

VERMONT LAW SCHOOL

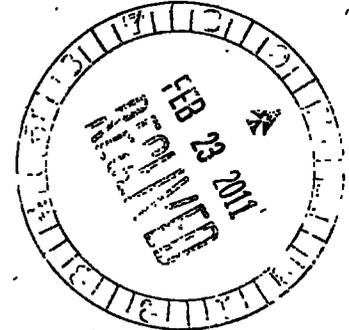


Environmental and Natural Resources Law Clinic
Vermont Law School, PO Box 96, Chelsea Street
South Royalton, VT 05068
802-831-1630 (phone) • 802-831-1631 (fax)

February 17, 2010

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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228879



Re: **STB Finance Docket No. 30186 (Sub No. 3)¹ Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment** ENTERED
Office of Proceedings

Note: The Attachments to This Filing Contain Color

FEB 23 2011

Part of
Public Record

Dear Ms. Brown:

We are writing on behalf of Northern Plains Resource Council and Mark Fix (“Northern Plains”) to reply to the letter dated February 4, 2011 from Betty Jo Christian and David H. Coburn, attorneys for Tongue River Railroad Company, Inc. (TRRC) regarding the captioned matter. The February 4 letter purports to update the Board with respect to litigation pending in Montana state court challenging the Otter Creek leases.² Attached to the letter is the Memorandum and Order Re Motions to Dismiss entered by Judge Hegel on December 29, 2010. Counsel for TRRC seek to make much of the fact that Judge Hegel denied motions to dismiss the lawsuit, arguing that it shows that “mining at Otter Creek remains no less speculative than it was when the Board issued its decisions in these proceedings.” In reply, Northern Plains would make three brief points.

First, Judge Hegel’s ruling on motions to dismiss is not a decision on the merits and it is much too early to speculate on what the final outcome of the litigation might be. In the meantime, the parties to the lease, namely the State of Montana and Ark Land Company (and its subsidiary, Otter Creek Coal LLC) are proceeding apace to develop the Otter Creek mine. On January 10, 2011, Ark filed an application for a prospecting permit. A copy of this application is enclosed as Exhibit A. The cover letter to the applications states:

¹ The Petition to Reopen also embraces *Tongue River R.R.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, MT*, STB Finance Docket No. 30186 (Service Date May 9, 1986), and *Tongue River R.R. Company—Rail Construction and Operation—Ashland to Decker, MT*, STB Finance Docket No. 30186 (Sub-No. 2) (Service Date Dec. 1, 1997).

² *Northern Plains Resource Council, et al v. Montana Board of Land Commissioners, et al*, Montana Sixteenth Judicial District Court, Powder River County, No. DV-38-2010-2480

The application covers Otter Creek Tracts 1, 2 and 3, in their entirety; the first phase of drilling is proposed on Tract 2 to support initial mine plan development. Additional drilling in subsequent phases will be added by application for revision as needed for coal resource assessment, environmental analysis and future mine plan development, and as additional surface access is confirmed. The initial drilling plan includes 44 proposed drill sites in the area of anticipated mining on Tract 2.

On February 2, 2011 the Montana Department of Environmental Quality (MDEQ) issued a "completeness determination" certifying that the application met all regulatory requirements and was "administratively complete." A copy of this determination is enclosed as Exhibit B. MDEQ also authorized Otter Creek Coal LLC to publish a public notice providing for a 30 day public comment period on the application. DEQ further determined that that "an Environmental Impact Statement is not necessary and we will prepare an Environmental Assessment prior to issuing a final decision on the permit application." Given normal processing time a prospecting permit could be issued within four months and work could begin as early as this Fall.

Second, in its brief supporting the motion to dismiss, Ark has argued that the leases represent a "property right" with binding obligations on the state. See Consolidated Brief of Ark Land Company and Arch Coal, Inc in Support of Motion to Dismiss, *Northern Plains Resource Council, et al v. Montana Board of Land Commissioners, et al*, supra n1, at p14 ("[L]ease also requires compliance with environmental laws that may be enacted in the future, **so long as property rights conveyed by the lease are not impaired.**" (Emphasis added)). Ark paid approximately \$86 million as a bonus bid for these leases.³ Ark has spent considerable sums preparing the application for the prospecting permits and will continue to commit significant sums and resources to developing this mine. In the face of all this, the argument that Otter Creek mine remains speculative is simply not credible.

Finally, Northern Plains would respectfully point out that the brief filed on behalf of the Board in the pending appeal before the Ninth Circuit takes the following position: "As relevant here, that review [in TRR III SEIS] included anticipated coal mine development in the Ashland/Birney area (id. at 6-4,-6-7) **but not the Otter Creek coal tracts, the prospective development of which the Board considered too speculative to be considered reasonably foreseeable.**" Joint Brief of Respondents at p. 20 (filed November 19, 2010) (emphasis added). Northern Plains, of course, disputes the accuracy of this statement, but regardless of whether the characterization of the mine as "too speculative" was accurate in 2006, when the Board approved TRR III, it clearly is no longer the case. The Otter Creek leases are in effect and the project is moving forward. The issuance of the leases is both a changed circumstance and significant new

³ See http://dnrc.mt.gov/trust/MMB/otter_creek/LandBoard.asp

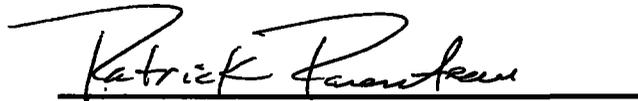
information. In all of the TRR EISs the Board recognized the potential for cumulative impacts from coal mines to be served by the railroad, including the impacts from the Otter Creek project should it ever materialize. That day has arrived.

The Board retains the authority to require a supplemental EIS to consider the undeniably significant impacts from the mining itself as well as the climate change impacts of coal combustion. Indeed, the Board recently agreed to reopen this proceeding to revise the Programmatic Agreement under the Section 106 process under the National Historic Preservation Act.⁴ Surely, the ongoing development of the Otter Creek mine is an equally significant change in circumstances warranting a similar reopening to comply with the requirements of Section 102 of NEPA.

Accordingly, Northern Plains respectfully requests that the Board promptly grant the petition to reopen.

DATED: February 17, 2011
South Royalton, VT

Respectfully submitted,



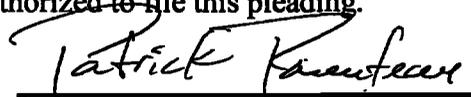
Patrick Parenteau, Esq.
Jack Tuholske, Esq.
Environmental and Natural Resources Law Clinic
Vermont Law School
P.O. Box 96, Chelsea Street
South Royalton, VT 05068
(802) 831-1305
pparenteau@vermontlaw.edu

Counsel for Petitioners

I, Patrick Parenteau, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on February 17, 2011

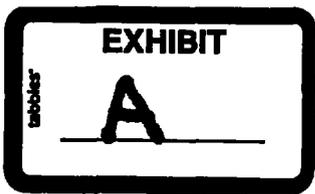
By:



Patrick Parenteau, Esq.
Counsel for Petitioners

cc: All Parties of Record
Teresa Erickson, Northern Plains
Jack Tuholske, Esq.

⁴ See <http://www.examiner.com/economy-in-billings/surface-transportation-board-takes-another-look-at-tongue-river-railroad>



IMAGED RECEIVED
JAN 11 2011
DEQ/IEMB

Simpson & Associates, LLC
P. O. Box 250
Clancy, MT 59634

406-933-5384

January 10, 2011

Mr. Chris Yde
Coal Program Supervisor
Industrial and Energy Minerals Bureau
Montana Department of Environmental Quality
P. O. Box 200901
Helena, MT 59620-0901

Re: Otter Creek Coal Project; Prospecting Permit Application

Dear Chris:

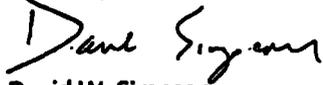
On behalf of Otter Creek Coal, LLC, I herewith submit two hard copies and one digital copy of an Application for Prospecting Permit. The application covers Otter Creek Tracts 1, 2 and 3, in their entirety; the first phase of drilling is proposed on Tract 2 to support initial mine plan development. Additional drilling in subsequent phases will be added by application for revision as needed for coal resource assessment, environmental analysis and future mine plan development, and as additional surface access is confirmed.

The initial drilling plan includes 44 proposed drill sites in the area of anticipated mining on Tract 2. At this time, no drill sites have been located on Sections 12 and 13, T.4S, R.44E. Access to Section 12 is not yet confirmed, and Section 13 can only be accessed through Section 12. We are optimistic that an access agreement for Section 12 will be in place shortly, and a revision adding drill sites in this area will be proposed at that time.

Please note that two drill sites are proposed on the east half of Section 14, T. 4S, R. 44E. This is public land, and a permit from BLM will be required to access and drill these sites. A right-of-way application will be submitted to BLM in the next few weeks.

Please contact me or Heidi Kaiser at Hydrometrics, Inc. if there are any questions regarding this Prospecting Permit Application. We look forward to working with you and your staff on this project.

Sincerely,

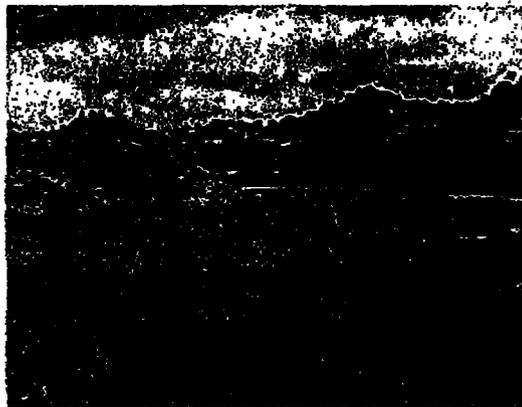

David W. Simpson

C. Heidi Kaiser (Via e-mail)
Mike Rowlands, Otter Creek Coal, LLC

Prospecting # 334

IMAGED

**OTTER CREEK COAL, LLC
APPLICATION FOR PROSPECTING PERMIT X2011334
OTTER CREEK TRACTS
POWDER RIVER COUNTY, MONTANA**



Prepared for:

**Otter Creek Coal, LLC
401 North 31st Street, Suite 770
Billings, MT 59101**

Prepared by:

**Hydrometrics, Inc.
5602 Hesper Road
Billings, MT 59106**

JANUARY 10, 2011

APPLICATION FOR PROSPECTING PERMIT X2011334
OTTER CREEK TRACTS
POWDER RIVER COUNTY, MONTANA
JANUARY 10, 2011

In November, 2009, Arch Coal, Inc. entered into a coal lease agreement with Great Northern Properties (GNP) covering coal resources on alternate sections in the Otter Creek Tracts in Powder River County, Montana. The coal reserve area is in the "checkerboard" created by railroad land grants in the late 1800's. In March, 2010, Arch Coal, Inc. was the successful bidder on State of Montana coal interests on the intervening sections. These coal lease interests comprise approximately 17,900 contiguous acres containing an estimated 1.5 billion tons of surface mineable coal. Otter Creek Coal, LLC, (OCC) is a subsidiary of Arch Coal Inc. (Arch) formed to develop the Otter Creek Coal Tracts. Exhibit 1 shows the location of the Otter Creek project area.

This Application for a Prospecting permit covers the entirety of Otter Creek Tracts 1, 2 and 3 (Exhibit 1). Initial Phase 1 prospecting will focus on Tract 2 where OCC is conducting baseline studies for its initial mine permit application (Exhibit 2). As additional surface access is confirmed and as future mine plans in Tracts 1 and 3 are developed, additional phases of drilling will be incorporated into the prospecting permit by revision.

The requirements of ARM 17.24 Subchapter 10 are addressed below:

ARM 17.24.1001(2):

(a) The Applicant is:

Otter Creek Coal, LLC
P.O. Box 7152
Billings, MT 59103-7152
Attn: Mike Rowlands
Phone: 406-245-0990

Representatives of the Applicant who will be present at and be responsible for the prospecting are:

**Ark Land Company
1 City Place Drive, Suite 300
St. Louis, MO
Attn: John Middleton
314-954-8870**

**Pronghorn Geologic Services
P. O. Box 4344
Gillette, WY 82717
Attn: Glenn Miller
307-682-8254**

**Hydrometrics, Inc.
5602 Hesper Rd.
Billings, MT 59106-3236
Attn: Heidi Kaiser
Phone: 406-656-1172 Ext 306**

**Simpson & Associates, LLC
P.O. Box 250
Clancy, MT 59634-0250
Attn: Dave Simpson
406-933-5384**

(b) The proposed prospecting program will not adversely affect any area possessing special, exceptional, critical or unique characteristics as defined in 82-4-227, MCA. No such characteristics are known to be present; please refer to Exhibit 4, which includes an excerpt from the Environmental Assessment prepared for transfer of federal mineral rights within the Otter Creek Tracts to the State of Montana, which describes the existing environment. If any such characteristics are identified during the course of prospecting operations, they will be reported promptly reported to the department.

(c) Class III cultural resource surveys have been completed on portions of the Otter Creek Tracts, and on nearly all of Tract 2 where initial prospecting activities are planned. Please refer to Exhibit 2, the Prospecting Map; drill hole sites and access routes have been planned to avoid identified sites. Where cultural resources surveys have not yet been completed, they will be completed prior to drilling and if necessary, drill hole sites and/or access routes will

be adjusted to avoid conflicts. Hence, historical, archaeological and ethnological values of the area will not be affected. If such values not previously identified are encountered, such areas will not be disturbed, and their presence will be documented and mapped as part of cultural resource surveys.

(d) None of the lands included in this NOI are protected under 82-4-227(13), MCA, or ARM 17.24.1131.

(e) Wildlife habitats in the Otter Creek Project proposed mine area and surrounding lands are a function of topography, soils, climate and land use. Topography and soils vary from nearly level terraces with comparatively deep soils along drainage bottoms, to gently-to-moderately rolling hills with variable soils, to steep, sometimes severely eroded slopes associated with the uplands of the Custer National Forest. Climate of the semi-arid area is characterized by comparatively hot summers (temperatures may exceed 100°F) and cold winters (temperatures may fall below -30°F). Annual precipitation at Ashland is about 14 inches, with most falling as rain from April through July. Land use is primarily ranching. Wildlife habitats include narrow stringers of deciduous riparian habitat (dominated by plains cottonwood (*Populus deltoides*), boxelder (*Acer negundo*) and green ash (*Fraxinus pennsylvanica*)) in stream bottoms; cultivated hay and grain fields on level terraces and gently rolling terrain; rolling bunchgrass uplands; and breaks/forested uplands dominated by ponderosa pine (*Pinus ponderosa*) and Rocky Mountain juniper (*Juniperus scopulorum*). Aquatic habitat is limited to the narrow, shallow warm intermittent-to-perennial channel of Otter Creek; livestock dams; and small, temporary natural depressions in the uplands.

Fisheries in the area would be expected to be comprised of species that are adapted to shallow, warm, turbid prairie streams. The Montana Department of Fish, Wildlife and Parks' (FWP) Montana Fisheries Information System (MFISH; available at <http://fwp.mt.gov/fishing/mFish/default.html>) data for Otter Creek indicate that 20 species (including several non-native species) may be present in Otter Creek (about 103 miles long), while sampling in various years from 2000 – 2006 captured nine species in the lower five miles of the stream, and 12 species in the lower 20 miles (which would encompass the Otter

Creek Project). No game fish were captured. The only game fish considered to be possibly present (by professional opinion) in the lower 20 miles of Otter Creek are channel catfish (*Ictalurus punctatus*), smallmouth bass (*Micropterus dolomeiu*), white crappie (*Pomoxis annularis*) and walleye (*Sander vitreus*).

Six amphibians (one salamander, three toads and two frogs) are known to occur in the region encompassing the Otter Creek Project (Montana Field Guide available at <http://fieldguide.mt.gov/displayClasses.aspx?Kingdom=Animalia>). Amphibians require water for all or part of their life stages, and therefore amphibian species richness and abundance in the Otter Creek Project area would be expected to be limited by the availability of surface water. Eleven reptiles (two turtles, two lizards and seven snakes) occur in the region encompassing the Otter Creek Project (Montana Field Guide available at <http://fieldguide.mt.gov/displayClasses.aspx?Kingdom=Animalia>). All could be present in the habitats of the Project area.

Bird species richness in the Otter Creek Project area will be determined by habitat diversity and availability, and by seasonal use (i.e., migrants, breeders, winter residents, etc.). It is anticipated that about 150 species could occur at least seasonally in the area encompassing the Otter Creek Project, and that about 60-90 species may nest in the Project area. Upland game birds that may occur in the Project area are the sharp-tailed grouse (*Tympanuchus phasianellus*), greater sage-grouse (*Centrocercus urophasianus*), gray partridge (*Perdix perdix*), ring-necked pheasant (*Phasianus colchicus*) and wild turkey (*Meleagris gallopavo*). A considerable diversity of raptors (birds of prey) may be present at least seasonally. Waterfowl and shorebird species richness would be expected to be limited by the availability of surface water in the project area. It is expected that song birds (order Passeriformes) will comprise about half of all bird species recorded in the Project area.

Similarly, it is expected that 50-60 species of mammals could occur in the area encompassing the Otter Creek Project, of which 35-45 species may occur at least occasionally in the habitats of the Project. Big game species that would be expected to occur at least seasonally in the Project area are pronghorn (*Antilocapra americana*), white-tailed deer (*Odocoileus*

virginianus), mule deer (*Odocoileus hemionus*) and elk (*Cervus canadensis*), while others such as the mountain lion (*Puma concolor*) and black bear (*Ursus americanus*) may occur occasionally.

The Otter Creek Project area and surrounding lands lie within Powder River and Rosebud Counties. The U.S. Fish and Wildlife Service (USFWS) maintains county lists of species that are listed, proposed or candidate species under the Endangered Species Act (ESA), available at

http://www.fws.gov/montanafieldoffice/Endangered_Species/Listed_Species/countylist.pdf.

The black-footed ferret (*Mustela nigripes*; listed endangered), interior least tern (*Sterna antillarum athalassos*; listed endangered) and greater sage-grouse (candidate) are listed for Rosebud County, while the black-footed ferret and greater sage-grouse are listed for Powder River County. Interior least terns would not be expected to occur in the habitats of the Otter Creek Project. Black-footed ferrets were reintroduced on the Northern Cheyenne Reservation in 2008

(<http://www.fws.gov/mountain-prairie/species/mammals/blackfootedferret/>). No critical habitat for the black-footed ferret has been designated by the USFWS. Ferret habitat in Montana has been defined as active prairie dog colonies. Black-tailed prairie dog (*Cynomys ludovicianus*) colonies may be present in or near the Otter Creek Project area. Greater sage-grouse are closely associated with sagebrush (*Artemisia spp.*). Although sage-grouse are known to occur in Rosebud and Powder River Counties, occurrence and habitat availability in and near the Otter Creek Project are unknown. As of June 28, 2010 the USFWS has reinstated a proposal to list the mountain plover (*Charadrius montanus*) for listing as threatened under the ESA (<http://www.fws.gov/mountain-prairie/pressrel/10-44.htm>). In southeastern Montana mountain plover habitat is considered to be prairie dog colonies.

