.: BK-N-98-30094-GWZ

Case No.: BK-N-98-30096-GWZ

Case No.: BK-N-98-30097-GWZ

Case No.: BK-N-98-30098-GWZ

Case No.: BK-N-98-30099-GWZ

Case No.: BK-N-98-30100-GWZ

Case No.: BK-N-98-30102-GWZ

Case No.: BK-N-98-30103-GWZ

Case No.: BK-N-98-30104-GWZ

Case No.: BK-N-98-30105-GWZ

**NOTICE OF HEARING ON TRUSTEE'S
 MOTION TO SELL TWO WATER
 RIGHTS LICENSES FREE AND CLEAR
 OF ALL LIENS, CLAIMS, AND
 INTERESTS AND FOR APPROVAL OF
 BIDDING PROCEDURES AND BID
 PROTECTIONS**

Hearing Date: September 20, 2022
 Hearing Time: 2:00 p.m.

Estimated Time: 30 min.

PLEASE TAKE NOTICE that, on August 20, 2022, at ECF No. ____, W. DONALD
 GIESEKE, Chapter 7 Trustee (the "Trustee") for the Bankruptcy Estate of Black Pine Mining,

Inc. ("Black Pine Mining" or "Seller") a debtor in the above-captioned administratively consolidated cases filed the TRUSTEE'S MOTION TO SELL TWO WATER RIGHTS LICENSES FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS AND FOR APPROVAL OF BIDDING PROCEDURES AND BID PROTECTIONS (the "Sale Motion"). As set forth more fully in the Sale Motion itself, the Sale Motion requests that the Court enter an Order: (a) authorizing the Sale of two Idaho water rights licenses (defined as the "Licenses" in the Sale Motion) in the name of Black Pine Mining to Pilot Gold Inc. ("Pilot Gold" or the "Stalking Horse" or "Stalking Horse Bidder") or the successful bidder at the Auction ("Successful Bidder"), free and clear of all liens, claims and encumbrances, with the Stalking Horse's initial bid being \$215,000.00; (b) waiving the 14-day notice periods in Bankruptcy Rule 6004(h); (c) finding the successful purchaser of the Assets a "good faith purchaser" under Section 363(m) of the Bankruptcy Code; and (d) granting certain related relief as described in the Sale Motion. Any opposition to the relief sought in the Sale Motion must be filed pursuant to Local Rule 9014.

NOTICE IS FURTHER GIVEN that the Sale Motion contains certain Bidding Procedures relating to the sale of the Licenses, including the Auction process proposed by the Trustee. If you wish to make a bid on the Licenses, you must review the Bidding Procedures carefully, as the Trustee is seeking approval and ratification of the Bidding Procedures at the Auction and Sale Hearing (defined below).

NOTICE IS FURTHER GIVEN that if you do not want the court to grant the relief sought in the Sale Motion, or if you want the court to consider your views on the Sale Motion, including the proposed Bidding Procedures and Auction, then you must file an opposition with the court, and serve a copy on the person making the Sale Motion *no later than 14 days* preceding the Auction and Sale Hearing date set for the Sale Motion, unless an exception applies (see Local Rule 9014(d)(3)). The opposition must state your position, set forth all relevant facts and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

///

If you object to the relief requested in the Sale Motion, you *must* file a WRITTEN objection with the Bankruptcy Court. You *must* also serve your written response on the person who sent you this notice. The opposition must state your position, set forth all relevant facts and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

If you do not file a written response with the Bankruptcy Court, or if you do not serve your written response on the person who sent you this notice, then:

- The court may *refuse to allow you to speak* at the scheduled hearing; and
- The court may *rule against you* without formally calling the matter at the hearing.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a telephonic hearing in the lead case of the above captioned administratively consolidated Bankruptcy Cases to consider the Sale Motion and conduct, if necessary, the Auction contemplated in the Sale Motion ("Auction and Sale Hearing"), with said Auction and Sale Hearing to be held on **September 20, 2022 at 2:00 p.m. before a United States Bankruptcy Judge, in the United States Bankruptcy Court, for the District of Nevada**, as may be continued from time to time as the Court orders.

PLEASE TAKE FURTHER NOTICE that due to the COVID-19 pandemic, in person appearances at court hearings has been suspended. The Auction and Sale Hearing will be conducted by teleconference, with a dial in number of (877) 873-8017, and Access Code 4994094#. To participate in the telephone hearing, dial the Toll-Free Call-in Number and enter the seven-digit Access Code followed by the "#" key. You must dial in to the Auction and Sale Hearing at least five minutes before the Auction and Sale Hearing time above. You may be placed on hold until the courtroom deputy activates the conference call, or you may hear others speaking. Another hearing may be in progress; do not announce your presence until the courtroom deputy takes roll call or your hearing is called. If you have problems connecting or the courtroom deputy does not activate the call within 5 minutes after your scheduled hearing time, hang up and call the court at: 866-232-1266. For further information on the Bankruptcy

Court's COVID-19 updates, including information on telephonic and videoconference participation at hearings, please visit <https://www.nv.uscourts.gov/coronavirus/>

Full size copies of the Sale Motion and any related pleadings, may be obtained at the United States Bankruptcy Court for the District of Nevada, C. Clifton Young Federal Building, 300 Booth Street, Reno, Nevada 89509, by visiting <http://www.nv.uscourts.gov> (PACER Account required), or by contacting Humphrey Law PLLC, Attn: L. Edward Humphrey, Esq., (775) 420-3500, ed@hlawnv.com, or via regular mail at 201 West Liberty Street, Suite 350, Reno, Nevada 89501.

DATED: August 20, 2022.

HUMPHREY LAW PLLC

By: /s/ L. Edward Humphrey

L. Edward Humphrey, Esq.
Patrick O'Rourke, Esq.
Attorneys for Chapter 7 Trustee,
W. Donald Gieseke

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EXHIBIT B

EXHIBIT B

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Attorneys for Chapter 7 Trustee,
W. Donald Gieseke

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

BEAL MOUNTAIN MINING, INC.,

This Filing Also Affects:

☒ Black Pine Mining, Inc.
☐ Pangea Exploration, Inc.
☐ Pangea Gold Corporation
☐ Pangea Minerals, Inc.
☐ Pegasus Gold Montana Mining, Inc.
☐ Pangea Resource Explorations, Inc.
☐ Pegasus Gold Finance Corporation
☐ Pegasus Gold Financing, LLC
☐ Pangea International Holdings Corp.
☐ POV Corporation
☐ Zortman Mining, Inc.

Case No.: BK-N-98-30090-GWZ
Chapter 7

Jointly Administered With:

Case No.: BK-N-98-30091-GWZ
Case No.: BK-N-98-30094-GWZ
Case No.: BK-N-98-30096-GWZ
Case No.: BK-N-98-30097-GWZ
Case No.: BK-N-98-30098-GWZ
Case No.: BK-N-98-30099-GWZ
Case No.: BK-N-98-30100-GWZ
Case No.: BK-N-98-30102-GWZ
Case No.: BK-N-98-30103-GWZ
Case No.: BK-N-98-30104-GWZ
Case No.: BK-N-98-30105-GWZ

**ORDER GRANTING TRUSTEE'S
MOTION TO SELL TWO WATER
RIGHTS LICENSES FREE AND CLEAR
OF ALL LIENS, CLAIMS, AND
INTERESTS AND FOR APPROVAL OF
BIDDING PROCEDURES AND BID
PROTECTIONS**

Hearing Date: September 20, 2022
Hearing Time: 2:00 p.m.

W. DONALD GIESEKE, Chapter 7 Trustee ("Trustee") for the Bankruptcy Estate of Black Pine Mining, Inc. ("Black Pine Mining" or "Debtor"), a debtor in these administratively consolidated proceedings, filed a motion titled "TRUSTEE'S MOTION TO SELL TWO

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**WATER RIGHTS LICENSES FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
INTERESTS AND FOR APPROVAL OF BIDDING PROCEDURES AND BID**

PROTECTIONS (the "Sale Motion"), which came before the Court for a hearing on shortened time on September 20, 2022, at 1:30 p.m. (the "Hearing"). Appearing at the Hearing were the following: the Trustee; L. Edward Humphrey, Esq., counsel for the Trustee; J. Thomas Beckett, counsel for Pilot Gold, Inc.; and _____. As set forth more fully in the motion itself, the Sale Motion requests entry of an Order: (a) authorizing the Sale of two Idaho water rights licenses (defined as the "Licenses" in the Sale Motion) to Pilot Gold Inc. ("Pilot Gold") or another successful bidder at the Auction ("Buyer"), free and clear of all liens, claims and encumbrances, with the Stalking Horse's initial bid being \$215,000.00; (b) waiving the 14-day notice periods in Bankruptcy Rule 6004(h); (c) finding the successful purchaser of the Assets a "good faith purchaser" under Section 363(m) of the Bankruptcy Code; and (d) granting certain related relief as described in the Sale Motion.

At the Hearing, the Court considered the Sale Motion [ECF No. ____]; [insert additional pleadings] as well as the exhibits attached to the foregoing. The Court takes judicial notice of the docket in these administratively consolidated bankruptcy case.

The Court stated on the record at the Hearing its findings of fact and conclusions of law with respect to the Sale Motion. Such findings of fact and conclusions of law are incorporated herein under Fed. R. Civ. P. 52, as made applicable to this contested matter under Fed. R. Bankr. P. 9014.

The Court determines that the Water Asset Purchase Agreement ("WAPA") was negotiated, proposed and entered into between the Trustee and Buyer without collusion, in good faith and from arms' length bargaining positions. The Buyer has represented there are no side agreements or side arrangements with the Franchisees and the Court finds the sale to the Buyer and its terms are reasonable and supported by the Trustee's business judgment. The offer made by the Buyer is the highest and best offer for the Licenses (as defined in the Sale Motion and WAPA). The provisions of section 363(f) of the Bankruptcy Code are satisfied.

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In accord with the findings of fact and conclusions of law stated on the record at the Hearing, and good cause appearing,

IT IS HEREBY ORDERED that the Sale Motion is **GRANTED**, as set forth herein.

IT IS FURTHER ORDERED that the Trustee is authorized to sell the Licenses to the Buyer for \$215,000.00 ("**Purchase Price**") free and clear of liens, Claims and encumbrances.

IT IS FURTHER ORDERED that the WAPA and all other ancillary documents, and all terms and conditions thereof are hereby approved and incorporated herein.

IT IS FURTHER ORDERED that the Trustee is authorized to take any and all actions including the execution of all documents necessary to implement the WAPA and to consummate the sale of the Licenses.

IT IS FURTHER ORDERED that upon the Closing, the Buyer shall take title to and possession of the Licenses subject only to the Assumed Liabilities set forth in the Asset Purchase Agreement. Under Sections 363(f) of the Bankruptcy Code, the transfer of the Licenses to the Buyer shall be free and clear of (a) any and all liens and Encumbrances; (b) any and all liabilities; (c) any and all Claims. All liens, Claims, and/or Encumbrances remaining with the Debtor's bankruptcy estate after the Closing shall attach solely to the proceeds of the Sale with the same validity, priority, force, and effect that they now have, subject to any claims and defenses the Debtor, the Trustee and the bankruptcy estate may possess.

