

**Powder River Basin Resource Council * Kanawha Forest Coalition
Kentuckians for the Commonwealth * Citizens Coal Council * Appalachian Voices *
Appalachian Citizens' Law Center * Kentucky Resources Council * Sierra Club**

December 16, 2019

Honorable Frank Volk
United States Bankruptcy Court
Southern District of West Virginia
Robert C. Byrd U.S. Courthouse
300 Virginia Street, Room 3200
Charleston, WV 25301

RE: Significant concerns regarding the Blackjewel bankruptcy, Case No. 19-30289

Dear Judge Volk,

On behalf of our millions of members, many of whom live in areas directly affected by coal mining operations subject to the ongoing bankruptcy proceedings, the undersigned organizations write to you to express our concerns about Blackjewel's bankruptcy. We appreciate the Court's consideration of the issues discussed below. We understand that a letter is not normally part of the formal process, but without an ability to object or intervene directly in the proceedings, we felt it was important to put our concerns on the record for the benefit of the Court and the various parties.

While the focus of the bankruptcy proceedings has been on the significant financial mismanagement of the debtor companies, the companies and their affiliated entities also entered the bankruptcy with severe environmental mismanagement problems. The companies had dozens of outstanding Surface Mining Control & Reclamation Act ("SMCRA") and Clean Water Act violations, along with almost a million dollars in outstanding Mine Safety and Health Administration ("MSHA") fines and penalties. Some of these violations are so severe that they have resulted in cessation orders, requiring a part or all of the mining operation to cease operations until the violation is corrected. These violations are ongoing, and have only been compounded by new violations levied by regulating agencies since the beginning of the Chapter 11 proceedings.

For instance, Kentucky issued a Failure to Abate Cessation Order at the Greenwood Refuse Site (permits 8748006 and 8749006) after the commencement of the Chapter 11 proceedings because water treatment stopped working, resulting in pollution from the mine reaching the Copperas Creek in the Daniel Boone National Forest. This is far from the only environmental problem at Blackjewel and Revelation mines in Kentucky. Many of these permits have a history of violations. Currently, Blackjewel has 19 outstanding non-compliance notices, 4 cessation orders, and 3 open administrative hearings cases. Revelation has 443 outstanding non-compliance notices, 227 cessation orders, and 69 open administrative hearings cases.

The West Virginia Department of Environmental Protection has issued more than a dozen Failure to Abate Cessation Orders at Revelation Energy's Rush Creek complex (permits

S300905, S300404, and S300499), just six miles from the federal courthouse in Charleston, since August 1st of this year. These are due to the company's complete failure to address multiple violations of sediment control, backfill/grading, valley fill stability, and revegetation regulations, resulting in serious downstream water quality problems, offsite damage to land, and ongoing threats to human safety.

In Virginia, the Aily Branch (1102080, 1102141) and Jones Fork (1102135, 1102137) surface mine permits have routinely violated reclamation and sediment control standards for several years, ultimately leading the Virginia Department of Mines, Minerals, and Energy (DMME) to issue Notices of Bond Forfeiture on these operations in August. Since at least the debtors' entry into chapter 11, no maintenance of sediment control and drainage structures has occurred on these permits, and run-off continues to carry mud and debris into adjacent waterways and onto neighboring properties.

It has been four months since DMME initiated bond forfeiture on these permits, but to date the agency has received no money from the surety, instead allowing an indefinite timeline for the surety to discern whether to release the bond, or to contract the necessary reclamation work itself. Unfortunately, this situation is likely to repeat many times over on other Blackjewel permits in Virginia and other states, unless the court ensures that adequate resources are designated to fully account for the debtors' extensive environmental liabilities.

These mines and others operated by Blackjewel, Revelation Energy, and the other debtors routinely create acid mine drainage pollution into the waterways of Kentucky, West Virginia, and Virginia. Many of the permits mentioned above appear unlikely to be considered for sale, and they will eventually be abandoned, leaving serious questions about abatement of these violations and reclamation of these mines. Thankfully, reclamation costs for most of these mines are secured by third party surety companies; however, it has yet to be seen whether the bonds will be sufficient to cover actual reclamation liabilities.

In spite of the seriousness of these violations, there does not appear to be any movement on the part of the debtors or the debtors' estate representatives to address them. Additionally, with these mines left over after various sales during the bankruptcy, it appears no company is willing to take them on, along with the liability. If these mines are forced to be liquidated through the bankruptcy process, this will likely result in abandonment of the mining operation. If reclamation bonding is not sufficient for cleanup work, including long-term water treatment, the people of West Virginia, Virginia, and Kentucky will be left with the costs.

We ask that you exercise the full scope of your authority to ensure that through the bankruptcy process, no mine is left abandoned and that all fees and penalties are paid to federal and state regulatory authorities. Reclamation work, water treatment, and other expenses related to environmental compliance should be approved and prioritized as administrative claims in the bankruptcy proceedings. The debtors must ensure that their bankruptcy plans include full compliance with all federal and state laws. If these issues are left unresolved, the mining operations will pose ongoing liabilities for the bankruptcy estate, risking the ability of the companies to emerge from bankruptcy.

Thank you for your time and attention. If you have any questions or need clarifying or supporting information on the issues raised, please do not hesitate to get in touch with any of the undersigned organizations.

Sincerely,

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cc: Law Clerk McKay Wyckoff; Counsel for the Department of Interior Fred Westfall