Exhibit 3 is written documentation from the Montana Department of Fish Wildlife and Parks.

(f) No known habitats of unique or unusually high value to wildlife would be disturbed by the proposed prospecting activities. Drill hole sites have been located in open areas, and

access routes have been planned to maximize use of existing trails and minimize overland travel.

(g) Please refer to Exhibit 4 for narrative descriptions and photographs of local topographic and geologic formations, scenic values and vegetation of the area.

(h)(i) Exhibit 1 is a map prepared on a standard U.S. Geological Survey topographic quadrangle base, showing the area covered by this prospecting permit application.

(ii) Proposed locations of prospecting holes are shown on Exhibit 2. Table 1 is a list of drill hole sites correlating with Exhibit 1 showing locations and anticipated depths. Overland routes from existing roads and trails to drill sites are shown on Exhibit 1; new road construction and/or improvement of existing trails is not anticipated, but may be necessary. Some existing trails are heavily gullied, and many ephemeral drainages are deeply eroded. Exhibit 8 addresses road improvement, construction and reclamation. In the event any such work is required, a minor revision detailing the proposed work, and documentation of surface owner consent, will be submitted to the Department.

(iii)(A) Other than potential road improvement and construction described above, no excavations, test pits or disposal areas are proposed.

(B) Streams, lakes and known stock water ponds, wells and springs are shown on the USGS map base.

(C) Roads, trails and overland access routes are shown on Exhibit 1.

(D) Dwellings are shown on the Exhibit 1 USGS map base; there are no known pipelines in the prospecting area.

(E) Topographic and drainage features are shown on the Exhibit 1 USGS map base. Cultural and historical features known from cultural resource surveys are also shown on Exhibit 1

(F) Exhibit 5 is an aerial photo of the primary area of investigation on which major habitat types and features may be discerned. Please refer also to Exhibits 4 and 5. Wildlife habitats will be identified and mapped as part of the proposed investigations under this NOI.

(G) Names, addresses and telephone numbers of surface owners and surface lessees are included in Exhibit 6.

(H) Maps are certified as required by ARM 17.24.305(2).

(i) Phase 1 of Prospecting to be conducted under this application will occur on Tract 2; future revision applications will be filed for later phases of drilling on Tracts 1 and 3 as well as any additional drilling on Tract 2. Prospecting activities and procedures are described as follows:

(ii) Rotary drilling to a projected core point, at which point core drilling will commence and samples of the coal seam will be taken. Each core will be logged by the geologist, bagged and boxed. During rotary drilling, overburden samples will be collected and bagged. Upon completion of drilling activities, the hole will be logged with a geophysical logging truck. For some drill sites, a rotary pilot hole may first be required which will be drilled and geophysically logged in order to determine core points. A second hole will then be rotary drilled to the core point and a core sample of the coal seam taken.

(iii) One or two truck-mounted rotary drills will be used, each of which will be accompanied by a water truck and support vehicle(s) (pickup trucks) as required for drilling personnel and the supervising geologist. One geophysical logging truck will also be utilized.

(iv) Table 1 lists the proposed drill hole sites, including location by legal description, size, and anticipated depth. The typical rotary hole will be 6 1/4 inches in diameter, and core holes will be 7 7/8 inches in diameter. It is anticipated that water will be encountered in the Knobloch coal. Drilling media to be used include air and water; use of drilling mud is not anticipated. Water used for and produced by drilling will not be contained and will be allowed to infiltrate into the ground surface.

(v) Holes will be filled with bentonite chips to a depth of two feet from the surface. A magnetic marker will be placed in the hole, and the remaining two feet will be filled with drill cuttings or soil. Drill cuttings will be leveled out to a maximum depth of one-half inch.

(vi) Prospecting holes will not be located near active streams, lakes, stock water ponds, wells or springs. Disturbance of the land surface will be minimized by minimizing or avoiding or minimizing grading of new roads and locating drill hole sites at locations where construction of drill pads will not be required.

(vii) Road construction, if required, will be limited to the minimum extent necessary to complete the drilling plan. Exhibit 8 describes road building / improvement and reclamation procedures. No earth moving for drill pads or disposal pits is planned.

(viii) A magnetic marker will be placed in each hole so that it can be located for bond release inspection purposes.

(J) The mineral to be prospected is coal.

(K) A listing of all surface and subsurface estate owners is included in Exhibit 6. Coal ownership is indicated on Exhibit 1.

(L) Copies of coal leases and documents authorizing surface access for prospecting are included in Exhibit 7. This information will be supplemented as additional surface access is confirmed.

(M) Affected land owners are aware that the department must make investigations and inspections necessary to assure compliance with the Act, applicable rules and permit conditions. Department personnel may enter the lands affected accompanied by personnel of Otter Creek Coal, LLC or its contractors, consistent with the terms of applicable surface access agreements.

(N) Prospecting by drilling proposed by this application will be completed in 2011. Additional drilling will be proposed in the future by revising this prospecting plan, with schedules to be determined at that time.

(O) Measures to be taken to comply with performance standards are addressed in response to the specific requirements.

(P) At all drill sites proposed, the current land use is grazing land, which will continue through and after the proposed prospecting disturbance.

(Q) The proposed public notice is included as Exhibit 9.

ARM 17.24.1001(3) – (7) No Response Required

ARM 17.24.1002

The information required in ARM 17.24.1002(1), (2) and (3) will be provided:

(1) Whenever DEQ must investigate possible environmental damage or complaints, OCC will provide appropriate information in its possession to facilitate such investigation.

(2) OCC will submit a monthly report for each successive 30-day period no later than the 15th of the following month, for each month during which there is activity, containing the information required by this section.

(3) OCC will submit annual reports containing the required information.

ARM 17.24.1003: No response required.

ARM 17.24.1004: Prospecting operations are short duration and will be conducted to minimize environmental damage to the area. A need for environmental monitoring is not anticipated, but will be implemented if required to address specific environmental concerns related to the prospecting plan.

ARM 17.24.1005

(1) Prospecting operations will be conducted as follows:

(a) To avoid degradation or diminution of any water supply;

(b) To avoid adverse impacts to existing or potential mining operations. All holes to be drilled will be abandoned in compliance with the requirements of this section. Conversion of prospecting holes to water wells is not proposed.

(2) If necessary, appropriate techniques will be used to:

(a) Prevent the escape of water, oil or gas from drill holes;

(b) Prevent the contamination of all surface and ground waters, and prevent interaquifer mixing;

(c) Prevent aquifer contamination by surface drainage; and

(d) Reclaim all surface impacts and prevent surface subsidence.

(3) The following reclamation techniques will be used:

(a) Drill cuttings will be spread over the surface to a depth of less than one-half inch.

(b) Casing, if used, will be cut off at the ground surface on rangeland and two feet below the surface on cropland or pastureland.

(c) Prospecting holes will be abandoned in compliance with this section.

(d) Not applicable because all prospecting holes will be abandoned in compliance with the requirements of section (c) above.

(4) No excavations, artificially flat areas or embankments will be constructed during prospecting.

ARM 17.24.1006

(1) Vehicular traffic will be limited on other than established graded and surfaced roads to the minimum that is necessary. Travel will be confined to graded and surfaced roads during periods when excessive damage to vegetation or erosion could result.

(2) Road improvement / construction and reclamation procedures are described in Exhibit 8. Drill hole sites will be located to minimize overland travel from existing roads and trails.

(3) Use of existing roads will comply with this subsection.

ARM 17.24.1007: Excavations, artificially flat areas or embankments are not proposed; there will be no need for soil salvage or recontouring. If applicable, the requirements of this section will be followed.

ARM 17.24.1008: Soil disturbance is not anticipated; if revegetation is necessary, the requirements of this section will be followed. Minor surface disturbance requiring revegetation will be hand broadcast seeded at the rate of 30-35 bulk pounds per acre with the following seed mix in equal parts: Western Wheatgrass, Slender Wheatgrass, and Thickspike Wheatgrass.

ARM 17.24.1009: Diversions are not planned.

ARM 17.24.1010: All equipment and facilities will be promptly removed when no longer needed.

ARM 17.24.1011: Drilling of prospecting holes will be conducted to minimize disturbance of the prevailing hydrologic balance.

ARM 17.24.1012: Toxic- or acid-forming materials are not anticipated; if encountered they will be disposed of as accordance with this section.

ARM 17.24.1013: Drilling of prospecting holes will comply with this section:

(1) Drill holes will not be located within 100 feet of stream channelways (dry or flowing) or in an area where drilling materials may enter stream channelways.

(2) There will be no excavation or dozer work other than potential road construction and improvement described above.

(3) Portable mud pits will be used if required; use of drilling mud is not anticipated.

(4) If utilized, drilling mud and other fluids will be confined to the site.

(5) Refuse from well drilling will be disposed of as required by this subsection.

ARM 17.24.1014: Not applicable.

ARM 17.24.1016: The proposed prospecting program includes 44 drill sites, comprising 4.4 acres. A bond of \$10,000 is proposed under this section.

**Table 1. Drill Site Locations and Projected Total Hole Depths
Otter Creek Coal, LLC Prospecting Permit Application X2011334**

Site I.D.	Township	Range	Section	Qtr	Projected T.D. (ft)
O37	4S	45E	15	SE¼	152
O41	4S	45E	15	SE¼	175
P31	4S	45E	10	SE¼	228
P33	4S	45E	15	NE¼	236
P35	4S	45E	15	NE¼	262
P39	4S	45E	15	SE¼	170
P43	4S	45E	23	NW¼	167
P47	4S	45E	23	SW¼	174
Q29	4S	45E	11	SW¼	259
Q33	4S	45E	14	NW¼	235
Q37	4S	45E	14	SW¼	232
Q41	4S	45E	23	NW¼	202
Q45	4S	45E	23	SW¼	174
Q49	4S	45E	26	NW¼	210
Q53	4S	45E	26	SW¼	165
R27	4S	45E	11	NW¼	297
R31	4S	45E	11	SW¼	233
R35	4S	45E	14	NW¼	239
R39	4S	45E	23	NW¼	277
R43	4S	45E	23	SW¼	279
R47	4S	45E	26	NW¼	225
R51	4S	45E	26	NW¼	223
S25	4S	45E	11	NE¼	194
S29	4S	45E	11	SE¼	285
S33	4S	45E	14	NW¼	291
S37	4S	45E	14	SE¼	287
S41	4S	45E	23	NE¼	273
S45	4S	45E	23	SE¼	265
S49	4S	45E	26	NE¼	220
S53	4S	45E	26	SE¼	256
T27	4S	45E	11	NE¼	198
T31	4S	45E	11	SE¼	320
T35	4S	45E	14	SE¼	373
T39	4S	45E	23	NE¼	319
T43	4S	45E	23	SE¼	340
T47	4S	45E	26	NE¼	278
T51	4S	45E	26	SE¼	240
U45	4S	45E	23	SE¼	359
U49	4S	45E	25	NW¼	264
U53	4S	45E	26	SE¼	238
V47	4S	45E	25	NW¼	289
V51	4S	45E	25	NW¼	259
W49	4S	45E	25	NW¼	310
X51	4S	45E	25	NE¼	296

Note: Locations are per section lines as shown on ownership map, section lines as shown on USGS quadrangle are incorrect.

OTTER CREEK COAL LLC
PROSPECTING PERMIT APPLICATION X2011334
LIST OF EXHIBITS

- EXHIBIT 1 - SITE LOCATION MAP AND COAL LEASES**
- EXHIBIT 2 - DRILLHOLE LOCATION MAP**
- EXHIBIT 3 - LETTER FROM FISH WILDLIFE AND PARKS**
- EXHIBIT 4 - DESCRIPTION OF EXISTING ENVIRONMENT**
- EXHIBIT 5 - AERIAL PHOTO OF PROSPECTING AREA**
- EXHIBIT 6 - SURFACE OWNER LOCATION MAP**
- EXHIBIT 7 - COPIES OF COAL LEASES AND LANDOWNER AGREEMENTS**
- EXHIBIT 8 - ACCESS ROAD PLAN**
- EXHIBIT 9 - PROPOSED PUBLIC NOTICE**



**Montana Fish
Wildlife & Parks**

352 I-94 Business Loop
P.O. Box 1630, Miles City, MT 59301
Telephone (406) 234-0921 ~ Fax (406) 234-4368
e-mail jensign@mt.gov

Mr. David Simpson
Simpson & Associates LLC
PO Box 250
Clancy, Mt 59634

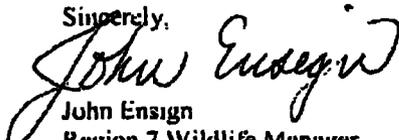
Dear Dave,

Montana Fish Wildlife & Parks Region 7 wildlife staff have reviewed the narrative description of significant fish and wildlife species and habitats, including rare and endangered species, in the general area of the proposed Otter Creek Project-proposed mine area. Staff felt the narrative description was accurate and that the proposed prospecting drilling activity would have little or no adverse impact on endemic fish & wildlife species or their habitats in the Project area.

Of interest is one historic sage grouse lek (PO -15 in MFWP lek database) in the vicinity of the Project area, located in 1981, was last rechecked in 2001 with no activity noted. Also prairie dog towns do exist in the Project area, the majority of which are towards the northern end. There currently are no mountain plover observations in Otter Creek. Given that there are active prairie dog colonies, the potential of plovers using the area cannot be ruled out. Prairie falcon aeries (on cliff faces) are known to occur adjacent to the Project area.

Should you need any further assistance or have any other questions we may be able to help address do not hesitate to contact me or any of the Region 7 staff.

Sincerely,


John Ensign
Region 7 Wildlife Manager
01/04/2011

DRAFT

Environmental Assessment

For

**Compliance with Section 503 of the Department of the
Interior and Related Agencies Appropriation Act of 1998
(Public Law 105-83)**

**Prepared
by the Bureau of Land Management
February 2002**

**RECEIVED
FEB 22 2002
D.N.R.C.**

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RMP. The Lands section of the RMP clearly indicates that these mineral estate disposal actions could be considered separately from the surface estate.

4. Affected Environment

Lands

The Otter Creek tracts are located within Powder River County in southeastern Montana, within the Otter Creek drainage, a tributary of the Tongue River, and are located approximately six air miles southeast of Ashland, Montana. The Otter Creek tracts also lie approximately four air miles of the east boundary of the Northern Cheyenne Indian Reservation and over forty air miles from the east boundary of the Crow Indian Reservation. The Otter Creek tracts encompass approximately 19,836 acres of which 7,623 acres (38 percent) is underlain with Federal mineral rights. Surface ownership within the tracts is approximately 82 percent private, 10 percent State of Montana and the remaining 8 percent is administered by the Bureau of Land Management (BLM). The Otter Creek tracts are not located within or adjacent to any Wilderness Study Area (WSA) or Area of Critical Environmental Concern (ACEC).

Approximately 7,623 acres of Federal mineral rights are located within the three tracts. These Federal mineral rights lie mostly under private surface ownership (6,026 acres), with 1,597 acres occurring under surface lands administered by the BLM. The private surface ownership includes 10 different landowners. Figure 1 provides a detailed view of the location of the Otter Creek tracts and of land ownership.

Three classes of mineral rights exist in the Otter Creek tracts: 1) all minerals, 2) coal and oil and gas, and 3) coal only. Nearly 72 percent of the Federal mineral right acres include rights for all minerals,

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while 28 percent include mineral rights for coal only. Federal mineral rights limited to coal, oil and gas occur on 40 acres. A legal description of the Otter Creek tracts is included in Appendix B. Table 1 provides a detailed breakdown of Federal mineral rights and surface status by tract for the three Otter Creek tracts.

Table 1. Federal Mineral Rights for the Otter Creek tracts.

	1. Total Acres	2. Non-Federal Surface Acres with Non-Federal Mineral Rights	3. Private Surface Acres with Federal Coal Rights	4. Private Surface Acres with Federal Coal, O&G Rights	5. Private Surface Acres with All Federal Mineral Rights	6. Total Private Surface Acres with Federal Mineral Rights (columns 3+4+5)	7. Federal Surface Acres with Federal Mineral Rights	8. Total Acres of Federal Mineral Rights (columns 6+7)
Tract #1	5,736	3,819	640	0	1,277	1,917	0	1,917
Tract #2	7,703	4,599	1,160	40	1,080	2,280	824	3,104
Tract #3	6,397	3,795	310	0	1,519	1,829	773	2,602
TOTALS	19,836	12,213	2,110	40	3,876	6,026	1,597	7,623

Air Quality and Climate

The climate of the area is classified as a semiarid cool steppe, where evaporation exceeds precipitation, with relatively short warm summers and longer cold winters. Prevailing winds occur from the southwest, but local wind conditions reflect channeling down the Otter Creek valley due to the adjacent terrain. Air quality conditions in the area are very good. Relatively low air pollutant concentrations are a result of limited industrial air pollution and favorable atmospheric dispersion. Site-specific air quality monitoring has not been conducted in the area. However, the lack of significant pollution sources probably means that existing air quality is in attainment with all ambient air quality standards. The area is designated as a Class II air quality area that would allow development activities to occur. The Northern Cheyenne Tribe has designated its lands to the west of the Otter Creek area as a Class I air quality area. The Crow Reservation further west is classified as a Class II area.

Cultural and Historical

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Cultural resources within the area represent human occupation throughout the prehistoric and historic periods. Site-specific inventories on the Otter Creek tracts have not been conducted. However, cultural resources relating to the prehistoric period in the general area consist of a wide variety of sites including; scatters of flaked and ground stone tools, hearths and other camp debris, wooden lodges and other evidence of domestic structures, rock shelters and caves, game traps and kill sites, and other features. Cultural resources associated with the historic period consist of homesteads, historic trails, Indian war period battle sites, ranch developments, and Native American sites representative of continuing occupation throughout historic times. No cultural resource-related ACEC have been designated by BLM in the Otter Creek area.

Geology and Minerals

The Otter Creek tracts are within the Missouri Plateau division of the Great Plains physiographic province. Most of the area consists of flat to gently rolling ridges or uplands. Erosion along the edges of the uplands has occasionally formed steep-sided gullies or coulees. A dendritic drainage pattern exists that flows generally south to east into Otter Creek. Elevations range from 3,040 feet to 3,420 feet above sea level. To the south of the Otter Creek tracts lies the Custer National Forest, which is very rugged, forest-covered highland. The Forest forms a divide between the Otter Creek and Tongue River watersheds.

The Powder River Basin, in which the Otter Creek tracts are located, produces small amounts of oil and very small amounts of conventional natural gas from shallow reservoirs. There are no oil and gas leases or production on the Otter Creek tracts.

Coal bed methane (CBM) gas is considered an unconventional hydrocarbon resource in the Powder River Basin, including the Otter Creek area. CBM is considered a prospective resource from the Fort Union Formation coal beds in the Otter Creek area.

