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FILE NO. 92-018

REAL ESTATE:
State Lien on Reclaimed Land

Mr. Timothy J. Hickmann
Executive Director
Illinois Abandoned Mined Lands
Reclamation Council
928 South Spring Street
Springfield, Illinois 62704

Dear Mr. Hickmann:

I have your letter wherein you inquire regarding the duration of a lien on property created pursuant to section 2.09 of the Abandoned Mined Lands and Water Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 8002.09) and whether such a lien, once filed, must be periodically renewed. For the reasons hereinafter stated, it is my opinion that liens created pursuant to section 2.09 of the Act continue in existence until satisfied, subject only to the recording requirements set forth in section 2.09 and sections 13-118 through 13-121 of the Code

of Civil Procedure. (Ill. Rev. Stat. 1991, ch. 110, pars. 13-118-13-121.)

Section 2.09 of the Abandoned Mined Lands and Water Reclamation Act provides, in part:

"Liens. (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land under this Article, the Council shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

* * *

(d) The lien provided in this Section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land or such lesser priority as may be permitted or required by the Federal Act or regulations thereunder. The statement shall state the priority claimed for such lien.

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There is no provision in either Abandoned Mined Lands and Water Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2,

par. 8001.0 et seq.), or in the Federal law to which it refers (30 U.S.C. § 1238), which limits the duration of the lien so created or which requires its periodic renewal. A lien is not generally extinguished by the lapse of time, unless a statute provides limits within which the lien must be enforced. (See Bowery v. Babbit (S. Ct. Ala. 1930), 122 So. 801, 805.) It is my opinion, therefore, that absent specific statutory language otherwise providing, a lien created pursuant to section 2.09 of the Act which is properly recorded in accordance with the statutory terms, is of indefinite duration.

In order to preserve the lien indefinitely, however, there must also be compliance with sections 13-118 through 13-121 of the Code of Civil Procedure. These sections are intended to facilitate marketability of land titles by extinguishing claims which have been in existence but not enforced for more than 40 years. Section 13-121 provides that, contrary to the general rule, the 40 year limitation period is applicable "to bar any right, title, interest or lien in land which the State of Illinois or any department, commission or political subdivision thereof would otherwise have". (Ill. Rev. Stat. 1991, ch. 110, par. 13-121.) Section 13-118 provides that, in order to preserve a claim, the owner thereof must, prior to the expiration of the 40 year period:

* * * file in the office of the recorder of the county wherein such real estate is situated, a verified statement definitely describing the

Mr. Timothy J. Hickmann - 4.

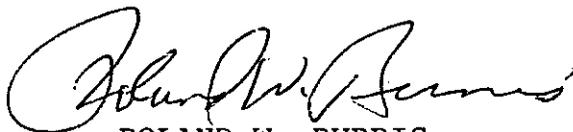
real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based. * * *

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Therefore, in order to avoid the bar of the 40 year limitations period in section 13-118, the Council should follow the procedure set out therein. This does not constitute a "renewal" of the lien, for which section 2.09 of the Act makes no provision, but is rather a preservation of the original lien. It is my opinion that, when properly preserved, the lien will continue in existence until satisfied or released.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL