

**STATE OF COLORADO
COUNTY OF ROUTT**

**OFFICE OF THE CLERK
OCTOBER 5, 2016**

County Commissioner Cari Hermacinski, Chair called the special meeting of the Routt County Board of County Commissioners to order. Commissioner Timothy V. Corrigan, Douglas B. Monger, Deputy County Manager Dan Weinheimer and County Manager Tom Sullivan were also present. Those present recited the Pledge of Allegiance. Tegan Anderson recorded the meeting and prepared the minutes.

EN RE: PEABODY ENERGY BANKRUPTCY UPDATE / TREASURER BRITA HORN

Brita Horn, Treasurer; Rani Gilbert and Tammy Green, Treasurer's Office staff; were present.

Commissioner Hermacinski stated that Treasurer Horn is present to give an update on the Peabody Bankruptcy. She also prefaced that this is a complex issue and some questions that are asked of Treasurer Horn may need to be relayed to her attorney and answered at a later date.

Treasurer Horn stated that she is thankful for the opportunity to give an update on the Peabody Bankruptcy and her Lawyer, Steve Klenda, is listening from Denver and may be calling in if he has information to add. Treasurer Horn stated that she believes she was asked by Commissioner Hermacinski to read an update to the Commissioners. On September 20th Treasurer Horn responded to an email from the Commissioners stating that she had not heard from Peabody since a letter was sent to Mr. Brewer (of Peabody) on August 25th but she had been attending meetings with taxing entities that are affected by Peabody's delinquent taxes. Treasurer Horn met with SOROCO School Board on August 23rd, South Routt Medical Board on September 6th, and West Routt Fire Board on September 13th in order to answer any questions she believed they may have had. Tom Lilly from the South Routt Library District and Kevin McBride from the Upper Yampa Water District stopped by looking for updates and they were very satisfied with the information that Treasurer Horn provided to them. The Treasurer's Office has been diligent in sending all the taxing entities copies of Mr. Brewer's letter and the press release from August 25th. Treasurer Horn also committed to sending updates as they become available. Treasurer Horn continued that she has an update in the form of a prepared statement that she read:

"On behalf of Routt County, both the Treasurers' Office counsel and I met with Peabody in Denver yesterday. Our conversations were cooperative and productive. We had an engaging conversation that gave a pathway for good faith settlement discussions. Together to find a way that will accomplish three effects:

1. Routt County to recover the payment of the pre-petition taxes from Peabody
2. Allow Peabody to pay the pre-petition taxes to Routt County

3. Follow the law and respect the legal limits of my authority as Treasurer.

I believe the conversations will continue in the same spirit. All parties at the table have agreed to not communicate on the substance and particulars of our discussions and they are confidential until we all reach an agreement.”

Treasurer Horn added that this is the end of her statement and asked if the Board has any questions.

Commissioner Hermacinski responded that she has a series of questions for Treasurer Horn but questioned if Treasurer Horn is able to answer any questions at this meeting based on the confidential nature of her meeting with Peabody. Treasurer Horn replied that she is unsure because she does not want to jeopardize the agreement with Peabody made the previous day.

Commissioner Hermacinski stated that the last time she met with the Board, Treasurer Horn had discussed potentially asking the bankruptcy judge for clarification on the interest and penalties component of the judge’s order. Commissioner Hermacinski asked if Treasurer Horn has done that. Treasurer Horn responded that asking for that information as well as asking a second question about relief of stay and the ability to sell the land and minerals at a tax lien sale was the plan. That plan has been paused due to the developments of the previous day.

Commissioner Hermacinski stated that throughout this process, Treasurer Horn has stated State law for her inability to accept tax payments from Peabody. Commissioner Hermacinski asked if Treasurer Horn and her attorneys have considered the fact that the judge’s authority as a Federal Judge overrides the State law and she could follow that order of the judge which basically states to the extent of the debtors to make any payment pursuant to that order that the taxing authority receiving such payments are directed to make those deposits as directed by the debtors. Treasurer Horn responded that what she believes is happening here is that Commissioner Hermacinski, who is a lawyer when she is not acting as Commissioner, is seeing that there are two different sides to this and how those words are being interpreted. The decision that was made in counsel was to move forth with what they have been sharing and all the transparency that the decision was that the Treasurer and her counsel believe she is handcuffed to those statutes that say she needs to take the full payment and cannot accept partial payments.

