

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
White Forest Resources, Inc., <i>et al.</i> ,	Case No. 25-10195 (TMH) (Jointly Administered)
Debtors. ¹	Hearing Date: June 17, 2025 at 10:00 a.m. (ET) Re: D.I. 328, 329

**REPLY IN SUPPORT OF MOTION OF ALLEGHENY-BLUE RIDGE ALLIANCE,
APPALACHIAN VOICES AND WEST VIRGINIA HIGHLANDS CONSERVANCY FOR
RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)**

The Allegheny-Blue Ridge Alliance, Appalachian Voices, and West Virginia Highlands Conservancy (collectively, “Movants”) hereby submit this Reply (the “Reply”) in further support of Movants’ Motion for Relief from the Automatic Stay [D.I 307] (the “Motion”)² and in response to the Debtors’ Objection (“Objection”) to the Motion [D.I. 328] dated June 10, 2025. For the reasons below and those in the Motion, the stay should be lifted for the limited purpose of allowing Movants to participate in the Office of Hearings and Appeals (“OHA”) proceeding concerning the cessation order (“Cessation Order Action”) and the related Valid Existing Rights (“VER”) determination process (“VER Determination”), and any appeal of that determination.

SUMMARY

In their Objection, the Debtors mischaracterize Movants’ request for stay relief as “efforts to shutdown the Debtors’ operations.” Obj. at ¶ 1. To the contrary, Movants simply are requesting to participate in the Cessation Order Action and VER Determination – neither of which is stayed

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: White Forest Resources, Inc. (3764); Xinery Corp. (3865); Xinery of West Virginia, Inc. (2401); Shenandoah Energy, LLC (6770); South Fork Coal Company, LLC (3113); Bull Creek Processing Company, LLC (0894); Raven Crest Mining, LLC (0122); Brier Creek Coal Company, LLC (9999); Raven Crest Contracting, LLC (7796); Raven Crest Leasing, LLC (7844); and Raven Crest Minerals, LLC (7746). The Debtors’ service address is 1295 Ashford Hill Rd., Ashford, WV 25009.

² Capitalized terms shall have the meaning ascribed in the Motion unless otherwise defined herein.

– in accordance with their rights as citizens under applicable federal law. There is no basis under the automatic stay provisions of the Bankruptcy Code or basic principles of fairness to deprive Movants of their rights in this fashion.

I. Movants Have a Right to Be Heard in the Cessation Order Action

A. Movants Initiated the Enforcement Action

1. As discussed in their Motion, Movants exercised their statutory rights under the Surface Mining Control and Reclamation Act (“SMCRA”) to trigger enforcement action against Debtors by filing formal citizen complaints on June 20, 2024 and December 12, 2024. Mot. at n. 3. These complaints alerted regulators that South Fork Coal Company (the Debtors’ subsidiary) was unlawfully using Haulroad #2 on federal land without a VER determination. In direct response, the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) issued Ten-Day Notice No. X24-111-440-003 on July 31, 2024 to the West Virginia regulators and, when the state failed to resolve the violations, issued Cessation Order No. 23-06-22-01 halting South Fork’s use of the haul road. But for Movants’ actions, the cessation order that South Fork is now appealing would never have been issued. Having set this enforcement process in motion pursuant to SMCRA’s citizen-participation provisions (see 30 U.S.C. § 1271(a)(1)–(3) (authorizing any person to notify regulators of violations) and 30 C.F.R. § 842.15(d) (providing for informal review of citizen complaints)), Movants have a cognizable interest in the outcome of the enforcement proceeding and a right to be heard as that process continues (43 CFR 4.1105).

B. Lack of Notice and Late Discovery of the Appeal

2. Debtors complain that Movants “chose not” to intervene in the OHA appeal of the cessation order prior to bankruptcy. Obj. at ¶ 11. This is a mischaracterization.. South Fork filed its administrative appeal of OSMRE’s cessation order on January 16, 2025 Obj. at ¶ 10, yet

neither Debtors nor OSMRE provided Movants notice that the appeal had been filed. In fact, Movants only learned of the cessation order's issuance – and South Fork's appeal – indirectly, after the fact. A West Virginia Department of Environmental Protection inspection report dated January 19th but not publicly posted until January 31, 2025 first alerted Movants to the existence of the OSMRE cessation order. Further, Movants first obtained documents on February 13, 2025 via Freedom of Information Act requests that confirmed the appeal (OHA Docket No. CH-2025-01-R) and revealed that Debtors had already filed a "Suggestion of Bankruptcy" in the OHA proceeding on February 12, 2025 (the day before) to halt it. In short, by the time Movants discovered the appeal, the proceeding had been stayed – first by an OHA order pending the VER process, and then by Debtors' bankruptcy suggestion – and Movants reasonably feared that any attempt to intervene without stay relief could violate the automatic stay. It is unfair for Debtors to fault Movants for "failing" to intervene earlier when Debtors themselves gave no notice of the appeal and immediately invoked the bankruptcy stay to suspend the OHA case. Movants acted with diligence once they became aware of the Cessation Order Action and the Debtors' appeal.

