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*Counsel to the Debtors
and Debtors in Possession*

*Local Counsel to the Debtors
and Debtors in Possession*

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

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

**MOTION TO AUTHORIZE DEBTORS TO (I) ABANDON AND/OR DESTROY
CERTAIN BUSINESS RECORDS AND (II) ESTABLISH PROCEDURES TO
ABANDON AND/OR DESTROY REMAINING BUSINESS RECORDS**

James River Coal Company (“**JRCC**”)² and its subsidiaries, as debtors and debtors in possession in these proceedings (each, a “**Debtor**” and collectively, the “**Debtors**”), respectfully represent:

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

² Capitalized terms not otherwise defined in this Motion shall have the meaning ascribed to such terms in the Order Establishing Certain Notice, Case Management and Administrative Procedures [ECF No. 77].

Background and Jurisdiction

1. On April 7, 2014 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by this Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On August 28, 2014, this Court approved the sale of a substantial portion of the Debtors’ assets (the “**Blackhawk Sale**”), including the Hampden Mining Complex (including the assets of Debtor Logan & Kanawha Coal Company, LLC), the Hazard Mining Complex (other than the assets of Debtor Laurel Mountain Resources, LLC) and the Triad Mining Complex to JR Acquisition, LLC (the “**Buyer**”), a wholly-owned subsidiary of Blackhawk Mining, LLC [ECF No. 599]. In connection with the Blackhawk Sale, the vast majority of the Debtors’ employees at those complexes were transferred to the Buyer, and non-essential remaining employees were terminated.

4. As a result of the Blackhawk Sale, the Debtors have substantially curtailed operations and no longer operate coal mines in the states of Indiana and West Virginia. Moreover, the Debtors and their professional advisors have been in the process of

marketing the Debtors' few remaining mining operations, and otherwise winding down the estate.

5. In an effort to preserve cash needed to fund short-term operational expenses and the continuing asset sales process, the Debtors have taken a number of proactive steps to preserve liquidity, including seeking to reduce the number of offices, storage sites and other physical locations maintained by the Debtors. In the course of this process, the Debtors have identified a large volume of physically maintained documents and records that either are not currently needed (the "**Obsolete Records**"), or will not be needed following cessation of the Debtors' remaining operations (the "**Remaining Records**"), for the purposes of the continued administration of the Debtors' estates. The Debtors' books and records generally include (i) accounting records, (ii) tax records, (iii) payroll and employee health and benefit records, (iv) personnel records, (v) insurance records, (vi) corporate records and (vii) mining safety, training and permitting records. Certain of these books and records also are maintained by the Debtors in electronic form.

Relief Requested

6. By this Motion, pursuant to sections 105(a), 363(b)(1) and 554 of the Bankruptcy Code, the Debtors respectfully request entry of an order, substantially in the form of order attached hereto as Exhibit A (the "**Order**"), approving (i) the abandonment and/or destruction of the Obsolete Records identified on Exhibit B hereto and (ii) the proposed procedures described below for abandoning and/or destroying the Remaining Records.

Basis for Relief Requested

7. The Debtors seek approval of the immediate abandonment and/or destruction of the Obsolete Records listed on Exhibit B hereto. The Obsolete Records are of no value to the Debtors' estate because they are not necessary for the purposes of the Debtors' limited ongoing operations or winding down the Debtors' affairs. Further, the Obsolete Records have no intrinsic or useful value for any other foreseeable purpose. In some cases, the Obsolete Records are duplicative of other documents and records maintained electronically. Consequently, the retention of the Obsolete Records is burdensome to the Debtors without a corresponding benefit. The Debtors do not believe that the destruction of the Obsolete Records will violate any applicable law or regulations relating to the Debtors' ongoing operations.

8. In addition, the Debtors request that they be authorized to abandon and/or destroy the Remaining Records as the Debtors determine in their business judgment that the Remaining Records are no longer needed in connection with the Debtors' limited operations or the ongoing administration of the Debtors' estates. Prior to abandoning and/or destroying any Remaining Records,³ the Debtors will provide written notice and a brief description of the Remaining Records to be abandoned and/or destroyed by overnight or hand delivery to (i) the United States Trustee, (ii) counsel to the Creditors' Committee, (iii) counsel to the administrative agent for the Debtors' post-petition lenders, (iv) counsel to the Buyer and (v) any Affected Entity (including any federal or state governmental agency that has issued regulations concerning the retention of the specified

³ The Debtors previously adopted a business record retention policy and retain or dispose of documents and business records in accordance with that policy in the ordinary course of business. The Debtors do not believe court approval is necessary for, and do not intend to provide notice of, the disposition of any documents or business records in the ordinary course of business in accordance with the Debtors' previously adopted retention policy.

Remaining Records) (collectively, the “Notice Parties”). The Notice Parties will have seven (7) days thereafter to serve on the undersigned counsel for the Debtors a written objection to the abandonment and/or destruction of the specified Remaining Records. The Debtors seek authority, in the absence of an objection, to abandon and/or destroy the specified Remaining Records without further notice or a hearing. If an objection is timely made, the Debtors will not proceed with the abandonment and/or destruction of the Remaining Records that are subject to objection unless the objection is resolved or upon further order of the Court. If the Debtors and the objecting party cannot resolve an objection consensually in a reasonable period of time, the Debtors will notice the objection for hearing at an Omnibus Hearing.