Several coal seams underlay the Otter Creek area, however, only the Knobloch seam is present in sufficient thickness and at a surface-mineable depth. The Knobloch seam ranges from 59 to 72 feet in thickness within the Otter Creek tracts. If this coal were leased, the Federal government would receive a royalty from any coal production. The State of Montana would receive 50 percent of the royalty receipts from any leased federal coal.

Coal from the Knobloch seam is low-sulphur coal classified as Sub-bituminous C. Coal of this quality is desirable for the generation of electricity because of its low sulfur content. These coal resources are not currently leased. Development of the coal at this time is considered speculative because the Otter

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Creek area would require development of new infrastructure to support a mine. The time frame and economics associated with potential coal development of these properties is therefore highly uncertain.

Construction mineral materials are generally present in the area and include sand and gravel, scoria, common clay and crushed common stone. There are no existing BLM mineral material permits nor mining claims for locatable minerals on the Otter Creek tracts.

Hydrologic Resources

Surface water is the primary source of water for uses in the area. Generally water quality is good. Surface water flow varies with the season. The Otter Creek is a tributary of the Tongue River, which flows north-northeast into the Yellowstone River.

Otter Creek has been identified by the State of Montana as an "impaired waterbody" in need of water quality restoration. This designation is in response to the requirements of Section 303(d) of the Federal Clean Water Act. Water quality degradation results from agricultural uses, road and bridge construction, land development and natural sources.

Groundwater quality and quantity are variable with the primary water quality issue being salinity. The primary bedrock aquifers are the sandstones and coal beds of the Tertiary Fort Union Formation. Wells within the Fort Union Formation may produce as much as 40 gpm, but yields of 15 gpm are more typical. Water is generally suitable for livestock purposes but may not be suitable for irrigation. Total dissolved solids concentrations range from 500 to 5,000 mg/L.

Water rights in Montana are the subject of the Montana Water Use Act and water rights are being adjudicated on a watershed basis. The Tongue River watershed, including the Otter Creek watershed, has not yet been fully adjudicated. Of particular importance to residents in the area and adjacent landowners, including the Northern Cheyenne Tribe, is the protection of surface water and groundwater in the vicinity of coal mines and future potential coal bed methane development. The Crow Indian Reservation is generally located in the Bighorn River watershed further to the west and is not affected by surface water or groundwater issues in the lower Tongue River and Otter Creek watersheds.

Paleontological Resources

Fossil-bearing rock units underlie the Otter Creek area and include the Fort Union Formation. The fossil record from the Fort Union Formation contains evidence of ancient environments that include streamside swamps, bottomlands, and well-established river courses. Fill within ancient river channels

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contains fossils of fresh water clams and snails. Other units of the Fort Union Formation contain fossils of turtles, fish, reptiles, and mammals. There are no Federal/BLM designated paleontological ACEC or National Natural Landmarks for paleontological resources in the vicinity of the Otter Creek tracts.

Vegetation

The shrubland vegetative community is the dominant vegetation type in the Otter Creek area. This vegetation type is characterized by shrub covers greater than 15 percent and forest cover less than 10 percent. Important shrubs include several species of sagebrush and others such as bitterbrush, creeping juniper, greasewood, mountain mahogany, rabbitbrush, and shadscale. The shrub community is associated with a complex understory of grasses such as bluebunch wheatgrass, blue grama, Idaho fescue, needle and thread, and western wheatgrass. The adjacent upland forests of the Custer National Forest are predominately a ponderosa pine forest with a shrub understory. No federally listed threatened or endangered plant species have been identified in the Otter Creek area.

Wildlife

The diverse topography and vegetative communities in the area provide habitat for a wide variety of wildlife. Big game species common within the area include mule deer, elk, and white-tailed deer. Some of the more common predators include coyote, red fox, raccoon, badger and striped skunk. Black bear and mountain lion may also occur in the general area. Inventories indicate that more than 250 species of birds occur in the area. Approximate numbers of species include 32 waterfowl and related species; 33 shore and wading birds; 18 diurnal and 11 nocturnal raptors; 8 species of gallinaceous birds; 8 woodpeckers; and 137 songbirds, including many neotropical migrants. Otter Creek is not a designated fisheries management stream, although Otter Creek has a moderate fisheries resource value and approximately 20 fish species have been identified. Abundant and common fish species in the downstream section of the Tongue River include the shovelnose sturgeon, goldeye, common carp, emerald shiner, fathead minnow, flathead chub, longnose dace, river carpsucker, longnose sucker, white sucker, shorthead redhorse, channel catfish, stonecat, and sauger. Federally listed threatened, endangered and proposed for listing species that may be found in the Otter Creek area include the mountain plover, bald eagle, and black-footed ferret.

Socio-Economics

The population of Powder River County is largely rural. Longtime residents often want to see continued local control of the land without interference from outside agencies or groups. There are some differences in attitudes toward energy development in the area and tensions arise from the desire

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for new development to support the often stagnant rural economies and the concern that such development could harm the environment and the lifestyle qualities of the area.

A portion of the population in the area is also Native American. They generally want to preserve many elements of their heritage, express strong connections with the natural environment, and often do not wish to become homogenized into the non-Indian culture. At the same time, some tribal members wish to pursue the development of energy resources for their long-term social and economic benefit.

The population of Powder River County decreased from 2,090 in the 1990 census to 1,858 in the 2000 census, a 1.2 percent negative annual growth rate. This compares to a State of Montana average annual positive growth rate of 1.2 percent over the same period. Data on race and ethnicity from the 2000 U.S. Census indicates that the Powder River County population is 97.4 percent white, with a 1.8 percent Native American population. Rosebud County which is located west of the Otter Creek tracts, includes part of the Northern Cheyenne Reservation, and has a 32.4 percent Native American population. Bighorn County which is located further to the west of the Otter Creek tracts and includes part of the Northern Cheyenne Indian Reservation and the Crow Indian Reservation, has a 59.7 percent Native American population. The percentage of the population of Powder River County below the U.S. Census Bureau poverty threshold is 15.3 percent, while 26 percent of the tribal members of the Northern Cheyenne Tribe and 38 percent of the tribal members of the Crow Tribe who are employed are below U.S. Health and Human Services poverty levels.

Employment by sector of the industry for 1998 indicates that Powder River County is 33.8 percent farm employment, 37.9 percent non-farm employment, and 28.2 percent government employment (U.S. Department of Commerce). The per capita income for Powder River County in 1998 was \$16,314, only 76.8 percent of the average per capita income for the State of Montana (Bureau of Economic Analysis). The average unemployment rate in Powder River County increased from 2.4 percent in 1995 to 3.0 percent in 2000. However, surveys by the Bureau of Indian Affairs indicate that 71 percent of the Northern Cheyenne and 61 percent of the Crow Tribe labor force is unemployed.

Northern Cheyenne Reservation

The Northern Cheyenne Reservation lies west of the Otter Creek tracts and occupies about 445,000 acres in Big Horn and Rosebud Counties. The Tongue River forms the eastern boundary of the Reservation. Approximately 4,212 Northern Cheyenne live on or near the Reservation. The community of Ashland, Montana is the nearest community to the Otter Creek tracts and is located on the Tongue River adjacent to the Reservation. Approximately 500 tribal members live in Ashland. The current economy of the Reservation is primarily based on livestock production; individual tribal

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members own an estimated 12 to 15 thousand head of cattle. The Tribe has approximately 27,000 acres of reservation lands presently under cultivation, the vast majority of which is dryland farming (i.e., hay, wheat, barley, and small grains). In addition to agriculture, the Tribe has developed several secondary sources of income including construction, timber harvesting, small business, light manufacturing, and casino gaming. The Reservation provides dispersed outdoor recreation including hunting, fishing, hiking, horseback riding, and plant and berry gathering. Hunting on the Reservation by non-tribal members is not permitted.

Coal deposits from the Fort Union Formation, estimated at 16.3 billion tons, exist beneath the entire Reservation. Several coal leases on the Reservation were canceled in 1978 by Congress, at the request of the Tribe, to respond to concerns regarding the political, economic and environmental sovereignty of the Tribe. Since that time, the Northern Cheyenne have overseen their energy development cautiously. The Reservation does not have any known oil or gas fields. Hydrological resources on the Reservation consist of surface water flow from several rivers and their associated tributaries, and the production of groundwater from a variety of geologic formations. The Tongue River and Otter Creek watersheds lie adjacent to the Reservation and are of concern to the Tribe.

Indian Trust Assets (ITAs) are assets such as lands or minerals held in trust by the federal government on behalf of Indian tribes or individuals. The Department of the Interior has an obligation to protect Indian Trust Assets and to consider the anticipated effects on ITAs in planning, deciding, and implementing actions by the federal government. The ITAs identified for the Northern Cheyenne Tribe are the Tribe's Reservation lands. The Northern Cheyenne Tribe also has existing water rights held in trust by the United States. These water rights include both surface water and groundwater rights needed for the protection and development of the Reservation. The Northern Cheyenne have successfully negotiated a water rights compact with the State of Montana and own a significant amount of water in the Tongue River Basin, including a principal portion of the Tongue River Reservoir.

Crow Reservation

The Crow Reservation is located west of the Northern Cheyenne Reservation and is further removed from the Otter Creek tracts. The Crow Reservation boundary is common with the western boundary of the Northern Cheyenne Reservation and is located primarily within the Bighorn River watershed which is further west. No further description of the Crow Reservation resource values or trust assets is needed to address the issues associated with the Otter Creek tracts. However, the Crow Tribe could be affected by competition to its existing coal mine if coal was developed in the Otter Creek tracts.

5. Consequences of the Proposed Action and Alternatives

**A CLASS III
CULTURAL AND PALEONTOLOGICAL RESOURCE INVENTORY
OF THE
OTTER CREEK STUDY AREA,
POWDER RIVER COUNTY, MONTANA**

VOLUME I

**Prepared for
Montana Department of Natural Resources and Conservation**

BLM Fieldwork Authorization Number MT-020-04-445

By

**David Ferguson and Garren Meyer
With contributions by
Jennifer Petersen**

Of

**GCM Services, Inc.
1003 S. Montana Ave.
Butte, MT 59701**

November 2, 2004

State of Montana
COAL LEASE

DS-499
Amended 12/21/2009

No. C-1103-10

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as "Lessor", and

Ark Land Company
1 City Place Drive, Suite 300
St. Louis, MO 63141

hereinafter referred to as "Lessee", under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. GRANTING CLAUSE. The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: Township 3 South, Range 45 East County: Powder River

Description of land: Section 26: All

Total number of acres, more or less, 640.00, belonging to Common Schools Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

2. EFFECTIVE DATE AND TERM. This Lease takes effect on March 18, 2010 and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

3. LEASE EXTENSION. The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. RIGHTS RESERVED. Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

5. BOND. Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of \$2,000, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of \$2,000, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

6. RENTAL. Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of \$3.00 per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

7. ROYALTY. Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of 12.5% upon coal removed by strip, surface, or auger mining methods and a royalty of 10% for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

8. READJUSTMENT OF RENTAL AND ROYALTY TERMS. The Lessor reserves the right to readjust the rental and royalty terms of this Lease to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

9. OFFSETTING PRODUCTION. The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

10. LESSOR NOTIFICATION AND REPORTS. Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation
Minerals Management Bureau
P.O. Box 201601
1625 Eleventh Avenue
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

11. INSPECTION. Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease and to review the Lessee's records relating to operations upon and administration of the lease premises. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

12. CONFIDENTIALITY. Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

13. ASSIGNMENT. This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

14. CANCELLATION. Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge any of the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

15. SURRENDER OF PREMISES. Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS. Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) damaging crops, including forage, timber, or improvements of a surface owner; or (3) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. The lessee shall not pollute or deplete surface or groundwater in excess of those impacts to water allowed by state or federal law or permit. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, regulation, or permit.

17. TAXES. Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

18. SUCCESSORS IN INTEREST. Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

20. WATER RIGHTS. Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

21. MINE SAFETY. Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

22. WASTE PROHIBITED. All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees.

23. SURRENDER OF DATA. All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

24. WEED CONTROL. Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises in consultation with any local weed control board.

25. SURFACE OWNER AND SURFACE LESSEE RIGHTS. Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

26. DAMAGES. Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

27. INDEMNIFICATION. The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent, wanton, or willful acts or omissions of the Lessee, its contractors, agents or subcontractors.

28. SPECIAL CONDITIONS.

(A) **DILIGENCE.** The Lessee hereby commits to a work program on the Otter Creek Area Coal Tracts with a minimum expenditure of \$2.0 million per lease year, for a period of five (5) years following the date this Lease takes effect, and at least \$500,000 per lease year thereafter. For the purposes of this Lease commitment, the Otter Creek Area Coal Tracts includes all State and non-State coal located within the areas identified as "Tract #'s 1, 2, and 3" on the attached Exhibit A. Within 120 days following the end of each lease year, the Lessee shall provide Lessor an accounting of Work (as later defined) performed on the Otter Creek Area Coal Tracts for such lease year. Any amount in excess of the minimum expenditure amount is referred to as the "Excess Amount" and any shortfall is referred to as the "Shortfall Amount." Within 120 days following the end of each lease year, the Lessee shall pay to Lessor the amount, if any, equal to the Shortfall Amount for such lease year, less the sum of the Excess Amounts for all prior lease years (to the extent such Excess Amounts have not been previously applied against a Shortfall Amount). For purposes of calculating the minimum expenditure, the Lessee may only include costs for work directly attributable to the Otter Creek Area Coal Tracts. Work to be performed on the Otter Creek Area Coal Tracts may include, without limitation, environmental baseline studies, exploration drilling, initiation of

permitting and all permitting actions, acquisition of surface rights and access rights over or to the Otter Creek Area Coal Tracts, title curative actions, market studies, compiling mine economics, preparation of feasibility studies and any other works, study or verifiable third party expense required to commence operations for the mining of coal on the Otter Creek Area Coal Tracts (collectively, the "Work"). The accounting of Work does not include payments made to non-State Lessors for shortfalls in work program expenditures. In the event any of the Work is conducted by Lessee's employees, the actual verifiable salaries, wages and personal expenses of Lessee's employees either temporarily or permanently assigned to the development and operation of the Otter Creek Area Coal Tracts may be included in the minimum expenditure. Lessee shall not include any internal overhead of any nature in calculating the minimum expenditure. If it is anticipated that the Work conducted by Lessee's employees will exceed 50% of the minimum expenditure, the Lessee will seek Lessor's approval for such amounts over 50%. In addition, taxes and assessments Lessee pays shall not be included in calculating the minimum expenditure. Copies of all analyses, data and other information produced or compiled as a result of Lessee's work program on the Otter Creek Area Coal Tracts will be provided to Lessor within 120 days after the end of each lease year. However, such analyses, data and other information submitted to Lessor shall be subject to the confidentiality provisions of Paragraph 12 and 77-3-308, MCA.

(B) **SETTLEMENT AGREEMENT.** After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Area Coal Tracts (singly and collectively "Operations"), the Lessee or its agents in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Lessor, obtain Lessor approval of, and thereafter implement the five written Operating Plans as detailed in the attached Exhibit B of the Settlement Agreement dated February 19, 2002, between the Lessor and the Northern Cheyenne Tribe.

29. NON-WARRANTY OF TITLE. Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this day of APR 20 2010 2010.

THE STATE OF MONTANA
Lessor

ARK LAND COMPANY
Lessee

By Its State Board of Land Commissioners

By: *David M. Lewis*

its. President

[Signature]
DIRECTOR

EXHIBIT A

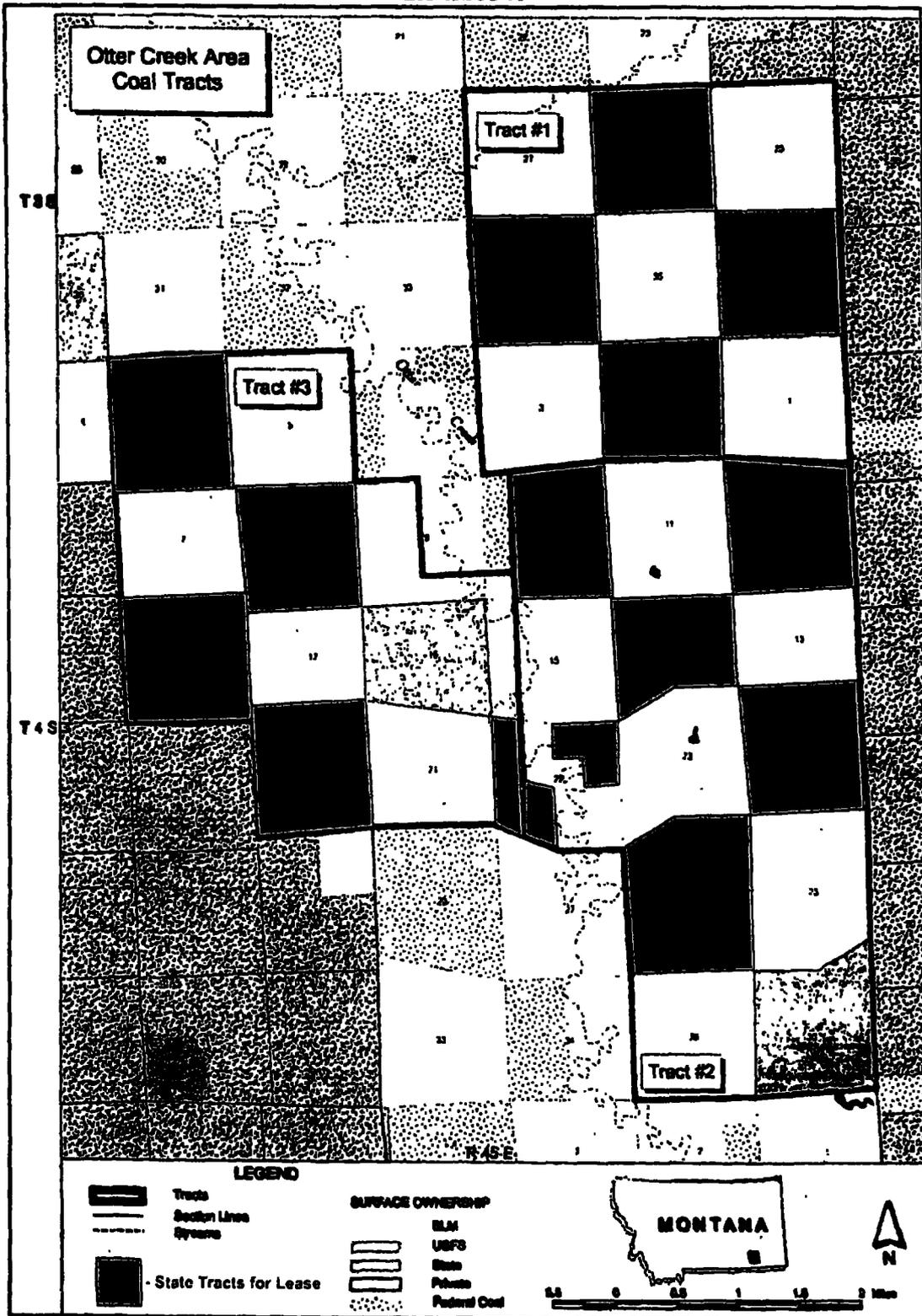


EXHIBIT B

Operating Plans

After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Montana State Board of Land Commissioners ("Board"), obtain Board approval of, and thereafter implement, the following written Operating Plans:

1. **Employment Program.** A written Employment Program designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Northern Cheyenne Reservation during the one-year period preceding their application for employment ("Indians") and to non-Indians who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County during the one-year period preceding their application for employment ("Other Local Residents"), to the extent such Indians and Other Local Residents are qualified and available and reside no more than 50 road miles from the Operations. The Employment Program shall address recruitment, training, hiring, promotion, reductions in workforce and termination for cause, in all categories of employment, and shall include:

- a. Programs for recruitment of Indians and Other Local Residents.
- b. Programs for training Indians and Other Local Residents, including entry-level training, on-the-job training, and training for advancement into supervisory positions.
- c. Preservation of the project operator's authority to establish reasonable, even-handed and job-validated training programs, employment criteria, and work rules for all project employees including Indians and Other Local Residents.