C. Regulatory Provisions Allow Intervention and Participation in the Cessation Order Action Despite Timing

3. Debtors appear to argue that OHA's rules would bar Movants as not "timely" intervenors Obj. at ¶ 10, 24. This argument ignores OHA's broad discretion to permit interested parties to participate in the interest of justice. Department of Interior regulations expressly provide that "*any person... may petition for leave to intervene at any stage of a proceeding in [OHA] under the Act.*" (43 C.F.R. § 4.1110(a) (2024) ("Any person, including a State, or OSM may petition for leave to intervene at any stage of a proceeding in OHA under the Act.")(emphasis added). In other words, intervention is not cut off by the mere passage of an early deadline; OHA's rules favor inclusivity of interested parties. Indeed, an Administrative

Law Judge (“ALJ”) may permit a party who had a right to participate but did not do so at an earlier stage to nevertheless “become a participant with the rights of a party” by order of the ALJ. (43 CFR 4.1105(c)). Equally important, even if formal intervention were deemed untimely, OHA rules allow a person to seek amicus curiae status “*at any time*” in the proceeding (43 C.F.R. § 4.406(d) (2024) (“A person may file a motion at any time to file a brief as an amicus curiae.”). The OHA’s procedural regulations specifically contemplate that if a motion to intervene is denied as late, the would-be intervenor can still be allowed to file an amicus brief and contribute to the case. (43 C.F.R. § 4.406(d)(2). In sum, Debtors’ portrayal of OHA procedure is unduly rigid. The governing regulations (43 C.F.R. §§ 4.1105(c), 4.1110, and 4.406(d)) vest the ALJ and the Department’s appellate Board with discretion to admit interested parties at a later stage for good cause – and here the cause is compelling. Movants satisfy the criteria for intervention as a matter of right: they have “*an interest which is or may be adversely affected by the outcome of the proceeding,*” as the rules require (43 C.F.R. § 4.1110(e) (2024)), given that upholding the cessation order directly furthers Movants’ environmental and public land interests. And to the extent any “timeliness” question exists, the extraordinary circumstances – lack of notice and the immediate imposition of the bankruptcy stay – warrant equitable tolling of any deadline to intervene. Movants took prompt action to pursue their rights once they learned of the appeal and once it became feasible to do so. OHA’s generous intervention rule exists precisely to avoid shutting out stakeholders in a case like this, especially where no prejudice results from allowing their input. Debtors cannot use the automatic stay as both sword and shield: first halting the OHA case before Movants could reasonably appear, and then claiming Movants are too late. Equity and the OHA rules align in favor of allowing Movants’ participation now.

II. Imminent VER Determination Justifies Stay Relief Now

A. The VER Determination Is Impending, Not “Speculative”

4. Debtors characterize Movants’ concerns about the pending Valid Existing Rights determination as “speculative” and premature. The facts say otherwise. South Fork’s request for a VER Determination on the haul road (Forest Service Road 249) has nearly run its administrative course: OSMRE deemed the application complete as of September 24, 2024 Obj. at ¶ 13. The public comment period closed on April 21, 2025, meaning OSMRE is now in the final stages of preparing its decision. By regulation, after reviewing the record (including all comments), OSMRE will issue a decision granting or denying VER, and “*any person with an interest that is or may be adversely affected*” (as well as the operator) will have 30 days from issuance to file an administrative appeal of that decision. See 30 C.F.R. §§ 761.16(f), 775.11(a). In other words, a determinative agency action is imminent – not a remote hypothetical – and it will trigger a tight timeline for whichever party wishes to challenge the outcome. Far from there being “nothing for Movants to do” until the decision is made, Movants must be in a position to act *immediately* once OSMRE announces its VER determination, or else risk forfeiting their appellate rights. This is precisely why Movants seek relief from the stay at this time. If Movants waited until after the VER decision to come to this Court, the 30-day appeal clock might run out (or critical early stages of the administrative appeal could proceed without Movants) before stay relief could be obtained. Debtors’ suggestion that Movants can simply sit on the sidelines at this time is a recipe for prejudice and potential procedural default.