9. As part of the relief requested, the Debtors also seek authority to retain and pay third-parties, as necessary, to assist with disposing of the Obsolete Records and the Remaining Records. In instances where they contain confidential or personally identifiable information, the Obsolete Records and Remaining Records will be shredded or otherwise disposed of in a manner that preserves the confidentiality of such information.

10. The Debtors submit that the Court may grant the relief requested herein under sections 554 and 105(a) of the Bankruptcy Code. Section 554 of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” The Court should review the Debtors’ request to abandon the Obsolete Records merely to ensure that it reflects a “business judgment made in good faith.” In re W.A.R. LLP, 2011 Bankr. LEXIS 2442, at *6 (Bankr. D.D.C. June 23, 2011). Moreover,

the additional relief requested herein is appropriate pursuant to section 105(a) of the Bankruptcy Code. Specifically, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

11. The Court may also grant the relief requested herein pursuant to section 363(b)(1) of the Bankruptcy Code because it represents a sound exercise of the Debtors’ business judgment. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to use, sell or lease assets outside the ordinary course of business if such a decision is based upon a sound business purpose. *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”). Indeed, courts in this and other districts have consistently and appropriately been loath to interfere with corporate decisions “unless it is shown that the bankrupt’s decision was one taken in bad faith or in gross abuse of the bankrupt’s retained business discretion.” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985) (applying the business judgment rule to a debtor’s decision to reject an executory contract); *see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

12. The relief requested is based on an appropriate business determination by the Debtors because they are seeking to sell their remaining assets and wind down their estates as soon as reasonably practicable and to preserve as much value as possible for

the Debtors' estates. The ability of the Debtors to abandon and/or destroy the Obsolete Records, which are of inconsequential value and burdensome to the Debtors' estates, is a critical part of this process. Absent the relief requested herein, the Debtors would be required to incur unnecessary costs to the estates in physically retaining voluminous Obsolete Records at a time when preservation of cash is a paramount concern.

Accordingly, authorizing the Debtors to abandon and/or destroy the Obsolete Records will best ensure the estates do not incur unnecessary costs or additional liabilities in connection with sale of the Debtors' remaining assets and wind-down of the estates.

13. Similar requests for relief have been approved previously in this and other jurisdictions. See In re Canal Corp., No. 08-36642-DOT (Bankr. E.D.Va. 2009); In re Simplexity, LLC, No. 14-10569-KG (Bankr. D.Del. 2014); In re Goody's, LLC, No. 09-10124-CSS (Bankr. D. Del. 2009); In re Hub Holding Corp., No. 09-11770 (Bankr. D.Del. 2009); In re CFM Majestic U.S. Holdings, Inc., No. 08-10668-KJC (Bankr. D. Del. 2008); see also In re Henry Vogt Machine Co., No. 12-34186 (Bankr. W.D.Ky. 2013); In re East Coast Brokers & Packers, Inc., No. 13-2894-KRM (Bankr. M.D.Fla. 2013); In re Morgan-Wightman Supply Co., No. 10-52103-705 (Bankr. E.D.Mo. 2011).

Notice

14. Notice of this Motion has been provided in accordance with the *Notice, Case Management and Administrative Procedures* [ECF No. 77] approved by this Court on April 10, 2014. Notwithstanding Rule 6007 of the Bankruptcy Rules, the Debtors submit that no other or further notice need be provided.

No Previous Request

15. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the Debtors the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: December 4, 2014
Richmond, Virginia

Respectfully submitted,

/s/ Justin F. Paget

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SCHEDULE 1

Debtor Entities

1. James River Coal Company (2012)
2. BDCC Holding Company, Inc. (3200)
3. Bell County Coal Corporation (0806)
4. Bledsoe Coal Corporation (4821)
5. Bledsoe Coal Leasing Company (6654)
6. Blue Diamond Coal Company (3812)
7. Buck Branch Resources LLC (1459)
8. Chafin Branch Coal Company, LLC (7873)
9. Eolia Resources, Inc. (0587)
10. Hampden Coal Company, LLC (4334)
11. International Resource Partners LP (8669)
12. International Resources Holdings I LLC (9838)
13. International Resources Holdings II LLC (1567)
14. International Resources, LLC (2522)
15. IRP GP Holdco LLC (5380)
16. IRP Kentucky LLC (1454)
17. IRP LP Holdco Inc. (4447)
18. IRP WV Corp. (6050)
19. James River Coal Sales, Inc. (3417)
20. James River Coal Service Company (2577)
21. James River Escrow Inc. (0314)
22. Jellico Mining, LLC (4545)
23. Johns Creek Coal Company (9412)
24. Johns Creek Elkhorn Coal Corporation (9199)
25. Johns Creek Processing Company (4021)
26. Laurel Mountain Resources LLC (1458)
27. Leeco, Inc. (4176)
28. Logan & Kanawha Coal Co., LLC (5716)
29. McCoy Elkhorn Coal Corporation (8373)
30. Rockhouse Creek Development, LLC (9583)
31. Shamrock Coal Company, Incorporated (1843)
32. Snap Creek Mining, LLC (6858)
33. Triad Mining Inc. (9005)
34. Triad Underground Mining, LLC (9041)

