

George Hofmann (10005)
Jeffrey Trousdale (14814)
Cohne Kinghorn, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300

Attorneys for George Hofmann, Chapter 7 Trustee

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF PACIFIC ENERGY
& MINING COMPANY

**TRUSTEE'S RESPONSE TO
PURPORTED FILING OF PACIFIC
ENERGY & MINING CO.**

Case No. 18-2602-01

George Hofmann, in his capacity as the duly-appointed Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Pacific Energy & Mining Company (the "Debtor"), by and through counsel, respectfully submits this Response to the Statement of Facts to be Established, Legal Issues to be Resolved, and Relief Sought at Hearing (the "Unauthorized Statement") purportedly filed by the Debtor on November 17, 2019, and represents as follows:

BACKGROUND AND ARGUMENT

1. On July 10, 2019 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), thus commencing Bankruptcy Case No. 19-25030 (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court").

2. On November 7, 2019, the Bankruptcy Court entered an order converting the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, and the

Trustee was appointed as the Chapter 7 trustee of the Debtor's estate (the "Estate") thereafter.

3. In his capacity as trustee, the Trustee has the sole authority and obligation to: (i) collect and reduce to money the property of the estate for which he serves; (ii) be accountable for all property received; (iii) investigate the financial affairs of the debtor; (iv) operate the Debtor's business, if in the best interest of the estate; and (v) distribute property of the estate. See, e.g. 11 U.S.C. §§ 704, 721 & 726. Property of the estate includes causes of action. See 11 U.S.C. § 541; In re Hedged-Investments Assocs., Inc., 84 F.3d 1281, 1285 (10th Cir. 1996).

4. The Debtor, "a corporation, cannot commit any act on its own. It can act only through its authorized agents." In re C.W. Mining Co., 636 F.3d 1257, 1261 (10th Cir. 2011). As the Tenth Circuit, quoting the United States Supreme Court, puts it:

Once a corporation is in bankruptcy, "[t]he powers and duties of a bankruptcy trustee are extensive," with the Bankruptcy Code giving the trustee "wide-ranging management authority over the debtor." Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343, 352, 105 S.Ct. 1986, 85 L.Ed.2d 372 (1985). In contrast, the powers of the debtor's directors are severely limited. Their role is to turn over the corporation's property to the trustee and to provide certain information to the trustee and to the creditors. Congress contemplated that when a trustee is appointed, he assumes control of the business, and the debtor's directors are "completely ousted." *Id.* at 352–53, 105 S.Ct. 1986 (citations omitted).

In re C.W. Mining Co., 636 F.3d at 1262.

5. In short, "the Bankruptcy Code vests the right to litigate on behalf of the estate in the trustee" but it "makes no provision for former management to appear in a . . . proceeding to assert a separate interest on behalf of the Debtor." *Id.* at 1262-63.

6. The Unauthorized Statement was unauthorized. It was not filed with permission, direction, or input from the Trustee. Because the Unauthorized Statement

was unauthorized, and because no person except for the Trustee may file any pleading on behalf of the Debtor, the Unauthorized Statement should not be considered by the PSC.

CONCLUSION

The Trustee respectfully requests that the PSC refuse to consider the Unauthorized Statement, as it was not filed by the Trustee.

DATED this 10th day of December, 2019.

COHNE KINGHORN, P.C.

/s/ Jeffrey Trousdale _____
George Hofmann
Jeffrey Trousdale
Attorneys for George Hofmann, Trustee

CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of December, 2019, a true and complete copy of the foregoing **TRUSTEE'S RESPONSE TO PURPORTED FILING OF PACIFIC ENERGY & MINING CO.** was served via electronic service upon all parties registered to receive electronic service in this case.

By U.S. Mail:

Office of Consumer Services
160 East 300 South
2nd Floor
Salt Lake City, UT 84111

Dean H. Christensen Manager
Dead Horse Oil Company
17 West Main Street
Green River, UT 84525

By e-mail:

Dan Green (dfgreen1@dslextreme.com)
Tariq Ahmed (taroil@yahoo.com)

Terry R. Spencer, Ph.D. (terry@spencerandjensen.com)
Spencer & Jensen, PLLC
Attorney for PEMC

Rodney Nugent (rnuge1@yahoo.com)
Registered Agent – PEMC

Dean Christensen
(dirtbag129@gmail.com) Manager, Dead
Horse Oil Company

Patricia Schmid
(pschmid@agutah.gov) Justin Jetter
(jjetter@agutah.gov) Robert Moore
(rmoore@agutah.gov) Steven Snarr
(stevensnarr@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

/s/ Mashell Parks