- d. Workshops for other project workforce to develop an awareness of relevant Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.
- e. A requirement that contractors and subcontractors engaged in Operations assume and comply with all terms and conditions of the Employment Program reasonably adaptable to their own employment practices.
- f. Notification to any involved labor union of the existence of the Employment Program and the project operator's duty and intent to abide by its terms, and accommodation of the Employment Program in any union collective bargaining agreement covering Operations.
- g. Employment by the project operator of a Facilitator, who shall be a qualified and available enrolled member of the Tribe approved by the Northern Cheyenne Tribal Council and acceptable to the project operator, whose principal and primary duties shall be to: (a) serve as liaison between the project operator and the Tribe with respect to the Employment Program and the Contracting Program established under section 2 below; (b) assist in facilitating the successful implementation of the Employment Program and Contracting Program; and (c) assist in resolving any problems which may arise in implementing the Employment Program or Contracting Program.
- h. A board of Administrators, consisting of equal numbers of Administrators separately designated by the Tribe and the project operator, which shall monitor compliance with and serve as a forum to discuss and resolve by agreement any disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program.

2. Contracting Program. A written Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members ("Tribal Contractors"), to obtain contracts and subcontracts for services or goods in the conduct of Operations at competitive prices. The Contracting Program shall include:

- a. A certification procedure under which a business entity applying for the status of Tribal Contractor must seek certification from the Administrators in the following two respects:
 - i. as majority-owned and controlled by the Tribe or Tribal Members; and
 - ii. as capable of competently providing particular kinds of contract services or goods.
- b. Notice to certified Tribal Contractors of Operations contracts and subcontracts to be awarded for which they are qualified.
- c. A requirement that project contractors and subcontractors involved in Operations assume and comply with all terms and conditions of the Contracting Program reasonably adaptable to their own project contracting activities.

3. **On-Reservation Conduct.** A written On-Reservation Conduct Program designed to encourage employees and truckers involved in Operations, while on the Northern Cheyenne Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.

4. **Environmental Monitoring.** To the extent not independently required by applicable federal or State environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Northern Cheyenne Reservation which may be affected adversely by Operations, including:

- a. Baseline monitoring for at least one year before the initiation of any surface disturbing Operations.
- b. Ongoing monitoring thereafter throughout the conduct of Operations, and thereafter until the completion of all required reclamation on the lands on which Operations were conducted and the release of all related reclamation bonds by regulatory agencies.

- c. **Training and employment of qualified and available Indians to assume responsibility, to the fullest extent feasible, for the operation of the monitoring programs on the Reservation.**
- d. **In addition, full compliance by the project operator with all applicable federal and State environmental laws and regulations.**

5. Cultural Resources. To the extent not independently required by applicable federal or State law or regulations, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significance, in the conduct of Operations, including:

- a. **A program carried out in consultation with the Tribe, to identify, record, and protect, in accordance with Northern Cheyenne standards and protections, all Northern Cheyenne historic, cultural, religious and burial sites on the lands covered by the Lease.**
- b. **Re-burial, in consultation with the Tribe and in accordance with all Northern Cheyenne standards, of all Northern Cheyenne human remains and funerary objects jeopardized or disturbed by Operations.**
- c. **In addition, full compliance by the project operator with all applicable federal and State laws and regulations that protect Northern Cheyenne historic, cultural and religious interests and values implicated by Operations.**

* * * *

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Oas/Cash-Settlement/AGB-Enb-D-Res-104-2-15-02:
0065.00642

DESCRIPTION OF TRACTS OFFERED
ALL TRACTS ARE LOCATED IN POWDER RIVER COUNTY

The Department is offering the following fourteen state land parcels as a package, although separate leases will be issued for each tract. Recoverable coal reserves for the fourteen state land parcels is estimated to total 572.3 million tons. Your bid will be a total amount offered over and above the first year annual rentals as an up-front, one-time only, bonus payment.

-
1. Township 3 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less;
 2. Township 3 South, Range 45 East, Section 34: All – containing 640.00 acres, more or less;
 3. Township 3 South, Range 45 East, Section 36: All – containing 640.00 acres, more or less;
 4. Township 4 South, Range 45 East, Section 2: Lots 1, 2, 3, 4, S2N2, S2 – containing 637.48 acres, more or less;
 5. Township 4 South, Range 45 East, Section 6: Lots 6 - 17 (inclusive), SE4 – containing 625.71 acres, more or less;
 6. Township 4 South, Range 45 East, Section 8: Lots 1 - 8 (inclusive), E2 – containing 589.30 acres, more or less;
 7. Township 4 South, Range 45 East, Section 10: E2W2, E2 – containing 480.00 acres, more or less;
 8. Township 4 South, Range 45 East, Section 12: All – containing 640.00 acres, more or less;
 9. Township 4 South, Range 45 East, Section 14: Lots 1 - 8 (inclusive), W2 – containing 550.39 acres, more or less;
 10. Township 4 South, Range 45 East, Section 18: All – containing 640.00 acres, more or less;
 11. Township 4 South, Range 45 East, Section 20: Lots 1, 2, 3, 4, E2, E2W2 – containing 587.40 acres, more or less;
 12. Township 4 South, Range 45 East, Section 22: W2W2, E2SW4, N2NE4, SE4NE4 – containing 360 acres, more or less;
 13. Township 4 South, Range 45 East, Section 24: Lots 1 - 8 (inclusive), W2E2, E2W2 – containing 593.34 acres, more or less;
 14. Township 4 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less.
-

CC-001

**FIREPROOF
FILE**

Coal Mining Lease

THIS COAL MINING LEASE (the "Lease") dated as of the 12th day of November, 2009 (the "Lease Date"), by and between Great Northern Properties Limited Partnership, a Delaware limited partnership, with an address at 601 Jefferson, Suite 3600, Houston, TX 77002 (hereinafter "Lessor") and Ark Land Company, a Delaware corporation, with an address at One CityPlace Drive, Suite 300, St. Louis, Missouri 63005 (hereinafter "Lessee") (each a "Party" and sometimes hereinafter referred to as the "Parties").

WITNESSETH:

WHEREAS, Lessor owns and controls certain coal and surface properties located within a certain area in Powder River County, Montana outlined on the map attached hereto and made a part hereof as Exhibit A (the "Otter Creek Tracts Area");

WHEREAS, Lessor owns and controls the coal and surface properties within the Otter Creek Tracts Area more particularly described on attached Exhibit B (the coal and surface properties so described, together, the "Leased Premises," and the surface properties so described, separately, the "GNP Surface") and more particularly identified on the map attached hereto as Exhibit C.

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, all of the Leased Premises pursuant to and in accordance with the terms and conditions of this Lease.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Lessor and Lessee hereby agree as follows:

SECTION 1. LEASE FOR COAL MINING PURPOSES.

In consideration of the terms, conditions, and stipulations set forth to be performed and observed by Lessee, Lessor, acting on its own behalf, and with the intention of exercising any right, option or power held by it relating to the Leased Premises, does hereby demise, lease and let to Lessee, all of its right, title and interest in and to the Leased Premises, including, without limitation, all of its right, title and interest in and to the coal in, on and under the Leased Premises, for the purpose and with the exclusive right of exploring for, developing, delineating, mining, processing, transporting and marketing such coal (including without limitation all substances commingled or produced in association with coal, except and to the extent that such of those substances as have been previously reserved by or granted to others). All rights, titles and interests in and to the coal or surface properties located within the Otter Creek Tracts Area now owned or hereafter acquired by Lessor shall be deemed included in the Leased Premises and such surface properties included in the GNP Surface.

Subject to the limitations set forth in this Lease on the methods of mining, including those set forth in Section 6, and to the extent necessary, convenient or useful in the mining, excavating, processing, transporting and marketing any of the coal contained in, on or under the

Leased Premises, Lessor hereby grants to Lessee the right to mine, remove, transport, process and market the coal, and all other substances commingled or produced in association therewith (except and to the extent that such of those substances as have been previously reserved by or granted to others), in, on, or under the Leased Premises by deep, strip, surface mining, highwall mining and any other method of mining now or hereafter developed (except that Lessee shall not mine any coal by the auger method), together with any and all necessary or convenient mining rights, easements and privileges with respect thereto which are owned or controlled by Lessor, including, but not limited to, the free and uninterrupted right to (i) disturb, remove and utilize so much of the GNP Surface as is necessary, useful or convenient for Lessee's operations; (ii) use sand, water, and gravel on the Leased Premises; (iii) divert water courses; (iv) construct and operate in and under the Leased Premises tramways, roadways, haulways, water drainage courses, coal slurry pipelines, silt ponds, dams, sidetracks, switches, substations, buildings, processing plants, tipples, and any other improvements or structures necessary or convenient for the mining, storing, processing, and shipping of coal on and from the Leased Premises or any other properties; (v) haul, without charge, rent, or royalty, men, supplies, materials, and coal, including coal mined from Other Lands (as hereinafter defined), over, across, under, and through the Leased Premises; (vi) deposit on the GNP Surface any and all slate, coal refuse, water, overburden and other materials resulting from or produced in connection with the mining or processing of the coal on the Leased Premises or Other Lands (as hereinafter defined); and (vii) make such other use of the Leased Premises as shall be convenient for mine permitting or for exploring for, developing, delineating, mining, transporting, storage, processing, marketing or disposing of said coal, coal refuse, and byproducts from the Leased Premises and Other Lands (as hereinafter defined), all without any liability for damages to the surface, other strata, timber or other mineral deposits (except as expressly provided herein). In connection with the exercise of the foregoing rights, interests and estates, to the extent they are owned or controlled by Lessor, Lessor hereby permanently and irrevocably waives (i) any right it might have to subjacent or lateral support of any strata or surface over, under or around the Leased Premises, (ii) any prohibition of any kind against mining within any specified minimum distance of any boundary line between the Leased Premises and any adjoining properties, and (iii) any prohibition of any kind against disturbing the Leased Premises or otherwise conducting mining operations within any specified minimum distance of any occupied dwelling or other improvement of any kind on the Leased Premises. Lessor shall execute documents evidencing all such waivers upon request by Lessee; provided, however that the foregoing waivers shall not release Lessee from liability for any damage caused to any occupied dwellings by Lessee's operations. The waivers specified herein may be transferred by Lessee in connection with any permitted transfer of this Lease and for such purposes shall be deemed to run with the land. Lessor grants only such mining rights and privileges, as set forth above in this paragraph, as it owns, controls or possesses in connection with the Leased Premises.

SECTION 2. RESERVATIONS AND EXCEPTIONS.

There are hereby expressly excepted from this Lease and reserved to Lessor the following rights and privileges in and respecting the Leased Premises:

a. the right to enter upon the Leased Premises, and to drill, bore, excavate, cut, remove, develop, store, and market (or to lease or license to others said rights), all timber and minerals other than coal;

b. the right to construct and operate railroads, roads, structures, and appliances which may be necessary for the removal or processing of such timber and minerals other than coal, or to serve other properties of the Lessor;

c. the right and privilege of leasing to tenants the GNP Surface for the purposes of occupying, farming and ranching the GNP Surface or of constructing thereon such plants and appliances as may be needed for the removal or processing of timber and minerals other than coal or for any other purpose;

d. the right to grant and convey from time to time to any electric or other power, pipeline, gas, oil, mining, railroad or other company, so much of the Leased Premises as may be required by such company or companies for rights-of-way; and

e. all other rights, privileges, estates and interests not specifically granted, demised, leased or let to the Lessee under this Lease.

Provided, however, that the rights and privileges hereby in this Section 2 excepted and reserved shall be subject and subservient to Lessee's rights under this Lease and exercised by Lessor in such manner as to not interfere with, encumber or render more costly or difficult the exercise of Lessee's rights hereunder. The intention of the Parties is that the development and mining of coal shall be the primary and dominant use of the Leased Premises and all other uses shall yield thereto. Should the exercise by Lessor of the rights and privileges provided for in this Section 2 be deemed by Lessee, in the exercise of its reasonable discretion, to interfere with, encumber or make more costly the exercise of Lessee's rights hereunder, Lessee may provide notice to Lessor and Lessor shall immediately undertake commercially reasonable efforts to remove such interference or encumbrance.

SECTION 3. TERM.

3.1 Primary Term. The initial term of this Lease shall be for a period of 10 years from the Lease Date (the "Primary Term"). If, at the end of the Primary Term, coal is being commercially produced on a continuous basis (as described below) from any part of the Leased Premises or from Other Lands (as hereinafter defined), then the term of this Lease shall be automatically extended and shall continue for so long thereafter as such coal is being commercially produced on a continuous basis. For the purposes of this Lease, coal shall be deemed to be produced on a continuous basis from the Leased Premises or Other Lands (as hereinafter defined) unless and until a period of six (6) months elapses during which there is no commercial production of coal from the Leased Premises or Other Lands.

3.2 Extension. If, at the end of the Primary Term, coal is not being commercially produced on a continuous basis from any part of the Leased Premises or from Other Lands but the Lessee is taking Commercially Reasonable Steps (as defined below) toward the development of coal from the Leased Premises or from Other Lands, then no later than 90 days prior to the end of the Primary Term, Lessee shall have the right (exercisable at its option by written notice to Lessor) to extend the Primary Term for one (1) additional period of two (2) years (the two (2) year period, the "Extension") under the same terms and conditions provided herein by paying Lessor an extension fee of [REDACTED]. Such extension fee shall be paid at the time Lessee

exercises its option to extend the Primary Term and shall be non-refundable and non-recoupable against the Advance Minimum Royalty payments or the Base Royalty payments to be paid under this Lease as provided below.

If, at the end of the Extension, coal is being commercially produced on a continuous basis (as described above) from any part of the Leased Premises or from Other Lands (as hereinafter defined), then the term of this Lease shall be automatically extended and shall continue for so long thereafter as coal continues to be commercially produced on a continuous basis (as described above).

"Other Lands" shall mean all lands in the Otter Creek Tracts Area other than the Leased Premises. "Commercially Reasonable Steps" shall mean those practices, methods, procedures and activities that would reasonably be expected of a prudent operator seeking to develop coal of a scale similar to the Leased Premises and located in the western United States in the exercise of reasonable judgment in light of facts and circumstances then known and in a manner consistent with applicable law, safety and environmental protection including, without limitation, engaging in any and all state and/or federal permitting processes for the regulatory authorization to so develop the coal on the Leased Premises. Notwithstanding the foregoing, in the event the length of the primary term of any of the State of Montana Leases (as defined in the next sentence) is longer than ten (10) years, the length of the Primary Term of the Lease shall be automatically extended to match the length of the longest primary term of any of the applicable State of Montana Leases. "State of Montana Leases" shall mean one (1) or more coal leases issued by the State of Montana covering the State of Montana's coal lying in, on and under the Otter Creek Tracts Area.

In the event all the merchantable and mineable coal (as hereinafter defined) underlying the Leased Premises shall have been mined and removed from the Leased Premises pursuant to the provisions of this Lease, then this Lease shall cease and terminate upon the date when all such coal shall have been mined and removed, except for the performance of obligations or the satisfaction of liabilities to Lessor or third parties or respecting the Leased Premises that have accrued upon or prior to the termination and except for those obligations under this Lease which are stated to survive termination or which require performance after termination. The term "merchantable and mineable coal" as used in this Lease shall mean coal in, on and under the Leased Premises, which when reached in the prosecution of Lessee's operation hereunder, can be mined at a reasonable profit in the then prevailing coal markets by the use of machinery and methods which at the time are modern and efficient.

3.3 Condemnation. In the event the Leased Premises, or any portion or part thereof, or any easement on or interest in all or part of the GNP Surface shall be taken, damaged, or injured by the exercise of the right of condemnation or eminent domain, or any other legal proceedings or acts by federal, state, county, municipal, or other governmental, public, or quasi public authority, or by any corporation, person, or persons having lawful power and authority to exercise the right of condemnation, eminent domain or other legal proceeding (each, a "Condemnation Proceeding"), then:

a. Lessor will take the lead in directing the defense of the Condemnation Proceeding in consultation with Lessee, provided Lessor shall not be required to continue the

defense of the Condemnation Proceeding if Lessor reasonably determines that it would not be prudent to do so; and provided further that if Lessor so determines not to continue the defense of the Condemnation Proceeding, then Lessor shall notify Lessee in writing and Lessee may elect to take the lead in directing the defense of the Condemnation Proceeding in consultation with Lessor;

b. The costs of the defense of the Condemnation Proceeding shall be shared by the Lessor and Lessee in proportion to the value of their respective economic interest in the portion of the Leased Premises that is the subject of the Condemnation Proceeding;

c. If the defense of the Condemnation Proceeding is not successful, then this Lease shall terminate as to the portion of the Leased Premises that is the subject of the Condemnation Proceeding upon notice from one Party to the other Party, provided that if the portion of the Leased Premises taken in the Condemnation Proceeding renders the balance of the Leased Premises not to be capable of being further developed and mined on a commercially viable basis as reasonably determined by the Lessee, then upon notice from Lessee to the Lessor, this Lease shall terminate as to the entire Leased Premises;

d. Any final award resulting from a Condemnation Proceeding shall be: (i) first used to reimburse the documented costs of the Lessee and the Lessor in connection with the Condemnation Proceeding; and (ii) the balance shall be divided between the Lessor and the Lessee in proportion to the value of their respective economic interest in the portion of the Leased Premises that is the subject of the Condemnation Proceeding, except that if this Lease is terminated as to the entire Leased Premises as provided in paragraph c., the balance shall be divided between the Lessor and the Lessee in proportion to the value of their respective economic interest in the entire Leased Premises;

e. If there is a partial termination of this Lease as provided in paragraph c., Lessor shall have no obligation to refund any payments Lessee has made to Lessor, and the future payment obligations of the Lessee under Section 4 shall not be reduced; provided, however, should such partial termination render the amount of coal remaining under this Lease insufficient to fully recoup any existing or future Unreimbursed AMR Payments, Lessee shall be relieved from paying any further Base Royalty or Advance Minimum Royalty from and after such partial termination. If there is a termination of the Lease as to the entire Leased Premises as provided in paragraph c., Lessor shall have no obligation to refund any payments Lessee has made to Lessor, but the future payment obligations of the Lessee under Section 4 shall terminate; and

f. Any disagreement between the Parties concerning any term of this Section 3.3 shall be determined by arbitration in accordance with Section 10.