Commissioner Hermacinski stated that in mid-September she sent Treasurer Horn an email that it had come to her attention that an earlier large bankruptcy in Colorado, Chrysler, was going through a similar to Peabody where they were attempting to pay the personal property taxes. It was noted in the Chrysler case that Adams, Larimer and Arapahoe Counties were able come to some agreement and Treasurer Horn was asked in that email, in the interest of finding a solution, if she was willing to reach out to her counterparts in those counties to see how acceptance of the taxes was accomplished. Commissioner Hermacinski asked if Treasurer Horn did contact those counties Treasurers. Treasurer Horn responded that on August 25th she responded that she would dig right away after she sent back the check that was short. The personal property taxes do have another set of rules and Peabody was offered a payment plan on the personal property taxes that total just over \$700,000 as well as a payment plan on the rest of it. Treasurer Horn states that she has already done that therefore she feels as though she has met those needs. She further stated that her goal is to work for Routt County’s best interest and follow the law as written. She is not unable to speculate on whether the County

Treasurers on a different bankruptcy case have done the right thing but as said earlier she is negotiating with Peabody and wants to do everything right by Routt County and its tax payers. Commissioner Hermacinski clarified that Treasurer Horn did not reach out to the Treasurers in Adams, Larimer, and Arapahoe Counties to learn how they received payment in the Chrysler bankruptcy. Treasurer Horn responded that when she talked to her counsel, it's speculative and a different case in a different time and it would have been a waste of her time.

Commissioner Hermacinski stated that she would like to point out that throughout this Treasurer Horn has cited that Peabody is a multibillion dollar company that has plenty of money to pay its taxes and pay interest. What Commissioner Hermacinski wants to discuss briefly is Twenty Mile Mine as opposed to Peabody. It is bad for our Twenty Mile Mine to pay 1% interest every month on \$1.8 million. Commissioner Hermacinski stated that as Treasurer Horn knows, coming from corporate America, corporations don't consider themselves one pot. Instead they look at assets and how productive they are. There was a lot of information about the Twenty Mile Mine following its near sale to Bowie Resource in the spring. We may not be thinking about Peabody but what is good for Routt County and the Twenty Mile Mine would be the ability for them to pay these taxes as soon as possible and stop accruing 1% interest on \$1.8 million. Commissioner Hermacinski continued that Treasurer Horn says it's a waste of time to chase down potential solutions but she disagrees with that statement. Instead, Commissioner Hermacinski believes it would be worth a call to those other Treasurers to see how they accomplished accepting payment. Treasurer Horn responded that while she appreciates Commissioner Hermacinski's opinion but she is doing everything she can do and is legally obligated to do. Treasurer Horn added that if Commissioner Hermacinski would like to put that request in writing and send it to the Treasurer's counsel then they would be happy to take a look at it although they have already looked at it and she believes is doing the best she can do following the letter of the law. Commissioner Hermacinski added that she sent this request to Treasurer Horn on September 12th and received no response. Treasurer Horn responded that the email didn't have a deadline so she didn't respond.

Commissioner Corrigan stated that the Board has been operating under assumption that the pre-petitioned taxes are at risk or not receivable at this time. He asked Treasurer Horn if she or her attorneys have formed any opinion as to the reliability of the County's ability to collect the post-petition taxes. Commissioner Corrigan restated his question to ask whether Treasurer Horn believes the post-petition taxes are at risk. Treasurer Horn responded that her understanding of bankruptcy law when an entity is in Chapter 11 is that those taxes will be considered administrative costs. The entity is required to pay those taxes in time.

Commissioner Corrigan asked if Treasurer Horn or her attorneys believe those post-petition taxes are subject to the bankruptcy courts authority. Treasurer Horn responded that her understanding is that the law of Chapter 11 bankruptcy states that one must pay their administrative fees, which are considered taxes, and they will be paid when those bills are sent and they are due.

Commissioner Monger asked if Treasurer Horn had anything to update the Board on aside from the statement she read. Treasurer Horn responded that she would be happy to update the Board but she does not want to jeopardize what was accomplished the previous day and she will give more information as soon as an agreement is met between her and Peabody.

Commissioner Corrigan asked the County can feel secure in the knowledge that Treasurer Horn will not be accepting anything less than 100% of the taxes and interest due. Treasurer Horn responded that her job is to do exactly that and she is hopeful that the agreements will work out the best.