IT IS FURTHER ORDERED that the sale approved herein is the product of an arm's length transaction between the Trustee and the Buyer, the consideration paid by the Buyer is fair and reasonable, the WAPA was negotiated, proposed, and executed in good faith, and based on the Trustee's and Buyer's representations at the Hearing, there has been no collusion. Therefore, the Buyer is a good faith purchaser for value under 11 U.S.C. § 363(m) and is entitled to the full protections of section 363(m) of the Bankruptcy Code and the provisions of section 363(n) of the Bankruptcy Code have not been violated.

IT IS FURTHER ORDERED that the stay under Fed. R. Bank. P. 6004(h) is waived and this Order is not stayed.

IT IS SO ORDERED.

Submitted by:

HUMPHREY LAW PLLC

By: /s/ L. Edward Humphrey, Esq.
L. Edward Humphrey, Esq.
Attorney for Chapter 7 Trustee,
W. Donald Gieseke

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

____ The court has waived the requirement set forth in LR 9021(b)(1).

____ No party appeared at the hearing or filed an objection to the motion.

XX I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

J. Thomas Beckett, Esq. Parsons Behle Latimer Approved/Disapproved

____ I certify this is a case under Chapter or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

DATED: September __, 2022

HUMPHREY LAW PLLC

/s/ L. Edward Humphrey
L. Edward Humphrey, Esq.

EXHIBIT C

EXHIBIT C

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07132

Priority: October 6, 1988 Maximum Diversion Rate: 0.91 CFS
Maximum Diversion Volume: 650.1 AF

This is to certify, that PZGASU GOLD CORP

N 9 POST ST #400

SPOKANE WA 99201

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated October 6, 1988; and has submitted Proof of Beneficial Use on February 6, 1992. An examination indicates that the works have a diversion capacity of 1,200 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
MINING	11 to 12/31	0.91 CFS	650.1 AF
LOCATION OF POINT(S) OF DIVERSION: NENE, Sec. 36, Township 15S, Range 29E CASSIA County			
PLACE OF USE: MINING			
TWN. RSE. SEC.			
15S 29E 25	NESW	NWSW	SWSW
	SESW	NWSE	SWSE
26	NWSW	SWSW	
27	NESW	NWSW	SWSW
	SESW	NWSE	SWSE
	SWSE		
34	NENE		SENE
	NENW		SESE
35	NENE		SENE
	NENW		SENE
	NESW		SWSW
	NESE		
36	NENE		SENE
	SENE		NENW
	NESE		SWSE
	SESE		

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.

MICROFILMED

MAY 19 1997

PAGE 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07132

CONDITIONS OF APPROVAL AND REMARKS

3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Mining use is for ore processing, dust suppression and support facilities.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30th day of APRIL, 1997.

Acting for KARL J. DREHER, Director

MICROFILMED

MAY 19 1997

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07140

Priority: May 10, 1992 Maximum Diversion Rate: 0.29 CFS
Maximum Diversion Volume: 209.7 AF

This is to certify, that SLACK PINE MINING INC

PO BOX 578

BURLEY ID 83318-0578

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 6, 1992; and has submitted Proof of Beneficial Use on December 5, 1995. An examination indicates that the works have a diversion capacity of 1,200 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
MINING	12/01 to 12/31	0.29 CFS	209.7 AF
LOCATION OF POINT(S) OF DIVERSION: NENE, Sec. 36, Township 15S, Range 29E CASSIA County			
PLACE OF USE: MINING			
TWN. RSE. SEC.			
15S 29E 25	NESW	NWSW	SWSW
	SESW	NWSE	SWSE
26	NWSW	SWSW	
	NESW	NWSW	SWSW
	SESW	NWSE	SWSE
27	NESW	NWSW	SWSW
	SESW	NWSE	SWSE
	SWSE		
34	NENE		SENE
	SENE		NENW
	SWSE		
35	NENE		SENE
	SENE		NENW
	NWSW		SWSW
	NESW		SWSE
36	NENE		SENE
	SENE		NENW
	SWSW		SWSE
	NWSW		SWSE

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.

MICROFILMED

APR 08 1997

PAGE 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07140

CONDITIONS OF APPROVAL AND REMARKS

2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Mining use shall be non-consumptive.
6. Mining use is for ore processing, dust suppression and support facilities.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 31st day of MARCH, 1997.

Acting for KARL J. OPENER, Director

MICROFILMED

APR 08 1997

Memorandum

EXHIBIT E

To: Parsons Behle & Lalimer
 From: WestWater Research
 Date: December 14, 2021
 Re: DRAFT - Black Pine Mine Water Rights Valuation

Background and Purpose

Parsons Behle & Lalimer is representing a client that is seeking to acquire groundwater rights from a bankruptcy process that are associated with the Black Pine Mine located in Cassia County, Idaho. At the request of Parsons Behle & Lalimer, this memorandum provides WestWater's preliminary opinion of market value for the Black Pine Mine water rights. The contents of this memorandum are organized as follows:

- Water Rights Description – this section provides a general description of the subject water rights.
- Water Rights Assessment – this section evaluates the subject water rights relative to the key factors affecting water right values to determine their marketability and highest and best use.
- Water Rights Valuation – the available methods for valuing water rights are described and the selected valuation approach(es) are applied to estimate the market value of the subject water rights.

Water Rights Description

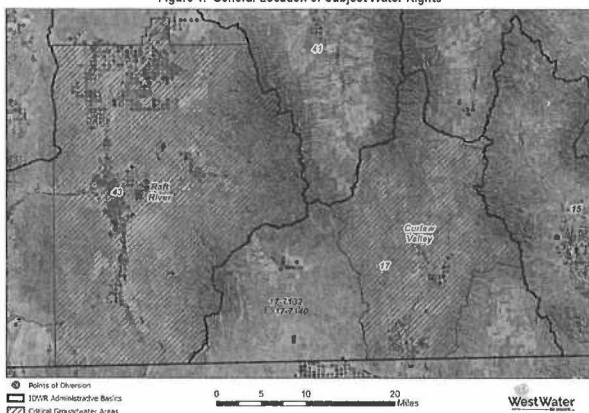
This subject water rights include water right numbers 17-7132 and 17-7140, located in Basin 17 in Cassia County. Both water rights allow for the year-round withdrawal of groundwater for mining purposes. 17-7132 has a priority date of October 6, 1988, while 17-7140 has a priority date of May 10, 1992. Combined, the two water rights allow for a maximum diversion rate of 1.20 cubic feet per second (cfs) and an annual volume of 867.8 acre-feet (AF). The conditions of approval for 17-7140 state that "Mining use shall be non-consumptive. Mining use is for ore processing, dust suppression and support facilities." Table 1 provides a summary of the subject water rights. Figure 1 shows the general location of the water rights.

Table 1. Subject Water Rights Summary

Water Right Number	17-7132	17-7140
Owner	Black Pine Mining Inc.	Black Pine Mining Inc.
Diversion Rate (cfs)	0.91	0.29
Annual Volume (AF)	658.1	209.7
Purpose of Use	Mining	Mining
Basin	17	17
County	Cassia	Cassia

EXHIBIT E

Figure 1. General Location of Subject Water Rights



According to available information, the Black Pine Mine well was drilled in 1989 in Section 36, Township 15S, Range 29E. Both of the subject water rights are associated with the well. The use history of the subject water rights is unknown. However, Pilot Gold is reportedly using the well to pump groundwater under a temporary permit issued by the Idaho Department of Water Resources (IDWR) and from a water right leased through the State Water Bank.

Water Rights Assessment

Water right values are localized such that prices observed in one region are often not applicable to others. Even within a region, water right values are influenced by the legal and physical characteristics of a particular water right. Some of the factors affecting water right values in general and the subject water rights in particular are briefly described below.

Alternative Water Supplies

The availability of alternative water supplies in the market area is an important value consideration. Water right prices tend to be lower in areas where there are alternative water supplies available to meet existing demands. In contrast, water prices are higher in regions that have little water available to support new uses or have water sources that are costly to access and utilize. Groundwater resources in Basin 17 in the vicinity of the subject water rights have not been administratively closed to appropriation through a new water right application. In fact, IDWR issued several new groundwater rights in the basin for irrigation purposes as recently as 2015. However, the region to the west and east of the subject water rights have been identified by IDWR as critical groundwater areas and are closed to new groundwater appropriation. While the subject water rights are not located within the Ralt River or Curlew Valley critical groundwater areas, communication with IDWR indicates that all groundwater in the basin is now considered to be fully

appropriated. While IDWR will still review a new water right application, it is incumbent on the applicant to demonstrate that there is available groundwater and that the new groundwater use will not impair any existing groundwater users.¹ Given these conditions, the path to obtaining a new water right through the application process is potentially lengthy and with an uncertain outcome. The apparent challenges associated with obtaining a new groundwater right creates value for existing water rights in the region.

Reliability/Seniority

The legal characteristics of a water right can have significant impact on value. Each water right has a priority date that refers to the date it was established. The priority date has particular importance because it determines the likelihood that water will be available for use under low-flow conditions. During times of water shortages, older, or senior water rights are the first to receive their water allocation. Junior water rights are required to forgo or curtail diversions in order to ensure that the water needs of senior water right holders are met. Senior water rights provide a reliable claim to water, even during low flows, and therefore, command a premium price.

The determination of seniority (reliability) is an important characteristic in estimating the value of water rights as well as in determining the volume of water that is eligible for transfer to a new use. In general, most water rights that have been traded in the in Idaho are relatively senior and provide reliable supplies. As described above, few demands have interruptible needs and consider junior (less reliable) water rights to be viable options. As described above, the subject groundwater rights have relatively junior priority dates and would be some of the earliest curtailed by IDWR to protect senior groundwater users in the event of a decline in groundwater availability. According to IDWR, to date there has been no regulation of existing groundwater rights in the region and there is no indication that existing groundwater uses will be curtailed based upon priority in the foreseeable future. As a result, the subject water rights are considered to be fully reliable, and no value adjustment is applied to account for reduced future reliability.

Type of Use

As described above, the subject water rights were issued for mining purposes. 17-7140 explicitly states that the mining uses including ore processing, dust suppression, and support facilities are nonconsumptive. Water right 17-7132 is also for the same mining purposes but does not explicitly state that the water right is nonconsumptive. However, mining uses are largely nonconsumptive in nature which limits their transferability to alternative uses that are more consumptive. Irrigation is the only identified alternative use in the vicinity of the subject water rights. It is unlikely that the purpose of use for the subject water rights could be changed to irrigation which is a highly consumptive water use. Given this, the marketability of the subject water rights appears to be limited.

Transferability

Unlike land, water and water rights can be moved from one location to another to meet changing demands. However, there are regulatory constraints that limit changes in the place of use for a water right and, therefore, limit the market (universe of potential purchasers) that would be interested in a water right. The market for a water right is defined by physical and regulatory conditions that limit the ability to move water rights from one location, use, and water source to another. Generally, water right transfers are limited due to the potential for "injury" to existing water rights.

In some markets, the value of a water right is affected by the amount of water that can be moved from its current use to a potential new use (e.g., irrigation to municipal). In fully appropriated systems, changes in use can be limited to the consumptive quantity for a particular type of use. The transferable quantity is determined through regulatory review to ensure that the resulting transfer does not injure other water right holders. In such a review, IDWR may consider changes to the following elements of an existing water right: place of use, point of diversion or withdrawal, additional point(s) of diversion or withdrawal, or purpose of use.

¹ Personal communication with Jared Adamson, IDWR, Water Resource Agent, Sr.

General guidelines for water right transfers in Idaho are described in Idaho Code 42-222 which provides that a water right may be transferred to another place of use, point of diversion, or purpose of use, and become appurtenant to another place of use without a loss of priority if the change can be made without detriment or injury to existing water rights or expansion of a water use beyond the original right. To ensure that a transfer does not lead to enlargement, water right transfers to new consumptive uses are typically limited to the consumptive use of the water right prior to the transfer. Like most water rights authorizing largely nonconsumptive uses, the subject water rights have limited transferability to new uses. In general, nonconsumptive water rights can be transferred only to other similarly nonconsumptive uses which limits their marketability and value.

Water Right Size

The size of the transaction can influence the value of water. Evidence from areas with developed water markets indicates that transactions involving large quantities of water sell for less on a per unit basis than small water sales. This is due in part to the fact that transaction costs are spread over a large volume of water as well as the smaller number of buyers that require large volumes of water. Limited market information in south central Idaho makes quantifying the impact of water volume on unit price difficult. However, WestWater has completed research and analysis in other more actively traded markets and has consistently observed a negative nonlinear relationship between unit price and transaction size, indicating that volume-induced price impacts diminish greatly beyond relatively small volumes of water. In other words, the volume discounts tend to level off and approach a relatively constant unit price as transaction size increases. The transaction data from Idaho is too limited to assess the influence of water right size on unit price. As a result, this analysis does not apply any volume adjustments to account for the volume associated with the subject water rights.

Period of Use

The period of use allowed by a water right can influence its marketability and value. Municipal, industrial, and commercial water rights often provide for year-round water use. In comparison, irrigation water rights generally are limited to water use during summer months. However, the period of use allowed by irrigation rights generally coincides with the peak demand requirements for many year-round uses. A majority of the water rights that are transacted in Idaho are seasonal irrigation rights. However, there have been some year-round water rights sold. There is no clear relationship between the observed unit price and period of use. In other words, the unit price associated with water rights that provide access to water throughout the year is not discernibly different from the unit price associated with water rights that provide access to a water source for only a portion of the year. As a result, this analysis applied equal value to the volume of water provided by the subject water rights and does not distinguish between irrigation and non-irrigation season use.

Urban Influence

Water rights that can be marketed and transferred to urban buyers (municipalities, real estate developers, etc.) routinely sell for higher prices than those that can only be marketed to non-urban buyers. This is due to the fact that urban buyers generally have a higher ability to pay for water rights than other users such as agricultural producers. The subject water rights are located in a rural area of Idaho with limited potential to transfer them to urban uses. As a result, their marketability and value is lower than groundwater rights in other, more populated regions of Idaho.



Sales Comparison Approach

In this analysis, prior water right transactions are applied to estimate the value of the subject water rights. However, the location and character of the subject water rights precludes the direct application of unit prices observed in regional water right transactions. To account for the limited marketability of the subject water rights and the lack of prior water right sales from within Basin 17, this analysis applies the following steps:

1. Due to the lack of water right transactions from within Basin 17, water right transactions from other regions of southcentral Idaho are used to establish relevant range of market value for consumptive water rights. As previously described, the unit prices for consumptive water rights are not direct indications of the market value for the subject water rights.
2. To account for the nonconsumptive nature of the subject water rights, an adjustment factor is applied to the unit price established in Step 1. The adjustment factor is obtained by comparing the prices paid for nonconsumptive water rights to the prices paid for consumptive water rights within the same market region. Due to the lack of nonconsumptive water right transactions from within Idaho, water right market information from Oregon and Washington regions is used to support the adjustment factor.

Selected Consumptive Groundwater Right Sales

This section reports identified groundwater right sales in southeastern and southcentral Idaho from 2012 to the present. All unit prices are adjusted to current dollars using the Consumer Price Index. Table 2 provides a summary of the 48 water right sales included in this analysis. As shown, the adjusted unit prices range from \$226/AF to \$6,492/AF and average \$1,391/AF. The sale volumes are generally low as indicated by the median volume of 9 AF but have a wide range of 1 AF to 3,258 AF. None of the water right sales occurred in Basin 17 indicating that the demand for water rights in the vicinity of the subject water rights is limited. A majority of the transactions occurred within the Eastern Snake Plain region where demands for urban and agricultural uses are higher than in Basin 17. A majority of the sales involved irrigation groundwater rights but several, including the largest volume sale involved groundwater rights for industrial uses.

Table 2. Summary of Selected Consumptive Water Right Sales

	Unit Price (\$/AF)	Volume (AF)
Average	\$1,391	160
Median	\$1,194	9
Min	\$226	1
Max	\$6,492	3,258
Count	48	48

Figure 2 provides a plot of the unit prices for the 48 transactions against the volume in each transaction to show the influence of transaction volume on unit price. As shown, small volume transactions have a wide range of unit prices whereas larger volume transactions tend to exhibit less price dispersion. All water right transactions except one involving volumes of more than 100 AF have unit prices of between approximately \$600/AF and \$1,100/AF. The largest volume transaction had a unit price of approximately \$2,175/AF. However, the water rights were sold to a county that needed them to be able to attract industry to the region, a market condition that is not considered relevant to the subject water rights.



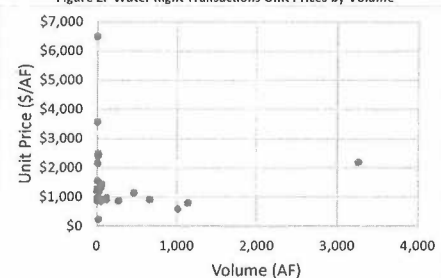
Preliminary Water Rights Valuation

There are a variety of approaches available to estimate the value of water rights. The selection of appropriate valuation technique(s) is determined by the characteristics and nature of the water right(s) being valued, the proposed transaction structure, the level of market activity, and the availability and quality of information, among other factors. The methods available to value water rights are briefly described below:

- **Sales Comparison Approach:** The Sales Comparison Approach compares a water right with similar water rights that have been sold or leased to determine market value. A reasonable number of sales are required to make accurate comparisons. Where necessary, adjustments should be applied to account for differences in physical and legal characteristics between the comparable sales and a particular water right. This analysis presents information on prior water right transactions as a comparison to the subject water rights. Due to the nature of the subject water rights (nonconsumptive), the selected transactions are limited to those involving nonconsumptive water rights. No transactions involving nonconsumptive water rights in Idaho were identified. As a result, it is necessary to consider water right transactions from other regions as well as transactions completed over an extended time period to estimate the value of the subject water rights.
- **Income Approach:** The Income Approach estimates the value of a water right according to the contribution that water provides to net income for a business. The method is based upon the expectations of future benefits from the water right and often can be subject to speculation if the future benefits are associated with a new rather than current use. This approach can be a useful alternative to comparable sales in regions where prior sales activity is limited. It is best suited to estimating the annual value associated with a water right lease (rather than sale). WestWater has previously applied income approaches to estimate the value of nonconsumptive water rights used for hydropower production and carriage water. An income approach is not applied to the subject water rights because it is unknown how the subject water rights contribute to potential net income from mining operations. Furthermore, there is no history of leasing activity associated with the subject water rights from which to support an income approach.
- **Cost Approach:** Under some circumstances, the cost of developing alternative water supplies similar to that provided by the subject water right can be used to establish value. The approach requires specific knowledge about the range of opportunities and costs associated with water supply development alternatives and consideration of the subject water rights in context with the available alternatives. In some regions that remain open to new appropriation, the cost of applying for a new water right can be used to estimate the value of existing water rights provided that new water rights have similar characteristics and conditions as existing water rights. As described above, IDWR considers groundwater in Basin 17 to be fully appropriated. While it may be possible to apply for, and receive a new water right permit for mining purposes, the outcome of a new water right application is uncertain. Due to this uncertainty, the cost approach is not applied in this analysis.
- **Land Price Differential Approach:** The Land Price Differential Approach, also referred to as the "before and after" analysis, estimates the value of the larger parcel including the water right and considers the value in the absence of the water right. The method, which is an application of hedonic price analysis, uses the difference in the property's value with and without access to water to estimate the contribution that water availability provides to the overall sale price. The approach is particularly useful in regions where irrigation water rights are routinely sold with land but where sales of water rights separate from land are rare. This analysis does not apply a Land Price Differential Approach as it is primarily used to estimate the value of consumptive water rights.



Figure 2. Water Right Transactions Unit Prices by Volume



Given the available information, the estimated value of consumptive groundwater rights in Basin 17 is \$1,000/AF. This is consistent with the pricing for observed groundwater transactions of similar size to the subject water rights within the broader geographic region.

Nonconsumptive Water Right Adjustment Factor

As previously described, no sales of nonconsumptive water rights were identified in Idaho. Table 3 provides a summary of the nonconsumptive water right transactions from Oregon and Washington and a comparison to the average market value of consumptive water rights in the respective basins at the time of transaction.

Table 3. Nonconsumptive Water Right Transactions

Year	Water Source	Location	Nonconsumptive Transaction Unit Price (\$/AF)	Average Consumptive Water Right Market Value (\$/AF)	Percent of Consumptive Water Right Value (%)
2002	Naches River	Yakima Basin, WA	\$23	\$500	4.6%
2004	Calapooya River	Willamette Basin, OR	\$21	\$400	5.3%
2005	Taneum Creek	Yakima Basin, WA	\$153	\$1,000	15.3%
2013	First Creek	Yakima Basin, WA	\$103	\$2,000	5.2%
2013	Beaver Creek	Okanogan Basin, WA	\$208	\$1,250	16.6%
2015	Teanaway River	Yakima Basin, WA	\$300	\$2,500	12.0%
2016	Big Creek	Yakima Basin, WA	\$259	\$2,500	10.4%
2017	Manastash Creek	Yakima Basin, WA	\$360	\$3,000	12.0%

As shown in Table 2, unit prices for nonconsumptive water rights in the selected sales are between 5% and 15% of the market value of consumptive water right sales. On average, nonconsumptive water rights have been valued at approximately 10% of consumptive water rights. This factor is used to adjust the value of observed consumptive water right sales from the broader southcentral Idaho region to estimate the value of the subject water rights.



Estimated Value for Subject Water Rights

Based upon the available information, it appears that the subject water rights have limited marketability. They are located within a rural area with no foreseeable opportunity to be marketed to higher valued urban uses. In addition, the subject water rights were issued for largely nonconsumptive mining use which limits their ability to be transferred to alternative uses with higher consumptive water needs such as irrigation.

Using information from prior groundwater right sales in southeastern and southcentral Idaho, this analysis estimated a unit price of \$1,000/AF for consumptive groundwater rights in Basin 17. Given the nonconsumptive nature of the subject water rights, a downward adjustment factor of 90% is applied to estimate the value of the subject water rights, which results in a unit value estimate of \$100/AF. Table 4 provides a summary of the estimated value of the subject water rights. As shown, the total estimated value of the two water rights is \$86,780.

Table 4. Estimated Value of the Subject Water Rights

Water Right	Volume (AF)	Unit Value (\$/AF)	Total Value (\$)
17-7132	658.1	\$100	\$65,810
17-7140	209.7	\$100	\$20,970
Total	867.8		\$86,780

EXHIBIT F

EXHIBIT F



July 11, 2022

John Marshall
John Marshall Law PLLC
1112 West Main Street, Suite 504
Boise, ID 83702

Sent via email to john@marshalllaw.com

Subject: Black Pine Mine Water Rights 17-7132 and 17-7140

Dear John,

This letter provides an analysis of Black Pine Mine water rights 17-7132 and 17-7140, along with a discussion of water conditions and water appropriation potential within the vicinity of the Black Pine Mine in Cassia County, Idaho.

Background

We understand that you represent the trustee of a bankruptcy estate that holds water rights 17-7132 and 17-7140. A mining company has offered to buy the water rights, but the trustee would like to better understand the local water right market. Specifically, the trustee seeks to determine (1) whether new water rights can be established within that area of Basin 17, and (2) whether there is demand from other buyers for water rights in that area of Basin 17.

Water Rights

Licensed water rights 17-7132 and 17-7140 in combination authorize diversion of 1.20 cubic feet per second (cfs) and 867.8 acre feet annually (AFA) for mining purposes with priority dates of October 6, 1988 and May 10, 1992, respectively. The place of use is the Black Pine Mine in Sections 25, 26, 27, 34, 35, and 36, Township 15 South, Range 29 East.

- Right 17-7132 authorizes diversion of 0.91 cfs and 658.1 AFA for mining uses consisting of ore processing, dust suppression, and support facilities.
- Right 17-7140 authorizes diversion of 0.29 cfs and 209.7 AFA for non-consumptive mining uses. The non-consumptive condition on water right 17-7140 will prevent transfer to most other uses (including irrigation).

The point of diversion for both water rights is a well located on federal land. The licensed location is the NENE of Section 36, T15S, R29E but review of aerial imagery shows that the well is actually located in the SENE of Section 36.

The well was drilled in 1989 to a total depth of 410 feet through sand, clay, and gravel, and is constructed with 10-inch casing to 388 feet. The casing is knife-perforated from 300 to 380 feet. Static water level in 1989 was reported to be 150 feet. A 1995 beneficial use field report describes the well pump as a 40-hp vertical turbine. A 150-hp in-line booster is used to add sufficient pressure to reach the mine site. Copies of water right reports, maps, and well report are provided as Attachment A.

Groundwater Conditions

Water Conditions in Basin 17. Administrative Basin 17 includes several small streams that are tributary to sinks in Utah and Idaho and the Deep Creek watershed that drains southward into the Great Salt Lake. Basin 17 is located between the Raft River Valley (Administrative Basin 43) on west and the Malad River Valley (Administrative Basin 15) on the east (Figure 1).



Figure 1. Black Pine Mine water rights 17-7132 and 17-7140 point of diversion location relative to administrative basin boundaries

The western portion of Basin 17 is theoretically open to new appropriation, although it is located between the Curlew Valley Critical Ground Water Area on the east and the Raft River Critical Ground Water Area on the west (Figure 2). For a new appropriation to be approved, an applicant would need to demonstrate that the proposed water use would not adversely impact existing water rights both within and outside the critical areas.



Figure 2. Black Pine Mine water rights 17-7132 and 17-7140 point of diversion location relative to critical ground water areas

Ability to Appropriate Water. Lacking a moratorium, or a designation as either a critical ground water area or ground water management area, the portion of Basin 17 outside of the Curlew Valley is open to appropriation. In fact, over the past 10 years, there has been somewhat a groundwater development boom in the western portion of Basin 17 with the following permits issued.

- permit 17-7175, 2013 priority, approved in 2013, and authorizing 12.00 cfs for irrigation of 1110 acres
- permit 17-7176, 2013 priority, approved in 2017, and authorizing 8.13 cfs for irrigation of 658 acres
- permit 17-7180, 2015 priority, approved in 2015, and authorizing 9.54 cfs for irrigation of 477 acres
- permit 17-7181, 2015 priority, approved in 2016, and authorizing 9.12 cfs for irrigation of 958 acres
- permit 17-7182, 2015 priority, approved in 2020, and authorizing 1.02 cfs for irrigation of 51 acres

3

- permit 17-7183, 2015 priority, approved in 2016, and authorizing 0.40 cfs for irrigation of 92 acres
- permit 17-7189, 2015 priority, authorizing 1.00 cfs for irrigation of 228 acres (located less than 2 miles from the Black Pine Well)

Groundwater Levels. Review of on-line groundwater level data shows four monitoring wells within approximately 6 miles of the Black Pine Mine Well. Three of these wells are 4 to 6 miles to the northeast in Juniper Valley and the fourth well is 3 miles to the southeast (Figure 3). Hydrographs are provided in Attachment B.

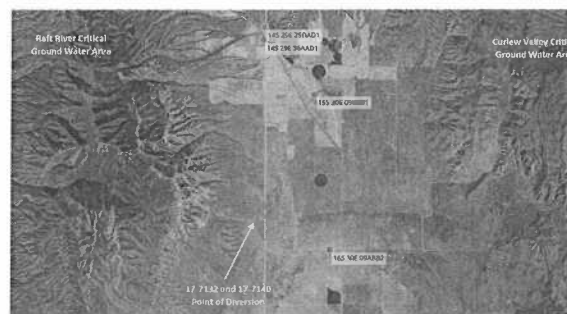


Figure 3. Groundwater-level monitoring wells near Black Pine Mine.

1. Well 14S90E25DAD1 has been monitored since 2016 and shows approximately 2 to 3 feet of decline over that period.
2. Well 14S90E36AAD1 has been monitored since 2016 and shows approximately 2 feet of decline over that period.
3. Well 15S90E09BBB1 has been monitored since 2016. Water levels appear to be relatively stable.

4

4. Well 16S90E09ABB2 has been monitored since 2009 and shows a slight declining trend.

Although the monitoring period for the four wells is relatively short, they appear to show sufficient decline for IDWR to potentially be concerned with additional appropriations. Groundwater levels in existing monitoring wells may need to stabilize, or site-specific monitoring data might be needed, for an applicant to overcome an assumption that the aquifer is over-appropriated.

Discussion

The value of water rights 17-7132 and 17-7140 is likely related to the following factors:

1. The ability to continue to appropriate groundwater in the western portion of Basin 17
2. The value of the water rights for mining or irrigation purposes if new appropriations are denied.

Regarding the ability to appropriate, the area is open for new appropriations, but an applicant will need to demonstrate to IDWR and to potential protestants that an appropriation can occur without injury to other water rights. Data will need to show that the significant recent appropriations in Basin 17 have not exceeded the natural recharge to the aquifer. Such data will need to demonstrate that a new groundwater use will not contribute to water-level declines, or that the location proposed by a new appropriation is not in hydraulic connection with an area of decline. If a new appropriation can be approved for use at the mine (or for irrigation purposes), then the primary value of water rights 17-7132 and 17-7140 is the early priority date that will protect the rights from curtailment in the event of a future delivery call.

If new appropriations in the area cannot be approved, then the rights have value for mining purposes or for transfer to irrigation.

- If transferred to irrigation, only the consumptive right (17-7132) would be considered. This right has a diversion rate of 0.91 cfs, adequate to provide irrigation to 91 acres at a rate of 0.01 cfs per acre or 45.5 acres at a rate of 0.02 cfs per acre. For discussion purposes, the water right would likely be adequate for approximately 60 acres if the historical consumptive use has been 150 acre feet or more (the area has an irrigation headgate requirement of 3.5 acre feet per acre and a consumptive use of 2.5 acre feet per acre).
- Similarly, if the mine must buy water rights from a local farm, then the amount of water rights that must be acquired will be based on the anticipated consumption at the mine. For example, if annual consumption is only 100 acre feet, then irrigation water rights from 40 to 60 acres (depending on historical crop mix at the farm) would need to be acquired. But if annual consumption is 500 acre feet, then irrigation water rights from 200 to 300 acres would need to be acquired. The limited number of farms in the local area may influence water right availability and cost. The cost for irrigation water rights that will yield 2 to 2.5 acre feet per

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acre would likely be slightly less than the value of irrigated cropland in the western portion of Basin 17.

It should be noted that although water right 17-7140 is "non-consumptive", the mining water use likely has had a high level of consumption. Uses such as dust control, heap leaching, and reclamation can have a very high percentage of consumption.

It should also be noted that the volume licensed under the water rights, 867.8 acre feet per annum, is based on pumping and beneficially using the full diversion rate, 24 hours per day, 365 days per year. In reality, most of the mining use is likely seasonal, with low demands during winter months and higher demands during summer months. As a result, annual volume produced and used has likely been substantially less than 867.8 acre feet.

Conclusion

The value of the Black Pine Mine water rights is based on (1) whether new permits can be approved in the local area and (2) the historical consumption under the Black Pine Mine water rights

- Whether a new permit can be approved is not known without making application. There is no prohibition on new appropriations, but each application must demonstrate that there is adequate available water supply that can be developed without injury to existing water rights.
- Historical consumption would need to be determined from pumping records and review of water use practices at the mine. IDWR typically considers the most recent 5-year period for transfer purposes, but has considered longer periods when justified. If historical consumption is low, then the rights have less value because they can be transferred for only limited irrigation use (likely 1 acre for each 2.5 acre feet of historical consumption). If historical consumption is high, then the rights can be transferred for irrigation of more acres and will have a proportionately higher value. Similarly, if mine consumption is high and rights 17-7132 and 17-7140 are not available to the mine, the mine would need to acquire and transfer a larger amount of irrigation water rights to meet water demands.

Please contact me with any questions.

Sincerely,
HDR Engineering, Inc.

Terry M. Scanlan

Terry M. Scanlan, P.E., P.G.
Principal Engineer

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IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

6/26/2022

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 17-7132

Owner Type	Name and Address
Current Owner	BLACK PINE MINING INC PO BOX 535 RUPERT, ID 83350 2086452612
Original Owner	NORANDA INC 2501 CATLIN #201 MISSOULA, MT 59801

Priority Date: 10/06/1988

Basis: License

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
MINING	1/01	12/31	0.91 CFS	658.1 AFA
Total Diversion			0.91 CFS	658.1 AFA

Location of Point(s) of Diversion:

GROUND WATER|NENE|Sec. 36|Township 15S|Range 29E|CASSIA County

Licensed Diversion Capacity: 1.2

Place(s) of use:

Place of Use Legal Description: MINING CASSIA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
15S	29E	25		NESW			NWSW			SWSW			SESW	
				NWSE			SWSE							

Case 98-30090-gwz Doc 1003-6 Entered 08/20/22 14:35:36 Page 10 of 20

26	NWSW	SWSW			
27	NESW	NWSW	SWSW	SESW	
	NESE	NWSE	SWSE	SESE	
34	NENE	NWNE	SENE		
	NENW				
	NESE	SESE			
35	NENE	SWNE	SENE		
	NWNW	SWNW	SENW		
	NESW	NWSW	SWSW		
	NESE	NWSE			
36	NENE	NWNE	SWNE	SENE	
	NENW	NWNW			
	NESE	NWSE	SWSE	SESE	

Conditions of Approval:

1. Mining use is for ore processing, dust suppression and support facilities.

Dates:

Licensed Date: 04/30/1997

Decreed Date:

Permit Proof Due Date: 4/1/1992

Permit Proof Made Date: 2/6/1992

Permit Approved Date: 3/2/1989

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 10/06/1988

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: NWD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Case 98-30090-gwz Doc 1003-6 Entered 08/20/22 14:35:36 Page 11 of 20

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

6/26/2022

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 17-7140

Owner Type **Name and Address**
 Current Owner BLACK PINE MINING INC
 PO BOX 535
 RUPERT, ID 83350
 2086452612

Priority Date: 05/10/1992

Basis: License

Status: Active

Source **Tributary**
 GROUND WATER

Beneficial Use	From To	Diversion Rate	Volume
MINING	1/01 12/31	0.29 CFS	209.7 AFA
Total Diversion		0.29 CFS	209.7 AFA