SECTION 4. EXECUTION BONUS AND ROYALTIES.

4.1 Execution Bonus.

[REDACTED]

4.2 Base Royalty. Lessee shall pay to Lessor, during the term of this Lease, a tonnage royalty for the coal mined or otherwise produced and sold from the Leased Premises during each calendar month of the term of this Lease, to be paid by Lessee on or before the 20th day of the month following the month during which the coal is mined or otherwise produced and sold from the Leased Premises as follows:

A base royalty ("Base Royalty") of [REDACTED] of the coal sales price ("Coal Sales Price.") The "Coal Sales Price" shall mean the total consideration received or charged by the Lessee in a bona fide arms-length sale of coal, F.O.B. mine, mined from the Leased Premises and determined in a manner consistent with the laws and regulations applicable to the determination of value for federally leased coal.

If the Lessee shall produce and not sell coal produced from the Leased Premises to an independent third party in an arms-length transaction, but rather, shall use or consume such coal itself, sell such coal to an Affiliate (as defined below in this paragraph), or sell such coal in other than an arms-length transaction, then the Coal Sales Price used to determine the Base Royalty on such coal shall be determined by a mechanism mutually agreeable to the Parties or in the absence of mutual agreement, by arbitration as provided in Section 10, in either case designed to produce a Coal Sales Price equal to the coal sales price then being paid and received for coal of like rank, grade, quality and quantity then being mined and sold under similar conditions from coal mines located in the Powder River Basin of southeastern Montana and northeastern Wyoming in a manner consistent with the laws and regulations applicable to the determination of value for federally leased coal in similar situations. A constructed coal sales price shall not be changed more often than once each Lease Year. For purposes of this Lease (other than Section 8), "Affiliate" shall mean any person, partnership, joint venture, corporation, limited liability company or other form of enterprise that directly or indirectly controls, is controlled by, is under the common control with Lessee or Lessor, as the case may be, and for this purpose "control" (and its derivatives) means possession, directly or indirectly, of the power to cause the direction

of the management and policies through ownership or voting securities, contract, statute or otherwise.

The term "coal" as used in this Lease shall include all ranks of coal from lignite through anthracite, as well as any low-coal content merchantable product that is sometimes sold and shipped under various trade names including, but not limited to, bone, coal, fuel and middlings. The term "ton" as used in this Lease shall mean a short ton of 2,000 pounds.

4.3 Weights. Lessee shall furnish to Lessor on or before the 20th day of each calendar month the railroad and truck scale weights showing the quantity of coal shipped from the Leased Premises and weights of coal, if any, otherwise produced or consumed on the Leased Premises or at the preparation plant or tipple during the preceding calendar month. Lessee shall keep accurate and correct books of account showing all coal mined or otherwise produced and sold, and all coal consumed or disposed of on, transported, or shipped from the Leased Premises or elsewhere, together with the correct weights and gross selling price thereof, to which books and records Lessor shall at all reasonable times have access for verification of statements to be furnished by Lessee.

Lessor, for like purposes, may request of any railroad company, trucking company or other agents transporting the products of the Leased Premises, to inspect its books and records, showing the weight and quantity of such products and pertinent information in relation thereto. Lessee shall reasonably cooperate with Lessor in requesting said carriers and other agents to show Lessor, or its agents, all such books and records and to furnish all such information when requested. In addition, Lessee shall make commercially reasonable efforts to provide in any contract it may have with any railroad company, trucking company or other agent transporting the products of the Leased Premises, the inspection rights for the benefit of the Lessor as provided in this paragraph.

4.4 Commingling. In the event it shall be necessary in mining coal from the Leased Premises to load the same over a tipple or tipples over which other coal is loaded, thereby mixing the coal from the Leased Premises with other coal, Lessee shall keep a strict account of the tonnage of coal from the Leased Premises as well as a strict account of the tonnage of other coal being loaded over the same tipple or tipples. The method of determining these respective tonnages shall be approved in writing by the engineer of Lessor before other coal may be mixed with coal from the Leased Premises, provided such approval shall not be unreasonably withheld or delayed.

4.5 Advance Minimum Royalty.

[REDACTED]

4.6 Recoupment.

[REDACTED]

4.7 Payments. All payments due to the Lessor pursuant to this Lease shall be paid to Great Northern Properties Limited Partnership, 13044 Collections Center Drive, Chicago, Illinois 60693, or such other places or in such other manner as Lessor may from time to time designate in writing.

4.8 Lesser Interest. If Lessor owns or controls an interest in the coal underlying any tract of the Leased Premises which is less than the entire fee simple interest in the coal underlying such tract, whether or not this Lease purports to cover the whole or a fractional interest, the Execution Bonus, the Advance Minimum Royalty payments and the Base Royalty payments provided for in this Lease shall be paid to Lessor only in the proportion that Lessor's interest in the coal underlying such tract bears to the entire fee simple interest in the coal underlying such tract. Any royalty interest or other burden on production to which Lessor's interest is subject shall be deducted from the Base Royalty payments otherwise payable to Lessor. Similarly, if Lessor owns or controls the GNP Surface covered by this Lease which is less than the entire fee simple interest therein, whether or not this Lease purports to cover the whole or a fractional interest, Surface Stand-By Damage Payments (as later defined), and Surface Damage Payments (as later defined) provided for herein shall be paid to Lessor only in the proportion that Lessor's interest in such GNP Surface bears to the entire fee simple interest in such tract.

4.9 Books and Records. Complete books and records shall be kept by Lessee. Lessor shall have the full right of inspection and to audit, at its sole risk, cost and expense, of Lessee's books and records, either directly or by an accountant of Lessor's choosing, and full right of inspection of mining maps, weighing equipment and of the Leased Premises during reasonable business hours and after reasonable prior notice to Lessee, provided, however, that such physical inspections shall be conducted in a manner which shall not unreasonably hinder or interrupt the mining operations of Lessee and shall be limited to verifying the quantity and quality of coal mined and sold or otherwise consumed from the Leased Premises and the Coal Sales Price for such coal. If Lessor discovers a discrepancy between the amount of a Base Royalty payment reported and the amount of a Base Royalty payment that should have been reported, Lessor shall promptly notify Lessee of the perceived discrepancy in writing, together with a detailed description of such asserted discrepancy. At the request of either party, any such discrepancy perceived by Lessor shall be the subject of a prompt meeting, by phone or in person, between Lessor and Lessee at which meeting the Parties shall discuss the purported discrepancy and attempt in good faith to resolve any dispute concerning it. If it is ultimately determined that a Base Royalty payment was underpaid or overpaid, the next payment or payments, as necessary,

of Base Royalty payments shall be increased or reduced to correct such underpayment or overpayment.

SECTION 5. TAXES, INDEMNITY, INSURANCE.

5.1 Taxes. Lessor will, in the first instance, pay all the taxes, levies and assessments on or in respect of Lessor's ownership of the Leased Premises, and during the continuance of this Lease, Lessee shall pay to Lessor the full amount of such taxes, levies, and assessments, beginning with the pro rata share of those taxes, levies and assessments covering the calendar year in which the Lease Date occurs, promptly upon receipt of Lessor's statement therefor, such amounts to constitute and be treated as additional rental hereunder, provided that Lessee shall be required to reimburse Lessor for annual real property taxes and assessments applicable to the GNP Surface only as provided in Section 6.5. To the extent not duplicative of the taxes, levies and assessments referenced in the preceding sentence, for which Lessee shall be responsible by way of reimbursement, Lessee shall pay all taxes, assessments and other governmental charges, including, but not limited to, all *ad valorem*, property, excise, privilege, license, resource indemnity, net proceeds, gross proceeds and severance taxes, which may be levied or assessed by a governmental authority from the Lease Date through the end of the Period of Reclamation Activity, as defined in Section 12, against and upon: the Lessee's leasehold estate created by the execution and delivery of this Lease; improvements, machinery, equipment, tools or other personal property of Lessee installed or placed upon the Leased Premises; coal produced from the Leased Premises; and all activities or operations conducted by Lessee or on Lessee's behalf on the Leased Premises, including, without limiting the generality of the foregoing, mining operations, the production, extraction, severance or removal of coal, the processing, cleaning, storing, use or sale of coal, or the transportation thereof on or away from the Leased Premises. Lessee shall, at its option, either pay on Lessor's behalf or reimburse Lessor for any taxes which Lessor may be required to pay to the State of Montana on royalty received, provided, however, that nothing herein contained shall require Lessee to pay any part of any State or Federal taxes based on gross or net income imposed upon the Lessor. If Lessee shall elect to pay such taxes on Lessor's behalf, Lessee shall make timely payment of the same without allowing a delinquency to occur and shall provide prompt evidence of Lessee's payment of such taxes to Lessor. For clarity, Lessor's pro rata share of any Montana Resource Indemnity Tax or of any other Montana tax on coal production may not be deducted from any royalties or other amounts due to Lessor under this Lease.

Lessee may at any time during the continuance of this Lease, at its own cost and expense, and after reasonable notice to Lessor of its intention so to do, contest any of the taxes, levies, or assessments to be borne by Lessee as above provided. In the event of any such contest, Lessee is authorized to proceed in the name of Lessor with respect to the reversionary interest of Lessor in the Leased Premises, but Lessee shall indemnify Lessor against any costs, penalties, expenses (including reasonable attorneys fees), or interest charges arising out of such contest. In no event shall Lessee permit the Leased Premises or any portions thereof or title thereto to be lost as a result of the nonpayment of any such taxes, levies or assessments and, if requested to do so by Lessor, Lessee shall provide a bond or other security as Lessor may reasonably request to assure against Lessor's loss of the Leased Premises or any portion thereof or title thereto as a result of Lessee's contesting any taxes, levies or assessments.

Lessee shall submit to Lessor, for its review, a copy of any annual coal appraisal reports or returns prepared pursuant to laws or regulations in the State of Montana with respect to Lessor's ownership prior to their filing with any governmental agency.

5.2 Indemnity. Lessee agrees that it shall comply with all of the terms and provisions of the black lung laws (defined below) and will secure the payment of black lung benefits (defined below) as hereinafter provided. "Black lung laws" mean the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 901 et seq., and the Internal Revenue Code, 26 U.S.C. 1 et seq., Black Lung Benefits Reform Act of 1977 (P.L. 95-239), Black Lung Benefits Revenue Act of 1977 (P.L. 75-227), Black Lung Benefits Revenue Act of 1981 (P.L. 97-119), as now or hereafter amended, and all rules and regulations adopted pursuant thereto. "Black lung benefits" means any and all benefits payable pursuant to the black lung laws. Lessee acknowledges that, as between itself and Lessor, that Lessee is, and shall be deemed to be, the operator of any coal mine or coal preparation facility or facility used for the extraction, preparation or transportation of coal produced from the Leased Premises and of all related activities, including, but not limited to, coal mine construction or maintenance, engaged in by Lessee pursuant to the terms of this Lease with respect to any claim for black lung benefits filed by or on account of any of its employees or former employees. Lessee shall secure and shall require any other person or entity who operates, controls, or supervises a coal mine or coal preparation facility on the Leased Premises or performs services of construction, maintenance, transportation, or other activities related to coal mining or preparation under the terms of this Lease, or who otherwise may be liable for the payment of black lung benefits, to secure the payment of such black lung benefits to or on account of employees or former employees in accordance with the black lung laws and shall provide Lessor, upon request, with appropriate certification that each of them has provided security in compliance with all black lung laws for the payment of such black lung benefits. Without limiting the generality of Lessee's obligations to comply with all other provisions of this Lease, Lessee agrees that it will secure and guarantee the payment of all black lung benefits required to be paid under the black lung laws by reason of mining, construction, transportation, and related activities under this Lease, and Lessee does hereby agree that it will indemnify, defend and hold Lessor harmless from all claims, liability or expenses, including reasonable attorney fees and expenses, which Lessor may suffer directly or indirectly, as a result of or with respect to any claim for black lung benefits filed by or on account of any of Lessee's employees or former employees, or employees or former employees of others who may be required to secure the payment of black lung benefits as provided above.

Notwithstanding anything in this Lease to the contrary, this Lease does not empower Lessor to make any decisions and Lessor hereby expressly waives and disclaims any right to make any decisions with respect to the terms and conditions under which the coal on the Leased Premises is produced, mined or sold, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced at any particular time, all within the meaning of the black lung laws. The parties hereto do acknowledge, however, that Lessor has reserved certain rights and has imposed certain requirements under the terms of this Lease solely for the purpose of preventing waste and protecting the reserved rights of Lessor.

Lessee covenants and agrees to indemnify, defend and save harmless Lessor, its members and its and their members, partners (general and limited), shareholders, officers, directors, agents, employees, successors, Affiliates and assigns (collectively, including the Lessor, the

"Lessor Parties") from and against (a) any and all claims, liabilities, demands, actions or causes of action by or on behalf of any person, firm, corporation or governmental body for damages, injuries, deaths, penalties, fines, assessments or otherwise caused by, arising out of, resulting from or as a consequence of, in whole or in part, (i) any acts or omissions of Lessee, its officers, directors, employees, sublessees, contractors, subcontractors, licensees, invitees, engineers, agents, successors, assigns or parent or other Affiliates or any other persons or entities acting by direct or indirect authority of Lessee arising out of or related to the rights granted in this Lease or (ii) the use and enjoyment of the Leased Premises pursuant to this Lease and (b) any and all costs, attorneys' fees, expenses and liabilities incurred in or about any such claim or action brought thereon, all of which costs, attorneys' fees, expenses and liabilities shall be reimbursed to Lessor by Lessee immediately upon notification from Lessor to Lessee that the same have been incurred.

The term "Hazardous Materials" means petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "deleterious," "restricted hazardous waste" or "toxic substances," or words of similar import, under all Environmental Laws (as hereinafter defined). The term "Environmental Laws" means all statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, handling, release, discharge, storage or disposal of Hazardous Materials, including, but not limited to, the Federal Water Pollution Act, as amended (33 U.S.C. § 1251 et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et. seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et. seq.), and the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et. seq.). Lessee shall remove, remediate, clean up, remedy and/or repair, as applicable, any soil or ground water contamination resulting from the release or disposal of any Hazardous Materials caused by Lessee or Lessee's contractors, subcontractors, employees, agents, invitees or others on the Leased Premises with Lessee's authorization, in, on, under or about the Leased Premises as required by applicable Environmental Laws. If Lessee is in breach of this paragraph, or if a release of a Hazardous Material is caused or permitted by Lessee or its contractors, subcontractors, employees, agents, invitees or others on the Leased Premises with Lessee's authorization that results in contamination of the Leased Premises or any other properties, then Lessee shall indemnify, defend, protect and hold the Lessor Parties, harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities (including, without limitation, sums paid in settlement of claims), deficiencies, fines, penalties or expenses (including, without limitation, reasonable attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) which arise during or after the term of this Lease as a result of such breach or contamination. This indemnity shall include, without limitation, and Lessee shall pay all costs and expenses relating to: (x) any claim, action, suit or proceeding for personal injury (including sickness, disease or death), property damage, nuisance, pollution, contamination, spill or other effect on the environment; (y) any investigation, monitoring, repair, clean-up, treatment or detoxification of the Leased Premises; and (z) the preparation and implementation of any closure plan, remediation plan or other required action in connection with the Leased Premises, in each case of (x), (y) and (z), arising from the above-described actions of Lessee or its contractors, subcontractors, employees, agents, invitees or others on the Leased Premises with Lessee's authorization. All indemnification

obligations of the Lessee under this Lease shall survive the termination of this Lease for the period of the applicable statute of limitations or until final release of Lessee's environmental reclamation bonds required by any regulatory authority, whichever shall last occur.

5.3 Insurance. Lessee shall at its sole cost and expense, procure and keep in full force and effect, policies of commercial general liability insurance covering bodily injury and property damage with respect to the Leased Premises with a combined single limit of not less than [REDACTED] per occurrence for bodily injury and property damage and a general policy aggregate of [REDACTED]. Such insurance shall be written on an ISO occurrence form GL000121204 (or a substitute form providing equivalent coverage) and the coverage shall include but not be limited to the following: Premises Operations; Explosion, Collapse and Underground Property Damage; Underground Resources; Products and Completed Operations; Blanket Contractual (including broad form contractual liability coverage in support of the indemnifications of Lessor as provided in this Section 5, Paragraph B); Personal Injury; Broad Form Property Damage; Independent Contractors; and sudden and accidental pollution liability insurance. Such insurance shall be endorsed to include a per location aggregate. Lessor, its members and its and their members, partners (general and limited), shareholders, officers, directors, agents, employees, successors, affiliates and assigns shall be named as additional insureds. Such insurance shall be written on an "occurrence" basis unless the policy is available only on a "claims made" basis, in which case such "claims made" insurance coverage shall be maintained in effect for a period of at least five (5) years after the termination of this Lease, or until final release of Lessee's environmental reclamation bonds required by any regulatory authority, whichever shall last occur. This insurance will be primary to any other liability insurance coverage that Lessor may have or that may be applicable for the benefit of Lessor.

Lessee further covenants and agrees that all employees of Lessee and/or any and all other persons performing work on the Leased Premises pursuant to the rights granted in this Lease will be fully covered by or insured at all times by Statutory Workers' Compensation Insurance Coverage in compliance with all applicable Workers' Compensation laws, rules and regulations of the State of Montana. Such policy shall be endorsed to include coverage under the Federal Coal Mine Health and Safety Act. Lessee shall also maintain Employers Liability Insurance covering all liability arising as a result of bodily injury, accident, disease, illness or death, sustained by an employee or contractor arising out of or in the course of employment for the Lessee with a limit of not less than [REDACTED] per accident and [REDACTED] per employee for disease.

Lessee further covenants and agrees to keep all buildings, plants, and improvements upon the Leased Premises, as well as those on the adjacent premises, that are constructed for the processing, treatment or loading for shipment of coal mined from the Leased Premises or from Other Lands, insured during the term of this Lease by responsible insurance companies in an aggregate sum of not less than the full replacement value without deduction for depreciation designating Lessor and Lessee as the loss payees as their interest may appear provided that in case of any loss any sum received by Lessor on account of the insurance shall be expended, if required by Lessee, in rebuilding or repairing the improvements destroyed or damaged, or in erecting upon the Leased Premises such other improvements for use in Lessee's operations as Lessee and Lessor may agree upon.

Lessee further covenants and agrees to provide automobile liability insurance with a combined single limit of not less than [REDACTED] per occurrence for bodily injury and property damage. Such policy shall be endorsed to provide coverage for owned, non-owned and hired vehicles utilized by Lessee.

The Lessee may purchase excess or umbrella liability insurance policies to satisfy the limits of coverage for any of the insurance policies required herein.