Exhibit A

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

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

**ORDER AUTHORIZING DEBTORS TO (I) ABANDON AND/OR DESTROY CERTAIN
BUSINESS RECORDS AND (II) ESTABLISH PROCEDURES TO ABANDON AND/OR
DESTROY REMAINING BUSINESS RECORDS**

Upon consideration of the motion (the “**Motion**”)² of James River Coal Company and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for authority to (i) abandon and/or destroy certain unnecessary business records and (ii) establish procedures to abandon and/or destroy remaining business records, pursuant to sections 105(a), 363(b)(1) and 554 of the Bankruptcy Code; and the Court having reviewed the Motion, and finding that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and determining that proper and adequate notice has been given and that no other or

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.

2. The Debtors are authorized and empowered to abandon and/or destroy the Obsolete Records listed on Exhibit B to the Motion.

3. The Debtors are authorized and empowered to abandon and/or destroy the Remaining Records in accordance with the following procedures:

i. The Debtors shall provide written notice of their intent to abandon and/or destroy any Remaining Records by overnight or hand delivery to: (i) the United States Trustee, (ii) counsel to the Creditors' Committee, (iii) counsel to the administrative agent for the Debtors' post-petition lenders, (iv) counsel to the Buyer and (v) any Affected Entity (including any federal or state governmental agency that has issued regulations concerning the retention of the specified Remaining Records) (collectively, the "Notice Parties").

ii. The Notice Parties will have seven (7) days thereafter to object to such proposed abandonment and/or destruction by serving a written objection on counsel to the Debtors. In the absence of an objection, the Debtors are authorized and empowered to destroy the specified Remaining Records without further notice, hearing or order of the Court. If an objection is timely made, the Debtors shall not proceed with abandoning and/or destroying the Remaining Records that are subject to objection until the objection is resolved or upon further order of the Court. If the Debtors and the objecting party cannot resolve an objection consensually in a reasonable period of time, the Debtors shall notice the objection for a hearing at a regularly scheduled Omnibus Hearing.

4. The Debtors are authorized to retain and pay third-parties for the purpose of disposing of the Obsolete Records and Remaining Records.

5. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

6. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

7. This Order shall be effective immediately upon entry.

Dated: _____, 2014

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Justin F. Paget

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Henry P. (Toby) Long, III (VSB No. 75134)
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LOCAL RULE 9022-1 CERTIFICATE OF SERVICE

I hereby certify that the foregoing proposed order has been either endorsed or served upon all necessary parties.

/s/ Justin F. Paget _____

Exhibit B

<u>Document Description</u>	<u>Time Period</u>
Accounting Records	
Cash Bank Reconciliations and Bank Statements	Prior to 1/1/2011
Daily Cash Banking Sheets	Prior to 1/1/2011
Coal Sale History Reports	Prior to 1/1/2011
Sales Summary, Coal Quarterly Books and Car Counts	Prior to 1/1/2011
Car Counts Sales Graphs Aging	Prior to 1/1/2011
Inventory Report Books and Parts Inventory Summaries	Prior to 1/1/2011
Copies of Monthly Financial Statements	Prior to 1/1/2011
Budget Files (Non-operating entities only)	All Prior Years
Tax Records	
State Tangible Property Tax Returns (Non-operating entities only)	All Prior Years
State Severance Tax Returns (Non-operating entities only)	All Prior Years
State Unmined Mineral Tax Returns (Non-operating entities only)	All Prior Years
Payroll Records	
Time and Attendance Card Forms	Prior to 1/1/2012
Time Sheets and Payroll Registers	Prior to 1/1/2012
Payroll Summary Deposits and Bank Copies of Checks	Prior to 1/1/2011
Unemployment Wage & Tax Reports	Prior to 1/1/2008
Payroll Journal Entries	Prior to 1/1/2011
Executive Payroll Records	Prior to 1/1/2011
Earnings and Deductions Registers	Prior to 1/1/2011
Corporate Records	
Coal Industry Reports and Working Papers	Prior to 1/1/2011
Coal Quality Books	Prior to 1/1/2011
Equipment Summaries and Royalty Tonnage Reports	Prior to 1/1/2011
Corporate Development Files	Prior to 1/1/2011
Feedstock Invoices and Quality Sheets	Prior to 1/1/2011
Employee Benefit Records	
Health, Dental and STD Reports	Prior to 1/1/2008
Excess Medical Reimbursement Reports	Prior to 1/1/2008
Benefit Plan Withdrawals, Changes and Enrollments	Prior to 1/1/2008
Personnel Records	
Drug Screening and Personnel Records	Prior to 1/1/2013
Mining Specific Documents	
Coal Haul Schedules (Non-operating entities only)	All Prior Years
Pit Tickets (Non-operating entities only)	All Prior Years
Survey/Recovery Information (Non-operating entities only)	All Prior Years