Location of Point(s) of Diversion:

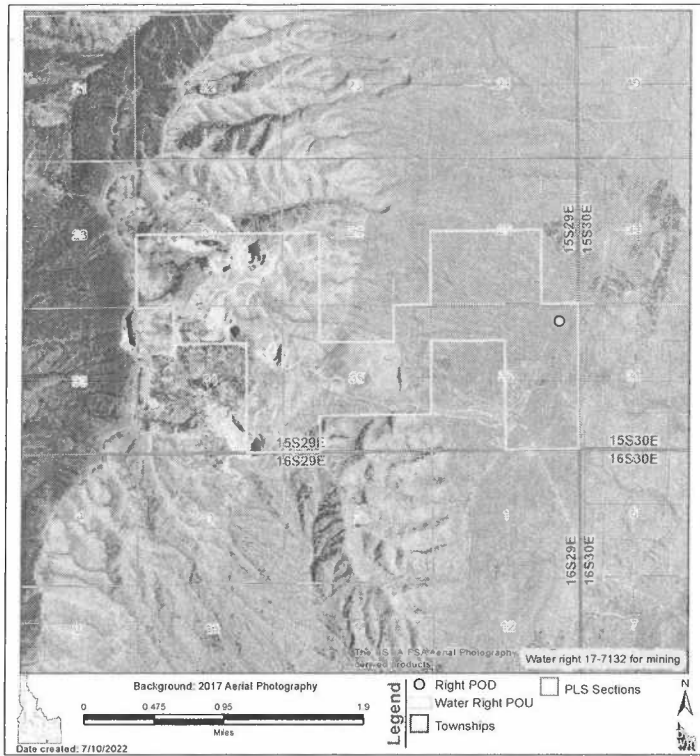
GROUND WATER | NENE | Sec. 36 | Township 15S | Range 29E | CASSIA County

Licensed Diversion Capacity: 1.2

Place(s) of use:

Place of Use Legal Description: MINING CASSIA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
15S	29E	25		NESW		NWSW			SWSW			SESW		
				NWSE		SWSE								
		26		NESW		NWSW			SWSW			SESW		
		27		NESW		NWSW			SWSW			SESW		
				NESE		NWSE			SWSE			SESE		
		34		NENE		NWNE			SWNE			SENE		



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		NENW				
		NESE		SESE		
35		NENE		NWNE	SWNE	SENE
		NENW		NWNW	SWNW	SENW
		NESW		NWSW		
		NESE		NWSE		
36		NENE		NWNE	SWNE	SENE
		NESW		NWSW	SWSW	SESW
		NESE		NWSE	SWSE	SESE

Conditions of Approval:

- Mining use shall be non-consumptive. Mining use is for ore processing, dust suppression and support facilities.

Dates:

Licensed Date: 03/31/1997

Decreed Date:

Permit Proof Due Date: 11/1/1995

Permit Proof Made Date: 12/5/1995

Permit Approved Date: 10/28/1994

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 04/06/1992

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: NWD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Case 98-30090-gwz Doc 1003-6 Entered 08/20/22 14:35:36 Page 15 of 20

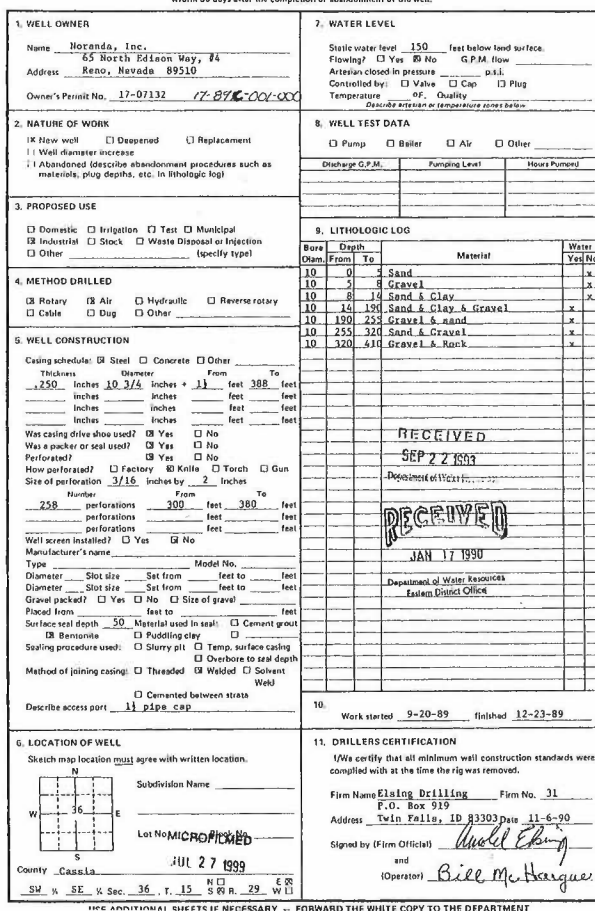
Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

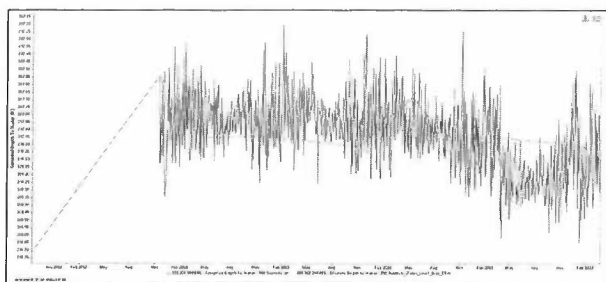
DLE Act Number:

Cary Act Number:

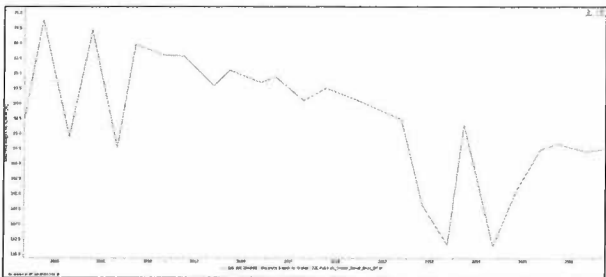
Mitigation Plan: False



14S29E36AAD1 hydrograph – August 2016 to March 2022



15530E09BBB1 hydrograph - August 2016 to March 2022



16530E09ABB2 hydrograph - August 2016 to March 2022

EXHIBIT G

EXHIBIT G

MEMORANDUM

Date: October 4, 1994
 From: Jim Johnson
 To: Norm Young/ File
 Subject: Review of Applicant's Response for Additional Information

Per conversations between myself, Norm Young, and Cellin Scott, additional information was solicited from the application to assist in determining whether this application should be approved.

The application is located within the Bear River Moratorium Area. Applications for non-consumptive use of water are exempt from the Moratorium, therefore, the purpose of the review of the additional information was to determine if the new appropriation would be non-consumptive.

The need for additional diversion rate and volume comes from increasing processing three million ton of ore per year to eight million tons of ore per year. The process for beneficiation of gold is illustrated by the schematic received by the applicant.

Groundwater diverted under this application will use the same well as used by existing water right 17-07132. The rate of diversion, however, will increase by 0.21 cfs. The well water will be diverted into a "Barren Pond" as shown on the schematic. Water diverted from the pond is used to increase the moisture levels of ore prior to processing the gold. The saturated ore is stacked on the leach pad rather than spreading it over an enlarged area, therefore, the surface area of the heap piles stay constant, resulting in no increase of evaporation. Residual water from the piles is captured and recycled to the Barren Pond as shown on the schematic.

There is no indication that the additional water under this application will be used for other purposes than described above. The applicant has shown the while the rate of diversion and annual volume will increase under this application, no increase in consumptive use will occur. The application for permit can be approved.

DEC 19 1994



RECEIVED
 AUG 23 1994
 Department of Water Resources

August 19, 1994

Mr. Norm Young
 Idaho Department of Water Resources
 1301 North Orchard Street
 Stathouse Mail
 Boise, Idaho 83720-9000

RE: Requested Information Regarding Water Right Application

Dear Mr. Young:

Thank you for responding to our water right application request. As per Jim Johnson's memo dated August 3, 1994, we have provided the additional information requested. We hope this new information answers your questions and explains the extraction process so you understand our water usage.

Attached is a list of the comments noted in Mr. Johnson's memo and our response to help clarify our terminology and processing. In addition, we have provided you with a flow diagram of the Black Pine Mine.

Granted, understanding the solution balance of our heap leach pad can be very challenging and because of that we have explained the process in more detail to help clarify your understanding. We believe if you have further questions, they would best be answered on site so we can explain the answers as well as show you the actual water course through the plant and heap leach pad. The hands-on observation of the process will crystallize your understanding of water usage.

We presently operate under a water right allowing groundwater diversion at a rate of 0.91 cfs. We could continue to operate under this rate if it was considered an average rate rather than a maximum rate of pumping at any give time.

Your review and approval of our request is critical to present operation therefore allowing efficient and economical metal extraction of gold. We sincerely appreciate your time and careful consideration of this request.

Sincerely,

C. Cellin Scott
 C. Cellin Scott
 Sr. Environmental Engineer

Encl.
 c: Pete Petrowsky Jim Anderson
 Jim Johnson IDWR

DEC 19 1994

**BLACK PINE MINE
RESPONSES TO IDWR'S COMMENTS IN
(MEMORANDUM DATED AUGUST 3, 1994)**

COMMENT: "The rate of flow on the application needs a downward adjustment to read 0.21 cfs instead of 1.2 cfs per explanation in Mr. Scott's letter."

RESPONSE: The additional water right request is for 0.21 cfs.

COMMENTS: Black Pine Mine needs to demonstrate how the diversion of an additional 0.21 cfs will not be consumed by the "extraction, beneficiation, and processing of ore."

RESPONSE: The definition of the term "nonconsumptive" will affect your interpretation of our use of water. In any system involving water exposed to the atmosphere, the balance between water gained from precipitation and water lost through evaporation plays a most significant part. The area in which the Black Pine Mine is situated experiences a net negative water balance, with 14.8 inches of rain and 42.5 inches of evaporation per average year. The leach pad now consists of 104 acres of plastic-lined area which receives 41.875 million gallons of rainwater and loses 120.25 million gallons of water through evaporation annually. This is a net average loss of 150 gallons per minute. During the winter months there can be a net water gain and the major loss, of course, occurs in the summer. In order to continue processing of ore, this water must be replaced with fresh water from the well.

The process employed by the Black Pine Mine involves heap leaching with carbon adsorption as the recovery method. Originally, the mine was scheduled to process three million tons of ore per year, but this has now been expanded to nearly eight million tons annually. The ore contains moisture at about 3% when it is stacked on the heap. In order to extract the gold with cyanide solution, the moisture content must be increased to about 10.5%, the point of saturation. When leaching has been completed, the moisture drains down to about 8.25%, or a net increase of 5.25% over the original content. At any given time approximately 40% of the ore contained in the heap is under leach, at saturation, with most of the remainder at the draindown moisture content. Eventually, after detoxification and closure of the heap, the heap will be breached to allow for a free draining system. Residual moisture will drain to underlying geologic strata.

Unless evaporation is included in your definition of "nonconsumptive," the

Black Pine's Response to IDWR Comments

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DEC 19 1994

COMMENTS: "I suggest requesting detailed schematics showing water systems of the beneficiation plant."