All insurance coverage required herein shall be placed with financially sound insurance carriers and shall be provided during the term of this Lease, during the Period of Reclamation Activity pursuant to Section 12 and during the period after termination of this Lease as provided in the first paragraph of this Section 5.3.

All insurance coverage other than Workers' Compensation shall name Lessor as an additional insured. Lessee shall obtain a waiver of subrogation in favor of the Lessor under all insurance coverage described above, including Workers' Compensation. Before any activities are performed on the Leased Premises under this Lease, Lessee agrees to provide the Lessor with certificates of insurance reflecting the coverages and terms required above. Lessee shall provide immediate notice in the event that any insurance required under this Lease is cancelled or subject to a material change and, in addition, Lessee shall use commercially reasonable efforts to attempt to cause all insurance required by this Lease to be endorsed to require the insurance company to give the Lessor at least thirty (30) days' prior written notice of any cancellation or material change. The failure of the Lessor to demand such certificates or other evidence of full compliance with these insurance requirements or the failure of the Lessor to identify a deficiency from the evidence that is provided shall not be construed as a waiver of the Lessee's obligations to maintain such coverage.

SECTION 6. METHOD OF OPERATION.

6.1 Mining. Lessee covenants and agrees that when it commences mining or operations under this Lease it will thereafter diligently prosecute its mining and operations hereunder utilizing modern mining equipment suited for the prevailing mining conditions so as to develop the coal herein leased in a commercially reasonable manner and to conduct such operations in a careful, skillful, and workmanlike manner, and in compliance with the present and any future laws of the State of Montana and of the United States, and also according to the rules and practices of good mining and with due regard for the value of the Leased Premises as a coal producing property.

6.2 Minimum Work Program. Lessee will commit to a work program on the Leased Premises with a minimum expenditure of [REDACTED] per Lease Year, for a period of five (5) years following the Lease Date and at least [REDACTED] per Lease Year thereafter. Within 120 days following the end of each Lease Year, the Lessee shall provide Lessor an accounting of Work (as later defined) performed on the Leased Premises for such Lease Year. Any amount in excess of the minimum expenditure amount is referred to as the "Excess Amount" and any shortfall is referred to as the "Shortfall Amount"). Within 120 days following the end of each Lease Year, the Lessee shall pay to Lessor the amount, if any, equal to the Shortfall Amount for such Lease Year, less the sum of the Excess Amounts for all prior Lease Years (to the extent such Excess

Amounts have not been previously applied against a Shortfall Amount). For purposes of calculating the minimum expenditure, the Lessee may only include costs for work directly attributable to the Leased Premises. Work to be performed on the Leased Premises may include, without limitation, environmental baseline studies, exploration drilling, initiation of permitting and all permitting actions, acquisition of surface rights and access rights over or to the Leased Premises, title curative actions, market studies, compiling mine economics, preparation of feasibility studies and any other works, study or verifiable third party expense required to commence operations for the mining of coal on the Leased Premises (collectively, the "Work"). In the event any of the Work is conducted by Lessee's employees, the actual verifiable salaries, wages and personal expenses of Lessee's employees either temporarily or permanently assigned to the development and operation of the Leased Premises may be included in the minimum expenditure. Lessee shall not include any internal overhead of any nature in calculating the minimum expenditure. If it is anticipated that the Work conducted by Lessee's employees will exceed 50% of the minimum expenditure, the Lessee will seek Lessor's approval for such amounts over 50%. In addition, taxes and assessments Lessee pays shall not be included in calculating the minimum expenditure. Subject to reasonable confidentiality, copies of all analyses, data and other information produced or compiled as a result of Lessee's work program on the Leased Premises will be provided to Lessor within 120 days after the end of each Lease Year.

6.3 Compliance with Laws. Lessee shall be solely responsible for complying with all present and future laws and governmental regulations, including Environmental Laws and regulations, impacting on or controlling mining, reclamation and related operations on the Leased Premises, which responsibility shall survive termination of this Lease. If, as a result of Lessee's operations hereunder, laws or governmental regulations are violated, or are claimed to be violated, then Lessee shall indemnify the Lessor Parties and hold them harmless from any claims, liability, causes of action, penalties, fines, costs, and expenses, including attorneys' fees and court costs, imposed upon or incurred by the Lessor Parties as a result of said claim, action, violation or violations.

Notwithstanding Lessee's obligation to comply with all laws, rules, regulations and orders as set forth above, Lessor shall not declare a default hereunder solely as a result of one (1) or more operational violations which Lessee cures or abates as promptly as practical. Lessee shall be solely responsible for treatment of any water discharge caused by its operations, if required by present or future law or regulation, which responsibility shall survive termination of this Lease.

6.4 Permits, Mine Plans, Mining Engineer, Duties. Lessee shall provide Lessor a permit map as a matter of information, in AutoCAD format or other digital format acceptable to the Parties for any coal seams being permitted on the Leased Premises at the time of permit submittal and at the time of any revisions and amendments thereof.

Lessee acknowledges that Lessor holds the Leased Premises for the purpose of maximizing the royalty revenue generated therefrom and agrees that it will work and mine the coal in a careful, skillful and workmanlike manner with due regard for said purpose and in accordance with general and detail maps and plans of mining and descriptions to be prepared by Lessee (hereinafter collectively called "Mine Plans") and will submit a copy of same to the

Lessor in a AutoCAD or other digital format acceptable to the Parties. The Mine Plans shall take into consideration the entire area proposed to be developed by Lessee, and shall make suitable provisions for the reasonable and proper removal of all the mineable and merchantable coal from the Leased Premises. No Mine Plan shall be proposed which, if adopted, would render otherwise mineable and merchantable coal unmineable or unmerchantable or substantially more difficult or expensive to mine. The Mine Plans shall be submitted to the Lessor at least thirty (30) days prior to the commencement of any operation on the Leased Premises. In the event Lessor determines that the Mine Plans submitted by Lessee fail to comply with any of the terms of this Lease, Lessor shall so notify Lessee, in which event Lessee will modify the Mine Plans to comply with the terms and conditions of this Lease. No material change in, modification of, or departures from any Mine Plans so approved shall be made in the development or operation of the mine or mines except pursuant to modified Mine Plans submitted by Lessee to Lessor for the purpose of allowing Lessor to determine that said modification complies with the terms of this Lease. Should a dispute arise with respect to Lessor's and Lessee's duties, rights, and obligations as identified herein, the dispute shall be referred to arbitration pursuant to and in accordance with Section 10 of this Agreement. Lessor's right to notify Lessee that proposed Mine Plans fail to comply with this Lease is a right reserved solely to protect Lessor's interest in the Leased Premises and to prevent waste and is not intended to give and shall not be construed to give Lessor any control over Lessee's operations. Lessor shall have no authority to determine the manner in which or the methods by which any of Lessee's mining operations are to be conducted, all of which shall be solely determined by Lessee, except to the extent the method of mining is limited by other provisions of this Lease.

During mining operations, the Lessee shall employ a competent mining engineer, duly registered in the State of Montana, who shall perform such surface and underground work on the Leased Premises as may be necessary to establish boundary and underground control, and will keep at the mine up-to-date, clear, accurate and detailed maps or drawings of workings, which maps or drawings shall be available for on-site inspection by Lessor at all reasonable times, subject to reasonable prior notice to Lessee. The following documents shall be furnished annually by the Lessee, no later than one hundred and twenty (120) days after the end of each Lease Year (subject to reasonable confidentiality restrictions): copies or reproductions of such maps and drawings related to the Leased Premises and Other Lands, leasehold and surface ownership/control data, current mine plans and amendments thereto, copies of all drill hole records, including logs of the holes and analysis of any samples taken, copies of any geological, geophysical, metallurgical and engineering progress reports, studies, assays and maps which have been prepared by or for the Lessee insofar as such records pertain to or concern the coal or coal mine on the Leased Premises and Other Lands.

6.5 Surface Damage. Lessee shall have the right to use, occupy and disturb so much of the GNP Surface as may be reasonably necessary, useful or convenient in carrying out the purposes of this Lease. As consideration for granting this right, Lessee shall pay Lessor as surface damage payments either a Surface Damage Stand-by Payment or a Surface Damage Payment (each as defined herein). Commencing on the Lease Date and on each anniversary thereafter as long as this Lease is in force and effect, Lessee shall pay to Lessor an amount equal to [REDACTED] per GNP Surface acre (the "Surface Damage Stand-by Payment,") with respect to GNP Surface acres not then currently being used, occupied or disturbed by Lessee. If Lessee elects to use, occupy or disturb any portion of the GNP Surface, Lessee shall

give Lessor one-hundred-eighty (180) days advance written notice (the "Advance Notice") identifying the portion of the GNP Surface Lessee intends to so use, occupy or disturb in its mining operations. The Advance Notice may be given at any time and from time to time with respect to any portion of the GNP Surface. Lessee shall, at the time it gives each Advance Notice, pay to Lessor an amount equal to [REDACTED] per GNP Surface acre (the "Surface Damage Payment") for each GNP Surface acre described in the Advance Notice. Such Surface Damage Payment shall be paid annually by Lessee to Lessor on or before each anniversary of the previous Surface Damage Payment for each GNP Surface acre that Lessee has so elected to use, occupy or disturb for so long as Lessee shall use, occupy or disturb such acre. In addition, for so long as Lessee is paying the Surface Damage Payment with respect to a GNP Surface acre, Lessee shall reimburse Lessor for the annual real property taxes and assessments applicable to the GNP Surface acre. Except as provided in Section 12, Lessee's obligation to make Surface Damage Stand-by Payments and Surface Damage Payments shall end upon termination of this Lease. The Surface Damage Payment shall not be required and Lessee shall not be obligated to make the Surface Damage Payment or to give the Advance Notice in connection with any exploration, prospecting, permitting, testing, surveying or other pre-mine construction activities or operations conducted by Lessee on the GNP Surface. It is the intent that the Surface Damage Stand-by Payments and the Surface Damage Payments made by Lessee to Lessor shall constitute full compensation for all damages arising from the use, occupancy or disturbance of GNP Surface; provided however, that (i) the payment of any Surface Damage Stand-by Payment or Surface Damage Payment shall not diminish or otherwise affect Lessee's obligation to pay its obligations under the last paragraph of Section 5.2, and (ii) in the event Lessee's operations on GNP Surface shall cause damage to structures, fixtures, machinery, equipment, other personal property, crops or water resources located upon or under the GNP Surface ("Damages"), such Damages shall be negotiated between the Parties. If the amount of Damages cannot be agreed, the amount shall be determined by arbitration in accordance with Section 10. In the event Lessee pays Surface Damage Payments or Surface Damage Stand-by Payments or their equivalent, to any other surface owner in the Otter Creek Tracts Area in an amount greater than what Lessor receives under this Lease, Lessee shall immediately increase the amounts being paid to Lessor to equal the highest amount being paid to any other surface owner in the Otter Creek Tracts Area.

6.6 Timber. Anything contained in this Lease to the contrary notwithstanding, the Lessee shall give notice in writing to the Lessor at least six (6) months prior to the start of any operations authorized herein which would require or result in the displacement or removal of commercially valuable trees or timber on the GNP Surface. The Lessor may, at its election, remove such trees or timber. Lessor shall complete any harvesting operations for trees or timber prior to start-up operations by Lessee. If Lessor does not remove such trees or timber within such six (6) month period, any damage or destruction thereof shall be deemed covered by the Surface Damage Payments described above.

6.7 Other Obligations of Lessor. Any royalty-like payment or other burdens or obligations based upon the production of coal or use of the Leased Premises for mining operations to which the Leased Premises is subject shall be the sole obligation of Lessor and Lessor shall indemnify, defend and hold harmless Lessee from and against any claims or liability based on such a burden or obligation.

6.8 Bypassed or Abandoned Coal. If it is found and reported to Lessee in writing by an agent of Lessor that in the progress of the work any areas of merchantable and mineable coal have been passed by or abandoned with the result that coal has not been mined and removed, which in accordance with accepted overburden/coal ratio criterion or in accordance with good mining practice should have been mined and removed, it shall be the duty of Lessee, upon written demand and notice by Lessor, to return as soon as possible to such areas and mine and remove the coal therefrom, or failing so to do, to account for the coal contained therein and pay a Base Royalty on such passed by or abandoned coal in the same manner as provided in Section 4 with the Coal Sales Price determined as if the passed by or abandoned coal had been sold in other than an arm's length transaction. Should a dispute arise with respect to Lessor's and Lessee's duties, rights, and obligations as identified in this Section 6.8, the dispute shall be referred to arbitration pursuant to and in accordance with Section 10 of this Lease.

6.9 Records; Inspection of Premises. Upon request of Lessor, Lessee shall make available for Lessor's inspection and copying any and all Lessee's correspondence with government agencies or departments which pertain to the Leased Premises, or to operations undertaken or to be undertaken under this Lease.

Upon reasonable prior notice to Lessee, Lessor, through its duly authorized agents, shall at all reasonable times at its sole risk, cost and expense, and in accordance with applicable safety rules, regulations and policies have the right to enter the Leased Premises, inspect the same, and have surveys made thereof to determine if all the terms and conditions of this Lease are fully complied with, and for these purposes to use freely the means of access to the Leased Premises and the workings thereof without hindrance, but in such manner as not unnecessarily or unreasonably to interfere with the operation thereof. Lessor agrees to indemnify, defend and hold harmless Lessee from and against any claims or liability arising out of or resulting from Lessor's exercise of rights under this paragraph.

SECTION 7. REMEDIES OF LESSOR.

Lessor shall have all of the rights and remedies, at law or in equity, granted by the laws of the State of Montana to collect all amounts due to Lessor under this Lease and to enforce the other obligations of the Lessee under this Lease.

Lessee shall be in default under this Lease if (i) Lessee fails to pay, on or before the day such payment is due, any payment required by this Lease to be paid and such failure continues for fifteen (15) days after written notice to Lessee of such failure from Lessor, or (ii) Lessee fails to keep or perform any covenant or condition, other than the payment of money, required to be kept or performed by Lessee under this Lease and the failure continues for sixty (60) days after written notice to Lessee thereof is given by Lessor, provided that Lessee shall not be in default if Lessee shall commence in good faith to remedy said failure within such sixty (60) day period and thereafter diligently pursues all commercially reasonable efforts to remedy the default as soon as is practicable. Upon default, Lessor may, at its option, terminate this Lease by notice to Lessee and re-enter upon and take possession of the Leased Premises and hold and possess the same as its absolute property free and clear of any claims of, by, or through Lessee, and pursue any and all other remedies available under the laws of the State of Montana for violation of any covenant or condition of this Lease, and all such remedies shall be deemed cumulative and not exclusive.

No action by Lessor pursuant to this Section 7 shall impair the right to payments due or accrued up to the time of termination and re-entry hereunder. If Lessee's default is the failure to pay any installment of the Execution Bonus, and Lessee fails to cure its default within the fifteen (15) day curative period or upon any termination of this Lease, then all unpaid installments of the Execution Bonus shall be accelerated and become immediately due and payable.

Notwithstanding the preceding paragraph, if Lessee disputes an allegation by Lessor of a breach of this Lease, the dispute shall be submitted to arbitration pursuant to Section 10, and if the arbitration award determines there is a breach, Lessor shall not have the right to terminate the Lease and re-enter the Leased Premises if Lessee pays all amounts owed within fifteen (15) days after the arbitration award is issued and if Lessee commences in good faith to remedy any breach, other than the payment of money, within sixty (60) days after issuance of the award and thereafter diligently pursues all commercially reasonable efforts to remedy the default as soon as is practicable.

All data in Lessee's possession or control, of every kind and description, which has not previously been delivered to the Lessor, relating to the Leased Premises, including but not limited to geologic and hydrologic data, reports, maps, logs, coal reserve information, title information, environmental studies and reports, mine maps, geotechnical data, isopach maps pertaining to overburden, sulfur, ash, sodium, heat content, and undamaged drill cores and other pertinent data relating to the Leased Premises and the coal underlying the Leased Premises shall be delivered to the Lessor within thirty (30) days after the termination or expiration of this Lease, provided that Lessor must bear all reasonable costs associated with the provision of such data to Lessor.

SECTION 8. ASSIGNMENT OR SUBLETTING

Except for a Permitted Transfer, as defined below, Lessee covenants and agrees that it will not sell, assign, sublease, mortgage, pledge or otherwise transfer or encumber (collectively a "Transfer" and the other party or parties to the Transfer a "Transferee") this Lease or any rights, interests or estates created by this Lease or all or any portion of the Leased Premises, either voluntarily or by operation of law, without having first obtained the written consent of Lessor, which may be arbitrarily withheld.

Provided, however, that the prohibitions in the preceding paragraph are subject to the following Permitted Transfers:

a. Any Transfer to an "affiliate" of Lessee herein is a Permitted Transfer, and for purposes of this Section 8 an entity is an "affiliate" if more than fifty percent (50%) of the equity interests and voting power of the entity to which this Lease is being transferred is owned or controlled by the same individual(s) or entity(ies) who owned or controlled more than fifty percent (50%) of the equity interests and voting power of Lessee on the Lease Date.

b. Any Transfer to a Reputable and Prudent Coal Mining Company is a Permitted Transfer. A "Reputable and Prudent Coal Mining Company" shall mean any entity, or its parent or affiliate that over the three (3) years immediately preceding the date of such Permitted Transfer (i) has produced not less than five (5) million tons of coal in the United

States, whether directly and/or indirectly through its wholly owned subsidiaries or contract miners or predecessor companies on an annualized basis; (ii) has not filed a voluntary bankruptcy proceeding or been declared a bankrupt; (iii) has not been blocked by any governmental authority from holding any necessary mining permits; (iv) has not had any leases for coal reserves terminated or forfeited as a result of uncured defaults under such leases and (v) has a net worth of \$250,000,000 or more on a consolidated basis.

c. Any Transfer to an exchange traded public company is a Permitted Transfer.

d. Any Transfer to a lender or group of lenders to Lessee wherein Lessee is pledging or encumbering its leasehold interest in this Lease as security for or in return for the loan and said loan or financing is in an amount in excess of \$10,000,000, is a Permitted Transfer; provided, however, that the lender may not subsequently Transfer such interests to any entity other than a Reputable and Prudent Coal Mining Company.

A "Transfer of Control" of Lessee or its permitted transferee (determined in accordance with the preceding provisions of this Section 8), either voluntarily or by operation of law, shall constitute a Transfer of the Lease under this Section 8. "Transfer of Control" as used in the preceding sentence shall include a Transfer of sufficient interests to vest more than fifty percent (50%) of Lessee's equity interests or voting power (or the equity interests or voting power in its permitted transferee) in persons or entities who are different than those persons or entities which directly own more than fifty percent (50%) of Lessee's equity interests or voting power (or with respect to a permitted transferee, those persons or entities which directly own more than fifty percent (50%) of the equity interests or voting power of such permitted transferee as of the effective date of such permitted Transfer.