Commissioner Hermacinski asked if there is a chance that pursuant to the bankruptcy judge's order, potentially considering that the bankruptcy judges order supersedes state law, that Treasurer Horn would be able to accept principle payments from Peabody. This would get money in the door and benefit the taxing recipients as well as Twenty Mile Mine because they can discontinue paying 1% monthly on a massive amount and instead they would pay interest on the penalties interest. Treasurer Horn responded that she cannot answer what the bankruptcy court is thinking. Commissioner Hermacinski restated her question by asking if Treasurer Horn if she believes her negotiations will result in accepting principle payments from Twenty Mile Mine and allowing the interest and penalties to carry. Treasurer Horn responded that how this question is being asked is getting into the substance and particulars of the agreement with Peabody and she does not want to jeopardize their confidentiality.

PUBLIC COMMENT

Tom Ross, Steamboat Today; and Laura Case, citizen; were present.

Mr. Ross asked if Treasurer Horn can fill everyone in on the content of the conversation's she had with the tax entities in the County, with South Routt Medical in particular. As the public is aware, the Board has backfilled the second half of their property taxes and they are going from mill levies because if it doesn't pass next month they will have a negative balance sheet. Treasurer Horn responded that she didn't really tell them anything, instead she was answering questions and offering information as well as educating. She also educated about tax bases, when taxes are delinquent and that interest follows taxes. Treasurer Horn continued that there seems to be a misnomer that interest was going to stay here in the County but the truth is the interest on what is owed to all these entities will follow with them we the County gets paid in full.

Ms. Case stated that as a single mom, if she doesn't pay her taxes on time she would get the same treatment as Peabody and she appreciates that. She questioned why a corporation is different from "Harriet Homeowner". She feels that what Treasurer Horn is doing is great but the Commissioners seem at big odds against her even though all four elected officials work for the citizens. Ms. Case feels that Treasurer Horn is following the law as its interpreted and she applauds the Treasurer for that. Commissioner Hermacinski responded that she agrees with Ms. Case's assessment as well as Treasurer Horn's statement that she should not treat a big corporation different than a single mom but if there was a single mom paying 1% interest on \$1,000 a month instead of \$10 a month it would be a big deal for them. It is the same big deal for Peabody to pay 1% interest on \$1.8 million versus \$810,000. If anyone who is struggling or suffering in this County, whether it's a single mom or a corporation, wants to pay principle and they aren't allowed to so we can continue to extract 1% out of that corporation or person that is a pattern of abuse. Commissioner Hermacinski added that she doesn't expect that to happen to a corporation or a single mother but currently it is happening to one of the largest employers in Routt County.

Commissioner Hermacinski stated that public comment is closed.

Commissioner Hermacinski asked Treasurer Horn if there was an agreement to meet again with Peabody following the meeting the previous day. Treasurer Horn responded that the agreement was for the Treasurer's counsel and Peabody's counsel to get together to come up with an agreement. They were working amicably and towards a solution.

Commissioner Hermacinski asked when the Board can expect another update on this matter. Treasurer Horn responded that she does not have that date available.

Commissioner Monger stated that it might be time that the Board solicit some discussion on the propriety of forcing the Treasurer to only take the whole bill including the interest. What may need to happen is potentially lobby for some legislation to have the bill be paid and not put the Treasurer in an illegal situation potentially and allow the interest and fees to be a primary debt in the bankruptcy. As the Board moves forward and gets more experience they may need to have more discussions with the Treasures Association on this matter. Commissioner Monger added that he feels that nine birds in the bag are better than waiting on ten. Ms. Green responded that this would still be asking the Treasurer to excuse a big corporation but charge the little guys. Commissioner Hermacinski responded that what is being discussed is across the board legislation to clarify the Treasures role in the bankruptcy. Ms. Green questioned if this would allow interest to be forgiven if a citizen was in bankruptcy. Commissioner Hermacinski responded that this is not about excuse interest but instead allowing a person or entity to pay their principle so they aren't paying "payday loan" rates on what the taxes are and allow the interest to continue to accrue. Ms. Green added that with her 21 years of experience in the Treasurer's Office, in a time when parties were able to only pay principle and be billed for interest, there was no way to hold people accountable for the interest and the County was out thousands of dollars. Commissioner Monger responded that if it is part of a bankruptcy there is recourse and what is being discussed is only bankruptcy proceedings. Further this is about a change in legislation not asking the Treasurer to do something that may have been done improperly in the past.

Treasurer Horn thanked the Commissioners for the opportunity to give an update on the Peabody bankruptcy. Commissioner Hermacinski asked Treasurer Horn to keep them updated in the future to the extent possible.

No further business coming before the Board, same adjourned sine die.

Kim Bonner, Clerk and Recorder

Cari Hermacinski, Chair

Date