RESPONSE: Water loss does not occur in the plant. It is tied into the entire closed system. We are providing you with a flow diagram to help illustrate how our mine processing works.

Black Pine's Response to IDWR Comments

3

DEC 19 1994

water collected and stored in the leach pad will eventually be treated (detoxified) and released to the substrata. Mine life now will carry through 1996. Therefore, Black Pine Mine does not believe there will be any consumptive use, only evaporation losses, that are minimized through drip line application, rather than sprinklers.

COMMENTS: "If, in fact, water is recycled in a closed system, then why is additional water needed?"

RESPONSE: The answer is that the system is not static, as explained below, with additional ore treated as it is mined. All of the water required to saturate ore is not immediately returned for reuse when the ore has been treated, resulting in the requirement for additional water. The water that drains from saturated ore, and from ore that has been allowed to drain following leaching, is recycled. It is important to note that new ore is placed on top of ore that has been treated, and the entire mass must be brought back to saturation.

COMMENTS: "What is "make-up" water? How is it applied? What is the rate and hours of application?"

RESPONSES: Make-up water is water added to the system due to two types of losses. The primary water lost is due to ore (rock and soil containing gold) absorbing the moisture and secondary loss of water is due to evaporation. Although the water still remains in the system, it is suspended in the ore soil matrix; we call this a draindown (equilibrium between gravity draining and soil retention of moisture) condition.

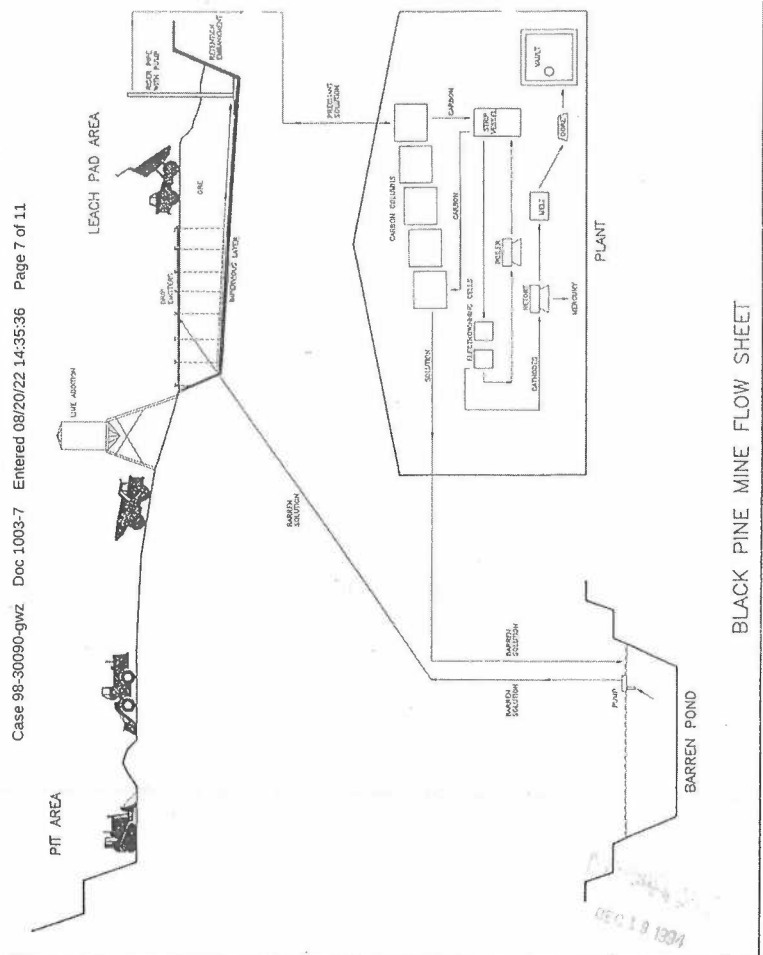
Make-up water is applied a couple of ways. It is either added to the system by direct pumping to our "barren pond" (none bearing gold solution), which is pumped directly to the leach pad for leaching use, or it is directly pumped to the leach pad and discharged into the pond storage area of the heap. Both systems have a direct increase in the solution balance.

The rate and hours of application are dependent on several factors. Generally, we add make-up water sparingly from October to May. This allows us to minimize the volume of solution on the pad to accommodate spring snowmelt and rains. In the summer and fall months the amount and rate of make-up water added to the leach pad depends on how much new ore is added to the pad and if it rains or not. The rate of pumping is highly variable, ranging from 0 gpm to 408 gpm the maximum allowed by our water right. We are not like an agricultural-based operation where pumping is continuous at the same rate. The pumping rate varies from not pumping at all to continuous pumping for several days.

Black Pine's Response to IDWR Comments

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DEC 19 1994



DEC 19 1994

MEMORANDUM

Date: August 3, 1994
 From: Jim Johnson
 To: Norm
 Subject: Review of Application and request from Crellin Scott

Per your request I have reviewed Mr. Scott's letter and the application for permit. Following are my comments and suggestions.

The rate of flow on the application needs a downward adjustment to read 0.21 cfs instead of 1.2 cfs per explanation in Mr. Scott's letter.

Mr. Scott needs to demonstrate how the diversion of an additional 0.21 cfs will not be consumed by the "extraction, beneficiation, and processing of ore". If in fact water is recycled in a closed system, then why is additional water needed?

What is "make-up" water? How is it applied? What is the rate and hours of application?

I suggest requesting detailed schematics showing the water systems of the beneficiation plant and request further clarification of make-up water and how it is used for wetting new ore.

If Mr. Scott fails to provide convincing information on the non-consumptive use of water then the only option left is for the Director to consider the appropriation under the provisions of paragraph 8.

This application is not located within the Curlew Valley Critical Groundwater Area.



DATE: 8/3/94

OF PAGES (INCLUDING COVER SHEET) 3

TO: Norman Young	FROM: Crellin Scott
COMPANY NAME: IDWR	BLACK PINE MINING, INC.
PHONE NUMBER:	PHONE NUMBER: 208-645-2612
FAX NUMBER: 327-7866	FAX NUMBER: 208-645-2632

☒ HIGH PRIORITY (DELIVER IMMEDIATELY)☐ CONFIDENTIAL (EYES ONLY ADDRESSEE)

MESSAGE

Norman,
 Here is a copy of the letter that was sent to Keith, requesting increased water rights. I would like to discuss this with you at your earliest convenience.
 Thank you
 Crellin

DEC 19 1994



June 23, 1994

Keith Higginson
 Director of Water Resources
 Idaho Department of Water Resources
 1301 North Orchard St.
 Boise, ID 83706

RE: Request Review and Approval of Water Right No. 17-07140, for Nonconsumptive use at the Black Pine Mine, Cassia County

Dear Mr. Higginson:

Black Pine Mine is a gold mining company located in the southeast corner of Cassia County. We presently hold the approved water right (No. 17-07132) with the right to divert water at the rate of 0.91 cfs for mining activities. In April of 1992 we filed for an additional 0.21 cfs for a total of 1.2 cfs water diversion. In 1992 we anticipated increased water needs for future mine expansion. Now, we have approved mine expansion permits from the U.S. Forest Service and will require the additional water rights to conduct the extraction, beneficiation, and processing of ore in an efficient manner. Therefore, we respectfully request your review of our water right request (No. 17-07140) under the Amended Moratorium Order for approval of nonconsumptive use.

Following the Amended Moratorium Order, page 4, item #6, it states "The moratorium does not apply to any application proposing a nonconsumptive use of water. Black Pine's use of water meets the nonconsumptive use definition as noted in Section 42-605A, Idaho Code. We use this water for beneficiation of ore through heap leach processing. This processing method uses a closed system that recycles the processing solutions for mineral extraction, thereby reusing the water already in solution. Make-up water is only added for wetting new ore on the pad and evaporation loss.

We understand the Director has the authority to review applications on a case-by-case basis if the application will have no effect on prior water rights because of location, and there is an insignificant consumption of water (see Order, page 5, item 8b). We believe Black Pine's well location and insignificant increase in use, 0.21 cfs, meet with the criteria allowing you to approve our application for additional water use and not have any detrimental effect on existing water resources.

We acknowledge the moratorium order (April 1993) and understand the need for responsible control of water rights through moratorium orders to protect Idaho's water resources. We

Mr. Keith Higginson
 IDWR
 Water Right 17-07140

Page 2

July 11, 1994

believe this request meets the objectives of the present moratorium and will have no significant impact to existing water rights in this area. We would sincerely appreciate your review of our request in order to continue an economical operation of beneficiation of ore processing.

Thank you for your help

Sincerely,

C. Crellin Scott
 Sr. Environmental Engineer

Enc

Encl

c: Pete Petrowsky
 Joel Brown
 Jim Anderson
 file

EXHIBIT H

EXHIBIT H

WATER ASSET PURCHASE AGREEMENT

This Water Asset Purchase Agreement ("WAPA") is made and entered into as of August 2022 (the "Effective Date") by and between (i) W. Donald Gieseke, solely in his capacity as chapter 7 trustee of Black Pine Mining, Inc. in Case No. BK-98-30091-gwz ("Black Pine Mining Bankruptcy Case") pending in the United States Bankruptcy Court for the District of Nevada ("Seller"), which is administratively consolidated with the lead case of Beal Mountain Mining, Inc. pending as Case No. BK-98-30090-gwz and (ii) Pilot Gold, Inc. or its designee (the "Purchaser" and together with Seller, the "Parties.")

RECITALS

The Parties hereby acknowledge that:

- A. Purchaser is in the gold mining business. It is presently exploring and developing mining claims previously mined by Beal Mountain Mining, Inc. (the "Beal Mountain Claims").
- B. After due diligence, Purchaser determined that Black Pine Mining, Inc. ("Black Pine Mining") is licensee to water right no. 17-07132 and water right no. 17-07140, both issued by the Idaho Department of Water Resources (together, the "Licenses"). Both of the Licenses relate to the Beal Mountain Claims.
- C. Purchaser further determined that Black Pine Mining had liquidated nearly all its assets in the administratively consolidated bankruptcy cases captioned under lead case *In re Beal Mountain Mining, Inc., et al.*, case number BK-98-30090-gwz, in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") (the "Beal Mountain Bankruptcy Case").
- D. Purchaser further determined that Black Pine Mining had not liquidated the Licenses when the Beal Mountain Bankruptcy Case was closed, and the Licenses remain assets of the estate in that case.
- E. Consequently, Purchaser moved the Bankruptcy Court to (i) reopen the Beal Mountain Bankruptcy Case and Black Pine Mining Bankruptcy Case and (ii) determine that the United States Trustee should appoint a trustee to insure the efficient administration of the Licenses. The Bankruptcy Court granted the Purchaser's motion.
- F. Seller is the duly appointed chapter 7 trustee over Black Pine Mining's bankruptcy estate. As such, he is authorized to sell assets from the Black Pine Mining, Inc. estate, including the Licenses.
- G. On the terms and conditions of this WAPA, Seller undertakes to sell the Licenses to Purchaser, and Purchaser undertakes to purchase the Licenses from Seller (the "Contemplated Transactions").
- H. Subject to receiving approval of the Sale Motion (as defined below) and entry of the final order approving the sale under this Agreement (the "Sale Order"), Seller will sell the Licenses to Purchaser under the terms of this Agreement.

DRAFT

AGREEMENT

In consideration of their respective covenants set forth herein, the Parties agree as follows:

1. Transfer of Purchased Assets.

1.1 Purchase and Sale of Purchased Assets. On the Closing Date, on the terms and conditions hereinafter set forth in this Agreement, under section 363 of the Bankruptcy Code, and as provided by the Sale Order, Seller will sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase, acquire, accept and receive from Seller, free and clear of all Encumbrances to the extent provided in the Sale Order, the Licenses (the "Purchased Assets").

2. Consideration.

2.1 Purchase Price. In consideration of the transfer of the Purchased Assets to Purchaser and the other undertakings set forth herein, the purchase price (the "Purchase Price") for the Purchased Assets will be cash in an amount equal to [\$215,000.00] (the "Cash Purchase Price").

2.2 Deposit.

(a) Purchaser shall deposit \$20,000.00 in cash (the "Deposit") with Seller's counsel.

(b) At Closing, the Purchaser shall instruct the Seller's counsel to release the Deposit to Seller, and the Deposit will be credited and applied to reduce the Cash Purchase Price.

(c) Except as set forth in Section 2.2(d) below, if this Agreement terminates without a Closing, the Seller shall instruct its counsel to release the Deposit to Purchaser.

(d) If this Agreement is terminated without a Closing by Seller pursuant to Section 10.3 or by Purchaser other than pursuant to Section 10.4, the Deposit shall become property of the Seller, and Purchaser will have no right, claim, or interest in the Deposit.

3. Closing Transactions

3.1 Closing. Subject to the satisfaction of the conditions to Closing contained herein, the Closing of the Contemplated Transactions (the "Closing") will take place as soon as reasonable practicable after the Sale Order becomes a Final Order, but not later than the Outside Date or on such other date as may be agreed to by the Parties hereto (the date on which the Closing occurs, hereinafter the "Closing Date").

3.2 Seller's Deliverables to Purchaser at Closing. On the Closing Date, Seller shall make the following deliveries to or for the benefit of Purchaser:

DRAFT

(a) deliver a Quitclaim Bill of Sale and Assignment, substantially in the form attached as Exhibit A hereto, duly executed by Seller, assigning all of Seller's interest in the Purchased Assets to Purchaser at Closing (the "Bill of Sale and Assignment"); and

(b) deliver any such other documents or other things reasonably requested by Purchaser or contemplated by this Agreement to be delivered by Seller to Purchaser at the Closing.

3.3 Purchaser's Deliverables to Seller at Closing. On the Closing Date, Purchaser shall make the following deliveries to or for the benefit of Seller:

(a) instruct Seller's counsel in writing to release the Deposit to Seller;

(b) pay to Seller, by wire transfer of immediately available funds an amount equal to (i) the Cash Purchase Price (ii) minus the Deposit; and

(c) deliver any such other documents or other things reasonably requested by Seller or contemplated by this Agreement to be delivered by Purchaser to Seller at the Closing.

3.4 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered, or affected until all such actions, documents and transactions have been taken, delivered, or effected. Unless provided otherwise herein or agreed otherwise in writing by the Parties, documents delivered at the Closing shall be dated as of 10:00 a.m. Prevailing Mountain Time on the Closing Date.

4. Conditions Precedent to Closing.

4.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the Contemplated Transactions shall be subject to the satisfaction of each of the following conditions (unless such condition is waived by Seller):

(a) All of the representations and warranties of Purchaser contained herein shall continue to be true and correct at the Closing in all material respects, and Purchaser shall have substantially performed or tendered performance of each material covenant on Purchaser's part to be performed which, by its terms, is required to be performed at or before the Closing.

(b) Purchaser shall have tendered delivery of all items required to be delivered by Purchaser under Section 3.3.

(c) No action, suit or other proceedings that is not stayed by the Bankruptcy Court shall be pending before any Governmental Body seeking or threatening to restrain or prohibit the consummation of the Contemplated Transactions, or seeking to obtain substantial damages in respect thereof, or involving a Claim that consummation

thereof would result in the violation of any law, decree or regulation of any Governmental Body having appropriate jurisdiction.

(d) The Bankruptcy Court shall have entered the Sale Order in accordance with Section 8.1 below and the Sale Order is final, has not been appealed or, if appealed, has not been stayed as of the Closing Date.

4.2 Conditions to Purchaser's Obligations. Purchaser's obligation to make the deliveries required of Purchaser at the Closing and otherwise consummate the Contemplated Transactions shall be subject to the satisfaction of each of the following conditions (unless such condition is waived by Purchaser):

(a) All of the representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects, and Seller shall have substantially performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is required to be performed at or before the Closing (provided, however, that Seller shall have performed in all respects its covenants hereunder to sell, assign, transfer, convey and deliver to Purchaser all of the Seller's right, title and interest in and to all Purchased Assets free and clear of all Encumbrances even if the Bankruptcy Court declines to authorize the sale of the Licenses "free and clear").

(b) Seller shall have tendered delivery of all items required to be delivered by Seller under Section 3.2.

(c) No action, suit or other proceedings that is not stayed by the Bankruptcy Court shall be pending before any Governmental Body seeking or threatening to restrain or prohibit the consummation of the Contemplated Transactions, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree, or regulation of any Governmental Body having appropriate jurisdiction.

(d) The Bankruptcy Court shall have entered the Sale Order in accordance with Section 8.1 below and the Sale Order is a Final Order, has not been appealed or, if appealed, has not been stayed as of the Closing Date.

5. Seller's Representations and Warranties.

Seller hereby makes the following representations and warranties to Purchaser:

5.1 Organization. Seller has all requisite entity power and authority, subject to the provisions of the Bankruptcy Code applicable to chapter 7 trustees, to enter into this Agreement and to consummate the Contemplated Transactions.

5.2 Validity and Enforceability. Subject to the entry and effectiveness of the Sale Order, this Agreement has been duly and validly executed and delivered by Seller and (assuming this Agreement constitutes a valid and binding agreement of Purchaser) constitutes a

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default under any agreement, instrument or writing of any nature to which Purchaser is a party or by which Purchaser or its assets or properties may be bound.

6.4 Financial Resources. The Purchaser is not undercapitalized and has the financial resources necessary to consummate the Contemplated Transactions upon the terms and conditions set forth in this Agreement, and such financial resources are not subject to any constraints, conditions or contingencies that could in any way materially affect the Purchaser's ability to consummate the Contemplated Transactions or perform hereunder.

6.5 Broker's or Finder's Fees. No agent, broker, person, or firm acting on behalf of any of the Purchaser is, or will be, entitled to any commission or broker's or finder's fees in connection with the Contemplated Transactions.

7. "AS IS" Transaction

Purchaser hereby acknowledges and agrees that, except only as provided in Section 5 above, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets (including, without limitation, income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any tangible Purchased Assets or other matter relating to the condition of any property, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets or any portion thereof, the merchantability or fitness of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets or any portion thereof. Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Purchaser further acknowledges that Purchaser has conducted an independent inspection and investigation of the Purchased Assets and all such other matters relating to or affecting or comprising the Purchased Assets as Purchaser deemed necessary or appropriate and that in proceeding with the Contemplated Transactions, Purchaser is doing so based solely upon such independent inspections and investigations. Accordingly, except only for the representations set forth in Section 5 above, Purchaser will accept the Purchased Assets at the Closing "AS IS," "WHERE IS," "IF IS," and "WITH ALL FAULTS."

8. Bankruptcy Court Approvals.

8.1 Seller has filed a Sale Motion with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order approving the sale of the Purchased Assets to Purchaser on the terms and conditions set forth in this Agreement. Any material changes to the form of the proposed Sale Order attached to the Sale Motion must be approved by Purchaser and Seller in their respective sole discretion. Seller will use commercially reasonable efforts to obtain entry of the Sale Order.

9. Commercially Reasonable Efforts. Subject to the terms and conditions of this Agreement:

9.1 During the period prior to Closing, Seller and Purchaser will (a) use their commercially reasonable efforts (i) to cause the conditions in Section 4 to be satisfied, (ii) to deliver or cause to be delivered at the Closing the items to be delivered by Seller and Purchaser

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valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as to the effect, if any, of the Standard Exceptions to Enforceability.

5.3 No Conflict. Subject to the entry of the Sale Order, neither the execution, delivery or performance of this Agreement by Seller, nor the consummation by Seller of the Contemplated Transactions, nor compliance by Seller with any of the provisions hereof, (a) conflict with or result in any breach of the articles of incorporation or bylaws of Seller, (b) result in a violation or breach of, or constitute (with or without notice or lapse of time) a default (or give rise to any right of termination, cancellation, vesting, payment, exercise, acceleration, suspension or revocation) under, any of the terms, conditions, or provisions of, any note, bond, mortgage, deed of trust, security interest, or Contract to which Seller is a party or by which Seller's properties or assets may be bound or affected, (c) violate any Legal Requirement applicable to the Seller or to the Seller's properties or assets, or (d) result in the creation or imposition of any Encumbrance on any asset of Seller.

5.4 Litigation. There is no material Legal Proceeding pending that, once the Sale Order is given effect, will result in any Liability to Purchaser or, to the Seller's actual knowledge, threatened against or affecting Seller that would likely result in the imposition of any Liability on Purchaser or in respect of the Purchased Assets, nor is there any material judgment or Order of any Governmental Body outstanding against Seller.

5.5 Broker's or Finder's Fees. No agent, broker, person, or firm acting on behalf of the Seller is, or will be, entitled to any commission or broker's or finder's fees in connection with the Contemplated Transactions.

6. Purchaser's Warranties and Representations.

In addition to the representations and warranties contained elsewhere in this Agreement, Purchaser hereby makes the following representations and warranties to Seller as of the Closing Date:

6.1 Organization. Purchaser is a corporation duly formed, validly existing and in good standing under the laws of the state of its incorporation. Purchaser has all requisite power and authority to own, lease and operate its properties, execute, and deliver this Agreement, and to perform its obligations hereunder and consummate the Contemplated Transactions.

6.2 Validity and Enforceability. This Agreement has been duly executed and delivered by Purchaser and constitutes the valid and binding obligation of Purchaser enforceable against it in accordance with its terms, except as may be limited by the Standard Exceptions to Enforceability.

6.3 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Purchaser have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the Contemplated Transactions, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Purchaser do not and will not: (i) conflict with or result in a breach of the articles of incorporation or bylaws of Purchaser; (ii) violate any Legal Requirement; or (iii) violate or conflict with or constitute a

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pursuant to Section 3.2 and Section 3.3, and (iii) to take all other actions to consummate the Contemplated Transactions, and (b) not take any action that will have the effect of unreasonably delaying, impairing or impeding the receipt of any authorizations, consents, or Orders to be sought pursuant to this Agreement.

10. Termination.

10.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Closing Date by mutual written agreement of the Parties.

10.2 Termination by Either Purchaser or Seller. This Agreement may be terminated at any time prior to the Closing Date by either Purchaser or Seller if any Governmental Body shall have issued an Order permanently restraining, enjoining, or otherwise prohibiting the consummation of the Contemplated Transactions and either (i) thirty days shall have elapsed from the issuance of such Order and such Order has not been removed or vacated, or (ii) such Order shall have become final and non-appealable.

10.3 Termination by Seller. This Agreement may be terminated with no further liability hereunder at any time prior to the Closing Date by Seller as follows:

(a) if there has been a material breach by Purchaser, which breach Purchaser has failed to cure within fourteen days following its receipt of written notice thereof from Seller;

(b) if any condition precedent of Seller specified in Section 4.1 shall not have been satisfied or waived and shall have become impossible to satisfy, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Seller; or

(c) if the Closing Date shall not have occurred on or before 5:00 p.m. Prevailing Mountain Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Seller's failure to meet its obligations hereunder, including without limitation using all diligent and commercially reasonable efforts to obtain approval of the Sale Order by the dates set forth herein.