Accordingly, a Transfer of Control shall have occurred whenever more than fifty percent (50%) of Lessee's equity interests or voting power (or the equity interests or voting power in its permitted transferee) shall become subject to the direct ownership of a person or entity or group of related persons or entities who are different than those persons or entities which directly own Lessee's equity interests or voting power on the Lease Date (or with respect to a permitted transferee, those persons or entities which directly own more than fifty percent (50%) of the equity interests or voting power of such permitted transferee as of the effective date of such permitted Transfer). Notwithstanding anything herein to the contrary, a Transfer of any or all of the voting power or equity interests in any parent entity that directly or indirectly owns Lessee shall not constitute a Transfer hereunder nor require Lessor's consent.

In the case of a Transfer to which Lessor has consented or which is a Permitted Transfer, Lessee will first obtain and present to Lessor a covenant of assumption by the Transferee, wherein such Transferee expressly agrees to and with Lessor to assume and be bound by all of the covenants, terms, conditions and provisions hereof to the same extent as if said Transferee had been named as the original Lessee.

Any such Transfer to which Lessor has consented or which is a Permitted Transfer shall not relieve Lessee from its obligations to comply with all the covenants, terms, conditions and provisions of this Lease, unless otherwise agreed in writing by Lessor. In the event Lessor consents to any Transfer, such consent shall not relieve Lessee and/or any Transferee from

securing Lessor's written consent to any further Transfer which is not a Permitted Transfer, nor shall any such consent be construed as a consent to any further Transfer, other than a Permitted Transfer, or as a waiver of any portion of this Section or of Lessor's rights hereunder.

Upon the occurrence of any such Transfer, which is not a Permitted Transfer, without the prior written approval of Lessor, Lessor shall have the option to terminate this Lease by serving written notice on Lessee of its election so to do.

Any direct or indirect Transfer or Transfer of Control in violation of this Section 8 shall be null and void and shall have no force or effect.

SECTION 9. WAIVERS AND RELEASES, ETC.

No waiver, release, modification, or amendment of any of the terms, conditions, or provisions of this Lease shall be valid or set up or relied upon by Lessor or Lessee, or offered by either of said parties in any judicial proceeding, arbitration proceeding or otherwise, unless the same is in writing duly exercised by Lessor and Lessee. The failure to exercise any right upon nonperformance shall not be construed as a waiver of the right to insist on subsequent performance of the terms and conditions hereof.

SECTION 10. ARBITRATION.

In the event of a disagreement or dispute between the parties hereto arising under or related to this Lease or Lessee's operations hereunder, including disagreements or disputes regarding matters requiring the mutual agreement or consent of the Lessor and Lessee under this Lease, such disagreement or dispute shall be submitted to three (3) competent and disinterested arbitrators in the following manner. The party desiring such arbitration shall select its arbitrator and give written notice thereof to the other party, and shall in such notice state precisely the matter or matters which it is proposed to bring before the arbitrators, and only the matters so stated shall be considered and decided by them. If the party receiving such notice shall fail to name an arbitrator within fifteen (15) days after notice as aforesaid has been given to it, the arbitrator named by the party giving such notice shall name and appoint an arbitrator for and in behalf of the party so in default, and the arbitrator so named and appointed shall have the same power and authority as if he had been appointed by such party. Prior to the appointment of a third arbitrator, as hereinafter set forth, each party shall submit to both arbitrators above-named a detailed statement of their last and final positions on the matters to be arbitrated within fifteen (15) days after the appointment of a second arbitrator. The arbitrators so chosen shall appoint a third arbitrator, and in the event they are unable to agree on such appointment, the appointment of the third arbitrator may be made by the Chief Judge of the Federal District Court for the District of Montana on the application of either of the parties hereto. The three (3) arbitrators shall immediately upon their selection hear and decide the question or questions submitted for arbitration and shall give to each of the Parties hereto reasonable notice of the time and the place in Billings, Montana of their meetings, and reasonable opportunity for the production of evidence. After hearing both parties, the arbitrators shall promptly make an award in writing upon the question or questions submitted and shall deliver a copy of such award upon each party hereto. In making their award, the arbitrators shall choose one (1) of the detailed statements submitted by the parties hereto as above set forth and shall not otherwise render any award. The

award of such arbitrators, or a majority of them, shall be final and binding upon the parties hereto, and the said arbitrators or a majority of them, shall, in their award and as a part thereof, decide by whom and in what proportion the costs of such arbitration shall be borne and paid and the amount of such costs. Neither party hereto shall have or enforce any right or remedy against the other in respect of any matter herein made the subject of arbitration, until such matter shall have been submitted to and decided by arbitration in the manner above provided, and then only in accordance with such decision in arbitration. The judgment on the award rendered by the arbitration may be entered in any court having jurisdiction. All arbitration shall be conducted in accordance with the Montana Uniform Arbitration Act and, to the extent not inconsistent with the Montana Uniform Arbitration Act, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In agreeing to the method of dispute resolution set forth in this arbitration clause, the parties specifically acknowledge that each prefers to resolve disputes by arbitration rather than through the formal court process. Further, each of them understands that by agreeing to arbitration each of them is waiving the right to resolve disputes arising or relating to this Lease in Court by a judge or jury, the right to a jury trial, the right to discovery available under the Montana Rules of Civil Procedure, the right to findings of fact based on the evidence, and the right to enforce the law applicable to any case arising or relating to this Agreement by way of appeal, except as allowed under the Montana Uniform Arbitration Act. Each of them also acknowledges that each has had an opportunity to consider and study this arbitration provision, to consult with counsel, to suggest modification or changes, and, if requested, has received and reviewed a copy of the Montana Uniform Arbitration Act.

SECTION 11. NOTICES.

All notices or other communications required or permitted by this Lease shall be in writing and shall be deemed given when personally served, or in lieu of such personal service, five (5) days after deposit in the U.S. Mail, first class, postage prepaid, certified, or on the next business day if sent by reputable overnight courier, provided receipt is obtained and charges are prepaid by the delivering party, or on the date of electronic receipt of transmission if sent by facsimile, provided that if such date is not a business day, then on the next business day. Any notice shall be addressed as follows:

To Lessee at:

**One CityPlace Drive, Suite 300
St. Louis, MO 63141
Attention: President
Phone: (314) 994-2700
Fax: (314) 994-2940
Email: dfinnerty@archcoal.com**

With copy to:

**One CityPlace Drive, Suite 300
St. Louis, MO 63141
Attention: General Counsel
Phone: (314) 994-2700**

Fax: (314) 994-2730
email: bjones@archcoal.com

and to Lessor at:

601 Jefferson, Suite 3600
Houston, TX 77002
Attention: Charles Kerr
Phone: 713-751-7590
Fax: 713-751-7591
Email: ckerr@gnplp.com

with copies to

601 Jefferson, Suite 3600
Houston, TX 77002
Attention: Wyatt Hogan
Phone: 713-751-7516
Fax: 713-751-7517
Email: whogan@nrplp.com

5260 Irwin Road
Huntington, WV 25705
Attention: Kevin Wall
Phone: 304-522-5757
Fax: 304-522-5401
Email: kwall@wpplp.com

Any party may change its address for purposes of this Section by giving notice of such change to the other party in a manner provided in this Section.

SECTION 12. RECLAMATION.

Lessee shall perform all activities necessary to reclaim and restore the Leased Premises as required by all applicable federal, state and local laws, rules, regulations, orders and ordinances and the period during which such activities occur on the Leased Premises, or on Other Lands shall be referred to as the "Period of Reclamation Activity." During the Period of Reclamation Activity, Lessee shall have full access to and control of the portions of the Leased Premises to which access is necessary or desirable to achieve the restoration or reclamation required to protect and secure release of its applicable bond commitments, all without undue interference from Lessor. During the Period of Reclamation Activity and until release of all of Lessee's reclamation bond(s) covering the Leased Premises or Other Lands, if any, Lessee shall

continue to pay Lessor either a Surface Damage Standby Payment or a Surface Damage Payment, as applicable, in accordance with Section 6.5 for those GNP Surface acres to which Lessee retains access and control in order to complete its reclamation and restoration obligations. Any Surface Damage Standby Payment or Surface Damage Payment, which was being paid prior to the termination of this Lease shall continue to be paid at the times provided in Section 6.5, and any Surface Damage Standby Payment and Surface Damage Payment not being paid prior to the termination of this Lease but which are required to be paid for the first time pursuant to this Section 12 shall be paid by Lessee to Lessor on or before the expiration of 90 days from and after the termination of this Lease, and annually thereafter on the same date until Lessee notifies Lessor in writing that access and control are no longer necessary. The terms and provisions of this Section 12 shall survive the forfeiture or other termination of this Lease. Lessee shall diligently pursue all of its obligations under this Section 12 and diligently complete those obligations.

SECTION 13. WARRANTY.

The Lessor, for itself, its successors and assigns, does hereby covenant and agree with the Lessee, subject to the exceptions and reservations herein set forth, subject to grazing leases, hunting rights, and other leases and licenses, as well as to easements and rights of way, as Lessor may previously have entered into or granted, and subject to such limitations, restrictions and defects in Lessor's title to the Leased Premises as were in existence at the time of Lessor's acquisition of title to the various tracts comprising the Leased Premises, that upon the payment of the rentals, royalties and other amounts due to Lessor under this Lease and the performance of all and singular the covenants and agreements aforesaid, said Lessee shall and may peaceably and quietly have and enjoy said Leased Premises for and during the term of this Lease, and for the purposes of this Lease, free from any hindrance by the Lessor, or any person or entity claiming by, through and under Lessor, its successors or assigns. Lessor warrants that all leases, licenses, hunting rights, easements and rights-of-way referenced in the preceding sentence to which Lessor is a party or of which it has knowledge are listed on Exhibit D attached hereto and that Lessor has provided Lessee with copies of all such leases, licenses, hunting rights, easements and rights-of-way. Lessor does not warrant generally its title to the Leased Premises but warrants only, subject to the matters set forth in the preceding sentences and subject to matters as to which Lessee has knowledge as of the Lease Date, that neither it nor anyone or entity claiming by, through and under the Lessor, has done any act to encumber the titles which it acquired to the various tracts comprising the Leased Premises since its acquisition of said tracts which would materially interfere with the operations of the Lessee hereunder.

SECTION 14. SUCCESSORS AND ASSIGNS.

All covenants, agreements, and conditions herein set forth to be performed by or on behalf of Lessor or Lessee shall bind their respective successors and assigns, whether so expressed or not, and shall inure to the benefit not only of Lessor and Lessee, but also the benefit of their respective successors and assigns, but this Section shall not be construed to modify the provisions of Section 8.

SECTION 15. REMOVAL OF PROPERTY.

Lessee, having performed all the terms and conditions of this Lease to be by it performed, and having mined all the merchantable and mineable coal herein demised shall, within six (6) months thereafter, remove any and all mobile mining equipment and personal property owned by Lessee, and shall remove from the GNP Surface any and all improvements, buildings, or other structures placed thereon by Lessee during the term hereof. If the Lessee shall fail to remove any of the mobile mining equipment and personal property described above within said six (6) months, then at Lessor's option the same shall thereupon be and become the absolute property of Lessor.

In the event this Lease is terminated for any reason prior to removal of all merchantable and mineable coal, all buildings, structures and improvements then affixed to the Leased Premises, at Lessor's option, shall be and become the property of Lessor, but mobile mining equipment and personal property of Lessee shall remain the property of Lessee; provided, however, that if the Lessee fails to remove the said mobile mining equipment and personal property within six (6) months after such termination of this Lease, then, at Lessor's option, the same shall thereupon be and become the absolute property of Lessor.

In the event Lessee acquires any surface or mineral rights or development rights within the Otter Creek Tracts Area not currently owned by Lessor, (collectively, "Other Property"), Lessor is hereby granted the right, upon any termination, assignment, subleasing, or any other surrender of any of the Other Property, if this Lease has terminated, or if Lessee intends to terminate or allow this Lease to terminate, to require Lessee, at Lessor's sole option and under conditions it reasonably deems acceptable, to assign, lease, sublease or otherwise transfer such of the Other Property as Lessor designates, provided that Lessor shall compensate Lessee for the fair market value of such designated Other Property. If, prior to the expiration of the State of Montana Leases, Lessee terminates, surrenders or otherwise abandons its rights with respect to any surface or mineral rights or development rights within the Otter Creek Tracts Area and if this Lease is terminated, at Lessor's sole option and under conditions it deems acceptable, Lessee shall assign all right, title and interest in and to the State of Montana Coal Leases to Lessor.

SECTION 16. TRANSPORTATION OF COAL MINED FROM ADJACENT TRACTS.

Lessee shall have the right (to the extent of Lessor's ownership) free of any charge or payment to transport foreign coal into, over or through the Leased Premises. For purposes of this Section, the term "foreign coal" shall mean any coal other than coal mined from the Leased Premises or any other properties under lease to Lessee from Lessor.

SECTION 17. ABSTRACT.

Lessee, at its option in its discretion, may record an abstract or memorandum of this Lease and Lessor shall cooperate in all respects to execute such abstract or memorandum. Lessor and Lessee may execute amendments to the abstract or memorandum in each instance as reasonably requested by Lessee.

SECTION 18. ENTIRE AGREEMENT; AMENDMENTS.

This Lease constitutes the entire agreement between the Lessor and Lessee respecting its subject matter. Any agreement, understanding, or representation respecting the Leased Premises or this Lease not expressly set forth in this Lease or in a subsequent writing signed by both parties, is null and void. This Lease shall not be modified or amended except in a writing signed by both parties. No purported modification or amendment, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct, or absence of a response to a unilateral communication, shall be binding on either party.

SECTION 19. GOVERNING LAW.

This Lease shall be governed by and interpreted in accordance with the internal laws of the State of Montana, not including a choice of laws rules that would cause it to be governed by the laws of another jurisdiction.

SECTION 20. PARTIAL INVALIDITY.

Should any provision of this Lease be held in a final and unappealable decision of a court of competent jurisdiction or by arbitration in accordance with Section 10 to be either invalid, void or unenforceable, the remaining provisions of this Lease shall remain in full force and effect and unimpaired by the holding.

SECTION 21. NO PARTNERSHIP.

Nothing contained in this Lease shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one (1) or more of the parties to this Lease.

SECTION 22. ATTORNEYS' FEES.

If either party brings any action or proceeding against the other (including any cross-complaint, counterclaim or third party claim) to enforce or interpret this Lease, or otherwise arising out of this Lease, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including reasonable attorneys' fees and accountants' fees, which shall be payable whether or not such action or proceeding is prosecuted to judgment. For purposes hereof, the term "prevailing party" includes a party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

SECTION 23. COUNTERPARTS.

This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

SECTION 24. CONSTRUCTION AND INTERPRETATION.

The headings of the sections of this Lease are not part of this Lease and shall have no affect upon the construction or interpretation of any part of this Lease. Unless the context requires otherwise, references in this Lease to sections, subsections or exhibits refers to the sections, subsections and exhibits of this Lease. Unless the context requires otherwise, references to a "party" or "parties" refers to Lessor or Lessee, or both, as the context may require. The word "including" shall be construed in its inclusive sense, and not in limitation, whether or not language of non-limitations (such as "without limitation") is used with reference thereto. All provisions of this Lease have been negotiated by Lessor and Lessee at arms-length. This Lease shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision of this Lease or by reason of the status of the respective parties as Lessor or Lessee.

SECTION 25. FORCE MAJEURE.

When used herein, "Force Majeure" means any cause beyond the control of the Lessee, which may include, without limitation, acts of God, acts of public enemy, insurrections, riots, labor disputes, fires, explosions, floods, interruptions to transportation of Coal including railcar or barge shortages, embargoes, orders or acts of civil or military authority or of any governmental body having jurisdiction and authority over the Lessee or the Leased Premises or Lessee's work force or Lessee's customers, market conditions, or other causes which prevent the mining or delivery of Coal or the acceptance, transportation or utilization of Coal by the Lessee or its customers. Subject to the notice provisions set forth below, in the event of Force Majeure, Lessee's obligations hereunder which are prevented by the Force Majeure, other than payment obligations, shall be suspended during the Force Majeure provided that (A) if occurring during the Primary Term prior to the first occurrence of commercial production, the period of the Force Majeure shall be added to the Primary Term provided that the Primary Term may not be extended by reason of one (1) or more conditions of Force Majeure for longer than a cumulative period of three (3) years; or (B) if occurring after the first occurrence of commercial production, this Lease shall not terminate as a result of the absence of coal production during the period of Force Majeure, and the period of Force Majeure shall be added to any time period within which production must be resumed in order for this Lease to remain in effect and the time period for the performance of any obligation of Lessee (other than a payment obligation) or for the exercise of Lessee's rights, provided that the additions to the time periods referenced in this clause (B) by reason of one (1) or more conditions of Force Majeure shall not exceed a cumulative period of three (3) years. Lessee shall give Lessor notice (i) of the Force Majeure within 20 days after the date the Lessee claims commencement of the Force Majeure, and (ii) promptly upon the end of the Force Majeure. Lessee shall diligently work to eliminate the effect of the Force Majeure.

SECTION 26. PARTIES' ORGANIZATION AND AUTHORITY.

Lessor warrants that: (i) Lessor is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware, and has authority to own and lease properties, conduct its business, and enter into this Lease and consummate the transactions contemplated hereby; and (ii) this Lease has been duly and validly authorized, executed, and delivered by or on behalf of Lessor and constitutes the valid and binding agreement of Lessor,

enforceable in accordance with its terms; the performance of this Lease and the consummation of the transactions contemplated herein and the fulfillment of the terms hereof, do not and will not result in a breach of any of the terms and provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, voting trust agreement, note agreement, lease, or other agreement or instrument to which Lessor is a party or by which Lessor or any of its property is bound, or under any rule or regulation or order of any court or other governmental agency or body applicable to Lessor or any of its properties, and no consent, approval, authorization, or order of any court or governmental agency or body has been or is required for the execution and delivery of this Lease, or for the consummation of the transactions contemplated hereby.

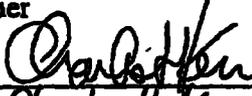
Lessee warrants that: (i) Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, and has authority to own and lease properties, conduct its business, and enter into this Lease and consummate the transactions contemplated hereby; and (ii) this Lease has been duly and validly authorized, executed, and delivered by or on behalf of Lessee and constitutes the valid and binding agreement of Lessee, enforceable in accordance with its terms; the performance of this Lease and the consummation of the transactions contemplated herein and the fulfillment of the terms hereof, do not and will not result in a breach of any of the terms and provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, voting trust agreement, note agreement, lease, or other agreement or instrument to which Lessee is a party or by which Lessee or any of its property is bound, or under any rule or regulation or order of any court or other governmental agency or body applicable to Lessee or any of its properties, and no consent, approval, authorization, or order of any court or governmental agency or body has been or is required for the execution and delivery of this Lease, or for the consummation of the transactions contemplated hereby.

IN TESTIMONY WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their respective representatives thereunto duly authorized, all as of the day and year first above written.

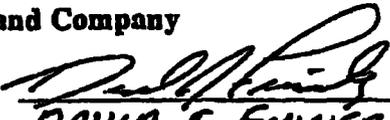
Executed in duplicate.

