

**SAFETY EVALUATION REPORT
PROPOSED INDIRECT TRANSFER OF CONTROL FOR NRC BYPRODUCT
MATERIALS LICENSE NUMBER 47-25301-01, PANTHER CREEK MINING, LLC**

DATE: September 12, 2019

DOCKET NO.: 03033571

LICENSE NO.: 47-25301-01

LICENSEE: Panther Creek Mining, LLC
3228 Summit Square Place, Suite 180
Lexington, KY 40509

TECHNICAL REVIEWER: Leonardo Wardrobe

SUMMARY AND CONCLUSIONS

Panther Creek Mining, LLC (Panther Creek), a wholly owned subsidiary of Blackhawk Mining LLC (Blackhawk), holds a byproduct materials license issued by the U.S. Nuclear Regulatory Commission (NRC). Under NRC Materials License 47-25301-01, Panther Creek is authorized to use and possess byproduct material at Catenary Coal Company's Samples Mine Complex, Toms Fork Loadout and Coal Preparation Plant, WV County Route 79/3, Cabin Creek Road, near Leewood, West Virginia, for purposes of performing density, level, and interface measurements.

By letter dated August 29, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML19242C745), Blackhawk and Blackhawk Mining, LLC (New Blackhawk) requested the NRC's consent to an indirect transfer of control of the above license from Blackhawk to New Blackhawk. The indirect transfer resulted from a Plan of Reorganization (Plan) approved by the U.S. Bankruptcy Court (Case Number 19-11595-LSS). The Plan provides for New Blackhawk to acquire all assets of Blackhawk, which consist primarily of the equity interests in its subsidiaries, including Panther Creek. Pursuant to the Plan, Blackhawk's senior debtholders will become equity holders in New Blackhawk. Blackhawk's subsidiaries, including Panther Creek, will become indirect, wholly-owned subsidiaries of New Blackhawk. None of the equity holders in New Blackhawk will hold a majority of equity or voting interests in New Blackhawk.

The request for consent was reviewed by NRC staff for an indirect transfer of control of a 10 CFR Part 30 licensee using the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016. The NRC staff finds that the information submitted by Blackhawk and New Blackhawk sufficiently describes and documents the transaction and commitments made by New Blackhawk.

As required by 10 CFR 30.34 and section 184 of the Atomic Energy Act, as amended (the Act), NRC staff has reviewed the application and finds that the indirect transfer of control is in accordance with the Act. The staff finds that Panther Creek may continue to use byproduct

material for the purpose requested and has the equipment, facilities, and procedures needed to protect public health and safety, and promote the common defense and security.

SAFETY AND SECURITY REVIEW

According to the data obtained from the NRC's Web Based Licensing (WBL), Panther Creek has been an NRC licensee since June 30, 1994. The NRC conducted a main office inspection of Panther Creek on May 28, 2019, for NRC Materials License No. 47-25301-01, and one violation was identified during the inspection. The commitments made by New Blackhawk state that under the transaction, the following will not change:

- A. the radiation safety officer listed on the NRC license;
- B. the personnel involved in licensed activities;
- C. the equipment authorized in the NRC license;
- D. the radiation safety program authorized in the NRC license; or
- E. the maintenance of required surveillance and decommissioning records.

New Blackhawk stated that Panther Creek will maintain the decommissioning records.

Pursuant to a plan of reorganization that was approved by the U.S. Bankruptcy Court, the transfer in ownership of Panther Creek from Blackhawk to New Blackhawk will occur on or around September 15, 2019. Before providing written consent to an indirect transfer of control, the NRC conducts a pre-licensing visit when the transferee is considered an unknown entity following guidance provided by the NRC's Nuclear Material Safety and Safeguards (NMSS) "Checklist to Provide a Basis for Confidence that Radioactive Materials Will be Used as Specified on the Application," January 29, 2019, revision. The purpose of this aspect of the review is for the NRC to obtain reasonable assurance that the licensed material will be used for its intended purpose. Using this guidance, the transferee, New Blackhawk, is considered an unknown entity, and the NRC will conduct a visit. However, the NRC visit will be performed post-transfer, but as soon as practicable, without undue risk to the public health and safety because of extenuating circumstances; the nature of the bankruptcy proceeding; the transferee's commitments; the retention of Blackhawk's management and employees; and no changes to the location, facilities, equipment, radiation safety program, use, possession, waste management or other procedures related to the licensed program.

Panther Creek is not required to have decommissioning financial assurance based on the types and amount of material authorized in NRC Materials License No. 47-25301-01.

REGULATORY FRAMEWORK

Section 184 of the Atomic Energy Act of 1954, as amended, prohibits the transfer of control of any license unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer in writing.

Panther Creek holds NRC Materials License No. 47-25301-01, which was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." The NRC is required by 10 CFR 30.34(b) to determine if the change of control is in accordance with the provisions of the Act and give its consent in writing. 10 CFR 30.34(b) states:

No license issued or granted pursuant to the regulations in this part and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

As previously indicated, the staff evaluation associated with the transfer of control is based on guidance in NUREG-1556, Volume 15, Revision 1. The central issue when determining whether a license is indirectly transferred is whether the authority over the license has changed. The Blackhawk and New Blackhawk request for written consent describes an indirect transfer of control of the NRC license held by Panther Creek, resulting from acquisition of all Blackhawk assets by New Blackhawk. Following the reorganization, Panther Creek will continue the licensed activities but will be owned by New Blackhawk, and, as such, the transfer requires the NRC's consent.

DESCRIPTION OF TRANSACTION

The transaction, which will be completed on or around September 15, 2019, is described in ADAMS accession number ML19242C745. In the transaction, New Blackhawk will acquire all the assets of Blackhawk pursuant to a plan of reorganization that was approved by the U.S. Bankruptcy Court. After completion of the reorganization, New Blackhawk will own Panther Creek, which will continue the activities described under the current license and is in control of all licensed activities under NRC Materials License No. 47-25301-01. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction and is consistent with the guidance provided in section 5 and Appendix E of NUREG-1556, Volume 15, Revision 1.

TRANSFeree's COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

The NRC staff finds that the information submitted by Blackhawk and New Blackhawk sufficiently describes the transaction; documents the licensee's commitments; and demonstrates that licensee personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records.

The submitted information also demonstrates that the licensee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

ENVIRONMENTAL REVIEW

An environmental assessment for transfer of control is not required because this approval of the described transfer of control is categorically excluded under 10 CFR 51.22(c)(21).

CONCLUSION

The NRC staff has reviewed the request for consent submitted by Blackhawk and New Blackhawk regarding an indirect transfer of control of NRC Materials License No. 47-25301-01 pursuant to 10 CFR 30.34(b) and consents to the proposed indirect transfer of control.

Consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1, the submitted information sufficiently describes the transaction, documents the understanding of the license and commitments of the transferee, and demonstrates that personnel have the experience and training to properly implement and maintain the license and that the licensee will maintain the existing records. The submitted information also demonstrates that the transferee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Rev 1.

Therefore, the staff concludes that the proposed transfer of control would not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.