B. Litigation Over VER Is Likely Regardless of Outcome

5. In all likelihood, the outcome of the VER request will not end the controversy – it will propel it into the next forum, no matter which side prevails initially. Debtors effectively

concede this point. If OSMRE grants the VER request, Movants (and others) are likely to appeal that determination, and if OSMRE denies VER, South Fork will likely appeal. Indeed, Debtors themselves have treated the VER issue as pivotal: they negotiated a stay of the cessation order appeal specifically to await the VER Determination, implicitly acknowledging that the VER outcome will be contested and will influence enforcement. Thus, litigation is not a mere possibility – it is likely if not certain. The stakes are high: if Debtors are found to lack valid existing rights, they cannot lawfully use the road and their mining operation faces shutdown; if they are found to have VER, it would set a precedent potentially undermining federal land protections that have been in place for nearly 50 years. Given these circumstances, it is entirely foreseeable that the agency’s decision will be immediately appealed and subjected to rigorous scrutiny in an administrative hearing, and likely in the courts thereafter. Granting stay relief now will ensure that this inevitable litigation can proceed without delay and with all interested stakeholders at the table.

C. Movants Submitted Timely Comments

6. Debtors assert in a footnote that, despite Movants’ representation that they submitted comments on the VER petition, “it does not appear” (based on FOIA-obtained documents) that any Movant actually filed comments. Obj. at 6 n.9. This is not true. All three Movants here – along with several other partner organizations – submitted a detailed comment letter via email with attachments to OSMRE Charleston Field Office Director Justin Adams, in accordance with comment submission protocol outlined in the to OSMRE Federal Register Posting on April 21, 2025, opposing South Fork’s VER petition. Movants have been fully engaged in the VER proceeding through the proper channels.

III. The Requested Stay Relief Is Narrow, Fair, and Consistent with Public Policy

A. No Prejudice to the Estate

7. Debtors complain that success by Movants in the Cessation Order Action and VER Determination proceeding could ultimately jeopardize South Fork's mining operations (by cutting off road access) Obj. at ¶ 16, but that is simply the potential consequence of enforcing applicable law. The automatic stay was never intended to immunize a debtor from ongoing regulatory compliance or to shelter a debtor's business from the outcomes of legitimate police power proceedings. Importantly, the governmental entities themselves – OSMRE, U.S. Forest Service, WVDEP, etc. – are *already* free to continue enforcement and administrative actions under the police and regulatory power exception, 11 U.S.C. § 362(b)(4). Here, OSMRE's Cessation Order Action and VER Determination are emblematic of police power actions to enforce public health and safety laws (environmental protection and land use restrictions). Congress affirmatively chose not to stay such actions. Movants simply seek to participate in the actions in accordance with their rights as citizens. Granting the Motion will merely allow the enforcement processes to reach their proper conclusion on the merits, with Movants contributing information and advocacy, but *without* altering any economic rights in the bankruptcy or prejudicing the Debtors' legal rights in the actions.

B. Irreparable Harm if Relief is Denied

8. By contrast, maintaining the stay would prejudice Movants and the public interests they represent. Movants and their members will suffer irreparable injury if they are prevented from timely advocating for enforcement of environmental and public land laws. Movants have statutory rights to participate in the Cessation Order Action and any subsequent appeals – rights conferred by SMCRA's design – and if the stay blocks them from exercising

those rights at the critical moment, the opportunity will be lost forever. One cannot “unscramble” an administrative or judicial decision reached without the input of an interested, necessary party. Excluding Movants now would permanently deprive them of a voice in decisions about the National Forest lands.

C. Public Policy and the Police Power Exception

9. Congress made clear in § 362(b)(4) of the Bankruptcy Code that bankruptcy does not provide a safe haven from government enforcement of environmental and safety laws. Here, OSMRE and other agencies are moving forward – appropriately – to address the alleged SMCRA violations. Movants seek only to assist and participate in those enforcement proceedings, not to usurp them. The automatic stay should not be wielded as a weapon to evade regulatory oversight or to prevent the enforcement of public health and safety laws. *See* 11 U.S.C. § 362(b)(4). That principle applies with special force in this case. The environmental issues at stake have broad public import, and allowing Movants to contribute will enhance the decision-making process.