10.4 Termination by Purchaser. This Agreement may be terminated at any time prior to the Closing Date by Purchaser as follows:

(a) the Sale Order is not entered by the Bankruptcy Court by one hundred eighty days after the entry of the Procedures Order;

(b) If the Sale Order does not become a Final Order by the Outside Date;

(c) if there has been a material breach by Seller, which breach Seller has failed to cure within fourteen days following its receipt of written notice thereof from Purchaser;

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(d) if any condition precedent of Purchaser specified in Section 4.2 shall not have been satisfied or waived or, in the reasonable judgment of Purchaser, shall have become reasonably unlikely to be satisfied, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Purchaser;

(e) if the Closing Date shall not have occurred on or before 5:00 p.m. Prevailing Mountain Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Purchaser's failure to meet its obligations hereunder; or

10.5 Effect of Termination. In the event of termination by either Party of this Agreement pursuant to this Section 10, written notice thereof shall as promptly as practicable be given to the other Party and thereupon this Agreement shall terminate, and the Contemplated Transactions shall be abandoned without further action by the Parties hereto. Upon termination of this Agreement, (a) except as otherwise provided in this Agreement, this Agreement shall cease to have any force or effect, (b) the Parties shall not have any liability to each other, except for fraud occurring on or before the date of such termination; provided, however, that if this Agreement is terminated by reason of (i) any material breach hereof by the non-terminating Party or (ii) any material non-compliance by the non-terminating Party with its obligations under this Agreement, which non-compliance shall have been the cause of the failure of one or more of the conditions to the terminating Party's obligations to effect the Contemplated Transactions to have been satisfied, the terminating Party's right to pursue any available remedies at law will survive such termination unimpaired, and (c) the Parties under this Agreement shall cease to have any further obligations under this Agreement except pursuant to Sections 10 and 11 (as such obligations are affected by any defined terms contained elsewhere herein and relating thereto), and (d) all filings, applications and other submissions made pursuant to the Contemplated Transactions shall, to the extent practicable, be withdrawn from the government authority or person to which made.

10.6 Notification of Certain Events. Seller shall give notice to Purchaser promptly upon becoming aware of any occurrence or failure to occur, of any event, which occurrence or failure to occur has caused or could reasonably be expected to cause any condition to the obligations of Purchaser to affect the Contemplated Transactions not to be satisfied. If Seller gives Purchaser a notice pursuant to this Section 10.6, then Purchaser is permitted to terminate this Agreement pursuant to Section 10.4.

11. Miscellaneous.

11.1 Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the predominantly prevailing Party in such action or proceeding shall be entitled to an award of all attorneys' fees, costs, and expenses (including, without limitation, all court costs and reasonable attorneys' fees) from the other Party.

11.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other shall be deemed effected upon personal delivery in writing, one Business Day after being dispatched by reputable overnight courier (e.g., FedEx), postage prepaid, or in the case of delivery by email, as of the date of the email transmission (with

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context of any kind whatsoever and shall not be construed to limit or extend the terms or conditions of this Agreement.

11.7 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such Party of any condition precedent to Closing not satisfied as of the Closing Date.

11.8 Payment of Fees and Expenses. Except as provided in Section 11.1 above, each Party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the Contemplated Transactions.

11.9 Survival. The respective representations and warranties of Purchaser and Seller under this Agreement shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Seller and Purchaser herein or in any certificates or other documents delivered prior to or at the Closing shall not be deemed waived or otherwise affected by the Closing.

11.10 Binding Effect. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties hereto.

11.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the Bankruptcy Code and to the extent not inconsistent with the Bankruptcy Code, the law of the State of Nevada applicable to contracts made and performed in such State.

11.12 Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for construction and interpretation, drafted by either Party hereto.

11.13 CONSENT TO JURISDICTION. THE PARTIES AGREE THAT THE BANKRUPTCY COURT SHALL BE THE EXCLUSIVE FORUM FOR ENFORCEMENT OF THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS AND (ONLY FOR THE LIMITED PURPOSE OF SUCH ENFORCEMENT) SUBMIT TO THE JURISDICTION THEREOF; PROVIDED THAT IF THE BANKRUPTCY COURT DETERMINES THAT IT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THEN EACH PARTY (A) AGREES THAT ALL SUCH ACTIONS OR PROCEEDINGS SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT OF THE UNITED STATES SITTING IN THE CITY OF RENO, NEVADA, (B) IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING, (C) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT SUCH PARTY MAY NOW OR HEREAFTER HAVE TO THE VENUE OR JURISDICTION OR THAT SUCH ACTION OR

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read-receipt enabled). Notices shall be addressed as set forth below, but each Party may change his address by written notice in accordance with this Section 11.2.

To Seller: W. Donald Gieseke
18124 WEDGE PKWY., STE 518
RENO, NV 8951
wdg@renotruster.com

With a copy to (which shall not constitute notice):

L. Edward Humphrey, Esq. - NSB 9066
HUMPHREY LAW PLLC
201 W. Liberty Street, Suite 350
Reno, Nevada 89501
ed@hlawnv.com

To Purchaser: Pilot Gold Inc.
c/o J. Thomas Beckett
Parsons Behle & Latimer
201 S. Main St Suite 1800
Salt Lake City, Utah 84111
TBeckett@parsonsbhle.com

With a copy to (which shall not constitute notice):

J. Thomas Beckett
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
TBeckett@parsonsbhle.com

11.3 Entire Agreement. This Agreement and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the sale of the Business. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

11.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto which expressly indicates the intention to modify, amend, or supplement this Agreement.

11.5 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

11.6 Captions. All captions, section titles and headings contained in this Agreement are for convenience of reference only and shall be without substantive meaning or

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PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT, AND (D) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AS PROVIDED IN SECTION 11.2 (PROVIDED THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY IDAHO LAW).

11.14 Counterparts. This Agreement may be signed in counterparts. The Parties further agree that this Agreement may be executed by the exchange of facsimile or electronic pdf signature pages provided that by doing so the Parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

11.15 Non-Recourse. No past, present or future stockholder, director, officer, employee, or incorporator of Seller or Purchaser shall have any liability for any obligation or liability of Seller or Purchaser, as the case may be, under this Agreement or for any claim, counter-claim, cause of action or demand based on, in respect of, or by reason of, the Contemplated Transactions except for any claim against any individual based on the fraud or gross negligence of such individual in connection with any representations of Seller or Purchaser hereunder, as the case may be.

11.16 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

11.17 Third Party Beneficiaries. This Agreement is intended to be solely for the benefit of the Parties hereto and is not intended to confer, and shall not be deemed to confer, any benefits upon, or create any rights in or in favor of, any person or entity other than the Parties hereto, and their respective permitted assigns.

11.18 Assignment to Affiliate. Purchaser shall have the right to assign this Agreement at Closing to its designated Affiliate. Notwithstanding any such assignment, Purchaser shall continue to be obligated for all of its obligations under this Agreement.

12. Definitions. In addition to the other terms defined elsewhere in this Agreement, for the purposes of same, the following words and terms shall have the meaning set forth below (such meanings being equally applicable to both the singular and plural form of the terms defined). The exhibits and schedules referenced in this Agreement are deemed to be part of the Agreement and are incorporated herein by reference.

"Affiliate" of a Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first-mentioned Person. For purposes of this definition, "control," when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by contract or otherwise, and the terms "controlling" and "controlled by" have meanings correlative to the foregoing.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the District of Nevada, presiding over the administratively consolidated bankruptcy cases of lead case Beal

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Mountain Mining, Inc. (Case No. 98-30090-gwz) and Black Pine Mining, Inc. (Case No. 98-30091-gwz).

"**Business Day**" means any day other than a Saturday or Sunday or a legal holiday on which banks in Nevada are closed.

"**Claim**" means any claim, cause of action, right of recovery, right of set-off, and right of recoupment of every kind and nature including but not limited to prepayments, warranties, guarantees, refunds, reimbursements.

"**Contract**" means any executory contract or unexpired lease within the meaning of the Bankruptcy Code.

"**Encumbrance**" means any claim, lien, pledge, option, charge, easement, Tax assessment, security interest, deed of trust, mortgage, right-of-way, encroachment, building or use restriction, conditional sales agreement, encumbrance or other right of third parties of any sort whatsoever, whether voluntarily incurred or arising by operation of law, and includes any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

"**Final Order**" means an order or judgment, entered by a court of competent jurisdiction, that has not been amended, modified, or reversed, and as to which no stay is in effect.

"**Governmental Body**" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or entity and any court or other tribunal); (d) multinational organization or body; or (e) individual, entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"**Legal Requirement**" means any applicable federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, notice requirement, guideline, Order, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"**Liability**" means any direct or indirect liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of any type whatsoever, whether accrued or unaccrued, absolute or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, asserted or unasserted, due or to become due.

"**Order**" means any judgment, decision, consent decree, injunction, ruling or order of any Governmental Body that is binding on any Person or its property under applicable law.

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IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the day and year first above written.

PURCHASER:**PILOT GOLD INC.**

By: _____
Name: _____
Its: _____

SELLER:

DONALD GIESEKE, solely in his capacity as chapter 7 trustee of Black Pine Mining, Inc. in case #98-30091 pending in the United States Bankruptcy Court for the District of Nevada.

By: _____
Donald Gieseke

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"**Outside Date**" the date that is sixty (60) calendar days after entry of the Sale Order by the Bankruptcy Court.

"**Person**" means an individual, entity, or Governmental Body.

"**Sale Hearing**" means the hearing conducted by the Bankruptcy Court to approve the Contemplated Transactions.

"**Sale Order**" means an Order entered by the Bankruptcy Court in a form and manner acceptable to the Purchaser conveying the Purchased Assets to Purchaser free and clear of all liens and claims.

"**Standard Exceptions to Enforceability**" means any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

[SIGNATURE PAGES FOLLOW; REMAINDER OF PAGE
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EXHIBIT A**QUITCLAIM BILL OF SALE AND ASSIGNMENT**

Reference is hereby made to that certain Water Asset Purchase Agreement dated August __, 2022 ("WAPA"), by and between W. Donald Gieseke, solely in his capacity as chapter 7 trustee of Black Pine Mining, Inc. in case #98-30091 pending in the United States Bankruptcy Court for the District of Nevada ("Seller") and Pilot Gold, Inc. or its designee (the "Purchaser"). Except for terms specifically defined in this Bill of Sale and Assignment, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Purchase Agreement.

For good and valuable consideration, the receipt and sufficiency of which Seller hereby expressly acknowledges, Seller hereby sells, transfers, assigns and delivers to Purchaser all of its respective right, title, and interest in and to the Licenses.

Notwithstanding anything to the contrary herein, Seller is executing and delivering this Bill of Sale and Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale and Assignment to be executed as of the __ day of ____, 2022.

SELLER:

DONALD GIESEKE, solely in his capacity as chapter 7 trustee of Black Pine Mining, Inc. in case #98-30091 pending in the United States Bankruptcy Court for the District of Nevada.

BY ITS SIGNATURE BELOW, PURCHASER ACKNOWLEDGES RECEIPT OF THIS QUITCLAIM BILL OF SALE AND ASSIGNMENT FROM SELLER.

PURCHASER:

By: _____
Its: _____

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