D. Cause Exists Under Section 362(d)(1)

10. Under the traditional three-pronged “cause” analysis applied to stay relief motions, Movants readily satisfy the standard. First, as explained, continuation of the targeted proceedings will not greatly prejudice the estate or debtor – Debtors face at most the ordinary burdens of defending an administrative appeal, and no threat to estate assets. Second, the hardship to Movants and the public from maintaining the stay far outweighs any burden on Debtors. The balance of equities tips decidedly in Movants’ favor given the irreparable harm that would result from their exclusion, compared to the negligible impact on Debtors of allowing the matters to proceed. Third, Movants have a probability of success on the merits sufficient to

justify relief. At the stay-relief stage, even a “slight probability of success” on the underlying merits can suffice, especially when the balance of hardships so strongly favors the movant. Here, Movants’ legal positions raise serious and substantial questions: for example, whether a misrepresentation to state regulators nullifies claimed “existing rights,” and whether a road use permit obtained years after SMCRA’s cutoff date can retroactively confer VER. These are at least “colorable” merits issues. Moreover, Movants’ procedural *entitlement* to participate is meritorious under the regulations, as shown above. In sum, cause exists on multiple independent grounds to grant the Motion. The automatic stay was never intended as a shield for debtors to escape environmental accountability, and this Court should not allow it to be misused in that fashion.

11. In sum, granting stay relief will cause no prejudice to Debtors’ estate, will prevent significant harm to Movants and the public, and will allow the competent administrative and judicial bodies to resolve pressing environmental issues on their merits. The interests of justice strongly support this outcome. Movants respectfully urge the Court to lift or modify the stay to permit Movants to participate in the Cessation Order Action and the VER Determination/appeal process, as requested in the Motion. By doing so, the Court will vindicate both the letter and spirit of SMCRA’s public participation provisions and the Bankruptcy Code’s aim to balance debtor protections with the need to uphold the law and protect the public.

Continued on next page

WHEREFORE, for the foregoing reasons and those set forth in Movants' opening Motion, Movants respectfully request that the Court grant the Motion and further request such other and further relief as the Court deems just and proper in the circumstances.

Dated: June 12, 2025

Respectfully submitted,

ASHBY & GEDDES

/s/ Benjamin W. Keenan

Gregory A. Taylor (#4008)

Benjamin W. Keenan (#4724)

P.O. Box 1150

500 Delaware Ave.

Wilmington, DE 19899

Tel: 302-654-1888

Email: bkeenan@ashbygeddes.com

-and-

ALLEGHENY BLUE RIDGE ALLIANCE

Andrew W. Young, Esq.

Post Office Box 21

Charlottesville, Virginia 22902

Tel: (434) 202-4397

Email: ayoung@abralliance.org

*Attorneys for Allegheny-Blue Ridge Alliance,
Appalachian Voices and West Virginia Highlands
Conservancy*

CERTIFICATE OF SERVICE

I, Benjamin W. Keenan, hereby certify that on June 12, 2025, I caused one copy of the *Reply in Support of Motion of Allegheny-Blue Ridge Alliance, Appalachian Voices and West Virginia Highlands Conservancy for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* to be served upon (i) all parties of who registered to receive notice pursuant to Rule 2002 via CM/ECF; and (ii) the parties on the attached service list via electronic mail, unless otherwise indicated.

Dated: June 12, 2025

/s/ Benjamin W. Keenan

Benjamin W. Keenan (Bar No. 4724)

William E. Chipman, Jr., Bryan J. Hall, Alison Maser, Alan Michael Root, Mariska Suparman, Chipman Brown Cicero & Cole, LLP
Hercules Plaza
1313 North Market Street
Suite 5400
Wilmington, DE 19801
Email: chipman@chipmanbrown.com;
hall@chipmanbrown.com; maser@chipmanbrown.com;
root@chipmanbrown.com;
mariskasuparman@chipmanbrown.com

Joseph F. Cudia
U.S. Trustee
844 King Street
Suite 2207
Wilmington, DE 19801
Email: joseph.cudia@usdoj.gov

Michael Busenkell, Esq.
Gellert Seitz Busenkell & Brown, LLC
1201 North Orange Street, Suite 300
Wilmington, DE 19801
Email: mbusenkell@gsbblaw.com

Mark W. Eckard, Thomas J. Francella, Jr.
Raines Feldman Littrell, LLP
824 North Market Street, Suite 805
Wilmington, DE 19801
Email: meckard@raineslaw.com; tfrancella@raineslaw.com

Harry A. Readshaw, Kenneth J. Lund, Michael J. Roessenthaler
Raines Feldman Littrell LLP
11 Stanwix Street
Suite 1100
Pittsburgh, PA 15222
Email: hreadshaw@raineslaw.com; klund@raineslaw.com;
mroeschenthaler@raineslaw.com;

Chad S. Bowen, Esq.
Bowen Law Group
PO Box 173442
Tampa, FL 33672
Email: Chad@bowenlg.com