Great Northern Properties Limited Partnership

By: GNP Management Inc., its general partner

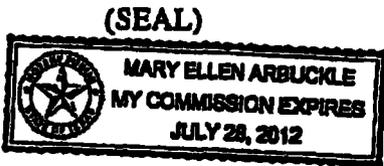
By: 
Name: Charles H. Kerr
Title: President

Ark Land Company

By: 
Name: DAVID J. FINNERTY
Title: President

STATE OF Texas)
County of Harris) : ss.

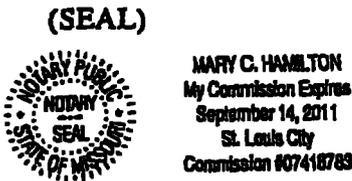
This instrument was acknowledged before me on the 18 day of November, 2009, by Charles H. Kerr, as President of GNP Management, Inc., which executed this instrument as the general partner of Great Northern Properties Limited Partnership.



Mary Ellen Ar buckle
Mary Ellen Ar buckle
[Type or Print Name]
Notary Public for the State of Texas
Residing at Houston
My Commission expires: 7/28/2012

STATE OF MISSOURI)
County of ST LOUIS) : ss.

This instrument was acknowledged before me on the 12 day of NOVEMBER, 2009, by DAVID J. FINNERTY, as PRESIDENT of Ark Land Company.



Mary C. Hamilton
MARY C. HAMILTON
[Type or Print Name]
Notary Public for the State of MO
Residing at ST LOUIS
My Commission expires: 9/14/2011



Hydrometrics, Inc.[®]
Consulting Scientists and Engineers

3602 Hesper Road
Billings, MT 59106
Ph: (406) 656-1172
Fax: (406) 656-8912
www.hydrometrics.com

July 14, 2010

Mr. Chuck Kerr, President
Great Northern Properties LP
601 Jefferson Street, Suite 3600
Houston, TX 77002

Re: Otter Creek

Dear Mr. Kerr:

Ark Land Company (Ark), an affiliate of Arch Coal, Inc., has leased certain coal reserves from Great Northern Properties LP (GNP) and the State of Montana at Otter Creek, Powder River County, Montana. Arch Coal Inc. has formed a new subsidiary, Otter Creek Coal LLC, to develop this coal reserve. Hydrometrics, Inc. of Billings, Montana, is assembling a Notice of Intent to Prospect on behalf of Otter Creek Coal, LLC on surface properties owned by Great Northern Properties LP and leased to Ark. These properties comprise some 4910.56 acres, and are enumerated in Exhibit B of the lease agreement between GNP and Ark dated November 12, 2009.

Prospecting activity will consist of environmental baseline studies, and subject to further permitting by the Montana Department of Environmental Quality (DEQ), installation of monitoring wells and exploration drilling.

DEQ rules at ARM 17.24.1018(4) specify that an owner of surface on which prospecting will occur must be notified that DEQ shall make investigations and inspections necessary to ensure compliance with the Montana Strip and Underground Mining Act, applicable rules and permit conditions. The purpose of this letter is to provide that notification.

Please contact Dave Simpson (406) 933-5384 or myself if there are any questions regarding this notification.

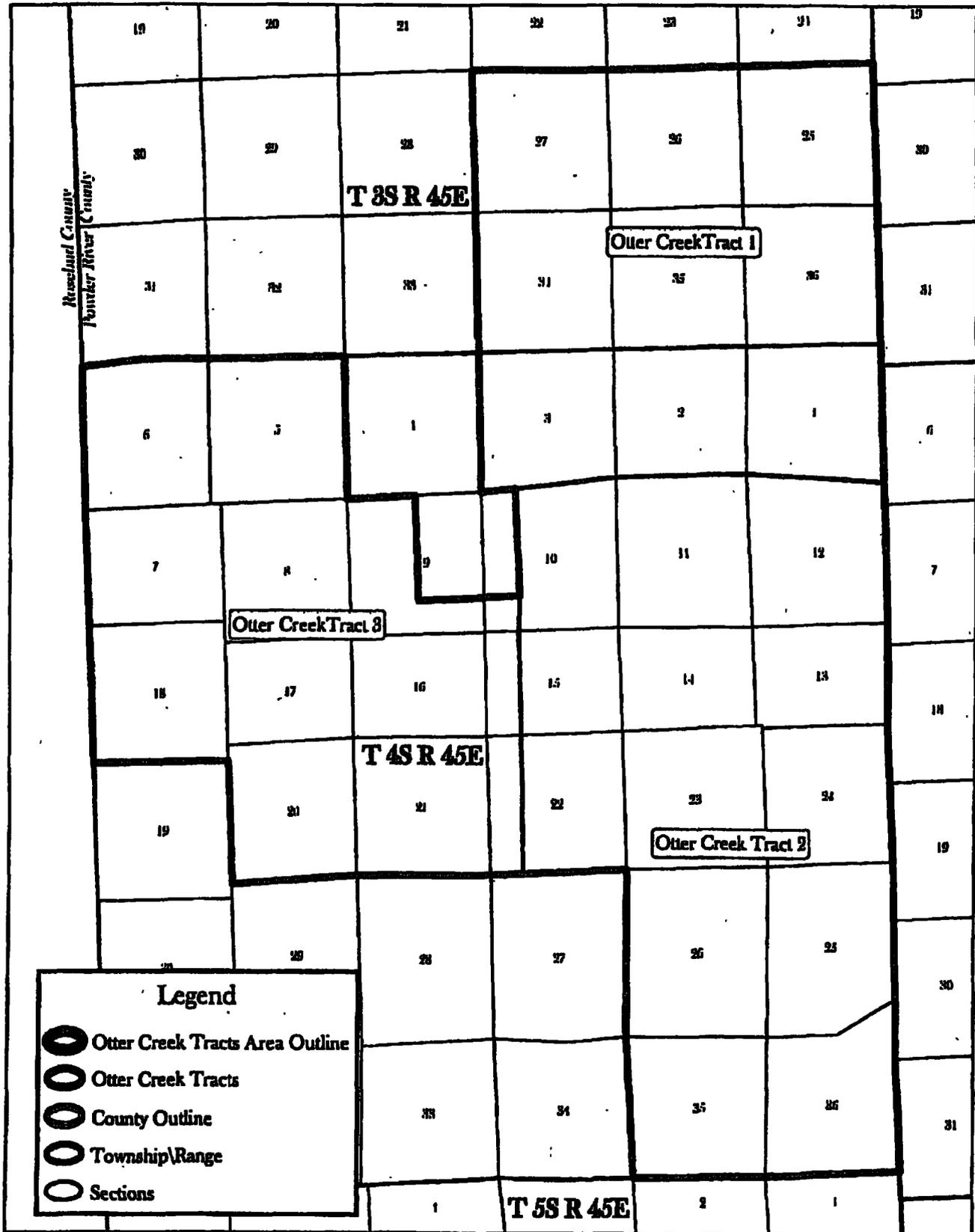
Sincerely,

Heidi J. Kaiser
Project Manager

- C. Mike Rowlands, Otter Creek Coal, LLC (via e-mail)
- Dave Simpson, Simpson and Associates, LLC. (via e-mail)

Exhibit A

Otter Creek Tracts Area



**EXHIBIT "B"
LEASED PREMISES**

COAL

Otter Creek Tract #1

Township 3 South, Range 45 East, Powder River County, Montana

Section 25:	All	640.00
Section 27:	All	640.00
Section 35:	All	640.00

Township 4 South, Range 45 East, Powder River County, Montana

Section 1:	Lots 1, 2, 3, 4, S/2N/2, S/2 (All Fri)	630.96
Section 3:	Lots 1, 2, 3, 4, S/2N/2, S/2 (All Fri)	627.96

Otter Creek Tract #2

Township 4 South, Range 45 East, Powder River County, Montana

Section 11:	All	640.00
Section 13:	Lots 1, 2, 3, 4, 5, 6, 7, 8, N/2 (All Fri)	597.01
Section 15:	E/2, E/2SW/4, NE/4NW/4	440.00
Section 15:	SE/4NW/4 (50% Coal)	40.00
Section 22:	SW/4NE/4, E/2NW/4	120.00
Section 23:	Lots 1, 2, 3, 4, W/2, W/2E/2 (All Fri)	674.24
Section 25:	Lots 1, 2, 3, 4, 5, 6, 7, 8, S/2 (All Fri)	647.97
Section 35:	E/2, E/2W/2, NW/4NW/4	520.00

Otter Creek Tract #3

Township 4 South, Range 45 East, Powder River County, Montana

Section 5:	Lots 1, 2, 3, 4, S/2N/2, S/2 (All Fri)	623.00
Section 7:	Lots 1, 2, 3, 4, S/2 (All Fri)	532.28
Section 9:	W/2, SW/4SE/4	360.00
Section 9:	SE/4SE/4 (50% Coal)	40.00
Section 10:	SW/4SW/4 (50% Coal)	40.00
Section 15:	W/2NW/4 (50% Coal)	80.00
Section 15:	W/2SW/4	80.00
Section 17:	Lots 1, 2, 3, 4, 5, 6, Fri E/2 (All Fri)	439.31
Section 21:	All	640.00

TOTAL COAL MINERAL ACRES	9,692.73
---------------------------------	-----------------

Exhibit "B" - Leased Premises

Page 2

LEASED PREMISES

SURFACE

Otter Creek Tract #1

None

Otter Creek Tract #2

Township 4 South, Range 45 East, Powder River County, Montana

Section 10:	S/2SE/4, SE/4SW/4	120.00
Section 13:	Lots 1, 2, 3, 4, 5, 6, 7, 8, N/2 (All Fr)	597.01
Section 14:	W/2	320.00
Section 15:	E/2, E/2SW/4, E/2NW/4	480.00
Section 22:	NE/4, E/2SW/4, Fr SE/4, E/2NW/4 Less 2.88 Ac Rd	467.00
Section 23:	Lots 1, 2, 3, 4, W/2, W/2E/2 (All Fr)	674.24

Otter Creek Tract #3

Township 4 South, Range 45 East, Powder River County, Montana

*Section 7:	Lots 1, 2, 3, 4, S/2 (All Fr)	532.28
*Section 18:	All	640.00
Section 20:	Lots 2, 3, 4, SE/4, S/2NE, SE/4NW/4, E/2SW/4	440.03
Section 21:	All	640.00

TOTAL SURFACE ACRES **4,910.56**

- * The surface rights owned by Lessor in Sections 7 and 18 are subject to a pre-existing and active Surface Estate Lease dated March 6, 1979 between Peabody Coal Company as Lessor, and Consolidation Coal Company as Lessee as further described on Exhibit D. During the period this Surface Estate Lease is in full force and effect as to any of the lands covered by such Surface Estate Lease, Lessee shall not be obligated to pay to Lessor, the Surface Damage Stand-by Payment provided in Section 6.5 of the Lease on such lands affected by such Surface Estate Lease.

Exhibit C

Leased Premises

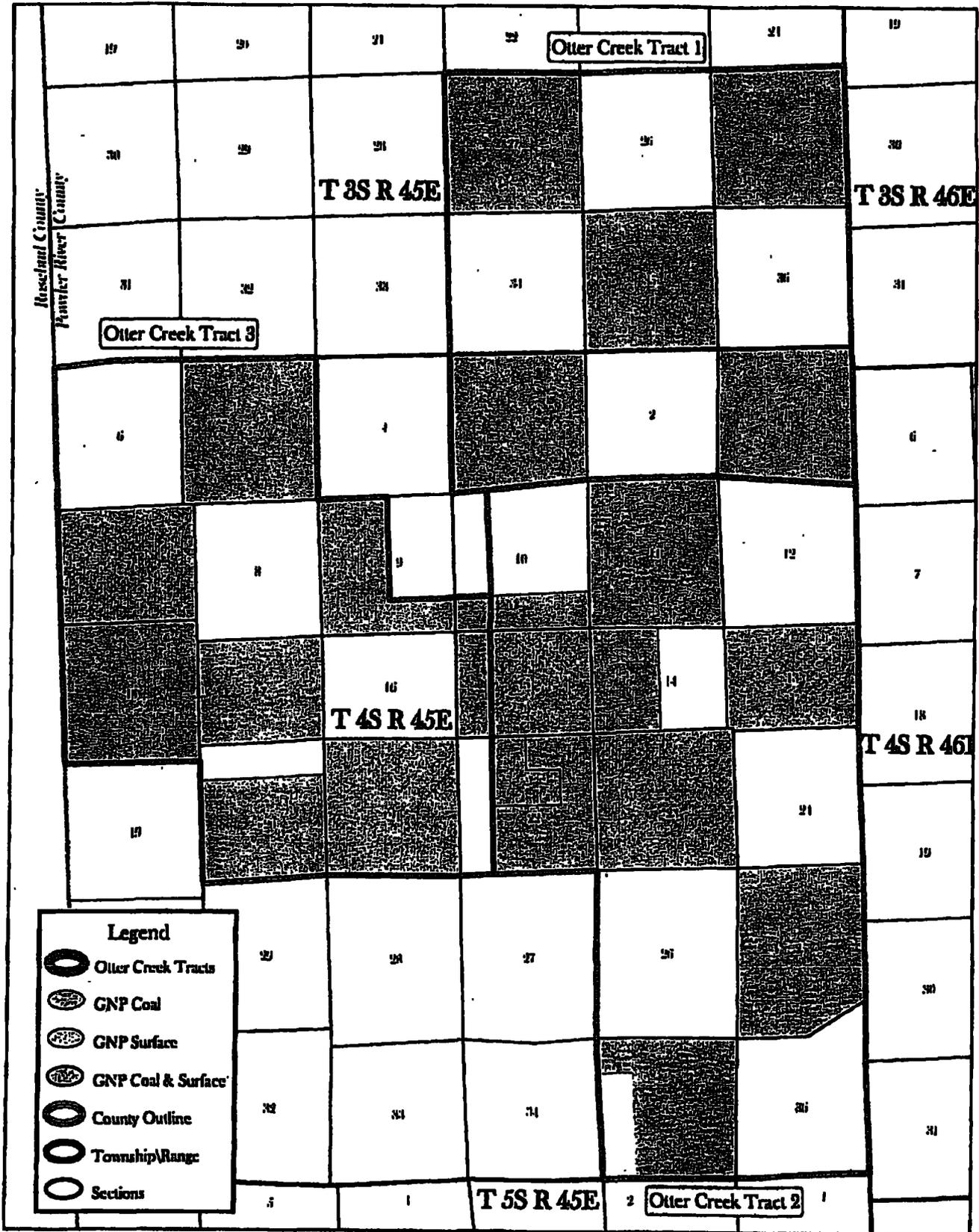


EXHIBIT "D"

**EXISTING LEASES, LICENSES, HUNTING RIGHTS, EASEMENTS AND RIGHTS-OF-WAY
ON THE LEASED PREMISES**

GREAT NORTHERN PROPERTIES LIMITED PARTNERSHIP AS LESSOR

<u>Lease #</u>	<u>Lessee</u>	<u>Lease Date</u>	<u>Expiration</u>	<u>Type</u>	<u>Legal Description</u>
MTSAO00052	Thane & Sandy Thomas	04-01-2006	03-31-2012	Grazing & Agricultural	4S-45E-07 All 4S-45E-15 E2SW 4S-45E-18 All 4S-45E-22 E2NW,W2NE & SENE
MTSAO00077	Keith & KP Stevens Inc	04-01-2006	03-31-2012	Grazing & Agricultural	4S-45E-10 S2SE,SESW 4S-45E-13 All Fr 4S-45E-14 W2 4S-45E-15 E2, E2NW 4S-45E-22 NENE
MTSAO00153	William & Karene McGregor	11-01-2005	10-31-2009	Tenancy	4S-45E-15 E2SW
MTSAO00179	Thane & Sandy Thomas	04-01-2008	03-31-2023	Grazing & Agricultural	4S-45E-22 E2SW,SE Fr 4S-45E-23 W2 4S-45E-27 NE,W2SE,W2 4S-45E-28 All
MTSAO00182	Roger & Lisa Gaskill	04-01-2008	03-31-2023	Grazing	4S-45E-20 Lots 2,3,4, SE E2SW,S2NE, SE 4S-45E-21 All 4S-45E-29 NE
MTLSO00003	Consolidated Coal Co.	03-06-1979	03-06-2019	Surface Lease	4S-45E-7 & 18 All
MTLSO00002	Consolidated Coal Co.	03-06-1979	03-06-2019	Coal Lease	4S-45E-9 SESE 4S-45E-10 SWSW 4S-45E-15 NWNW

GREAT NORTHERN PROPERTIES LIMITED PARTNERSHIP AS LESSEE

<u>Lease #</u>	<u>Lessee</u>	<u>Lease Date</u>	<u>Expiration</u>	<u>Type</u>	<u>Legal Description</u>
C-1076-08	Great Northern Properties	06-10-09	06-10-19	Coal Lease	4S-45E-36 All

OTHER

Miscellaneous unrecorded and local service easements for electricity and telephone.

Great Northern Properties LP Surface Lessees

**Thane & Sandy Thomas
Ashland, MT 59003**

406-784-6268

**Keith & KP Stevens Inc.
P. O. Box 91
Ashland, MT 59003**

406-784-2459

**William & Karene McGregor
P. O. Box 734
Ashland, MT 59003**

406-784-2732

**Roger & Lisa Gaskill
P. O. Box 555
Ashland, MT 59003**

406-784-2354

**Consolidated Coal Co.
CNX Center
1000 Consol Energy Drive
Canonsburg, PA 15317**

724-485-4518

MEMORANDUM NOTICE OF SURFACE ACCESS AND USE LICENSE AGREEMENT

NOTICE IS HEREBY GIVEN BY THIS MEMORANDUM (this "Memorandum"), that under and pursuant to a separate agreement entitled Surface Access and Use License Agreement ("Agreement") dated effective as of August 12, 2010 ("Effective Date"), by and between Keith and KP Stevens, Inc., a Montana corporation, having an address of P.O. Box 91, Ashland, Montana 59003 ("Owners") and Ark Land Company, ("Ark Land") with an address of One CityPlace, Suite 300, St. Louis, Missouri 63141, Owners have granted surface access and use to, and does hereby confirm a grant of surface access and use to, Ark Land of the following described lands located in Powder River County, Montana ("Lands"):

T3S, R45E M.P.M. Powder River County, MT

Section 22: S2, S2N2, N2NE4, NE4NW4, less 4.44 acres described as follows: Commencing at a quarter corner stone between Sections 15 and 22 T3S, R45E, P.M.M.; Thence South 01°01'16" West 198.5 feet to the South boundary of U.S. Highway #212 Right of Way and the true point of beginning; Thence South 89°3'03" West 375.0 feet; Thence South 00°30'47" East 516.0 feet; Thence North 89°03'03" East 375.0 feet; Thence North 00°30'47" West 516 feet to the point of beginning, containing 4.44 acres, more or less AND less 12.0 acres described as follows: That portion of the NW4 Section 22, T3S, R45E, P.M.M., described as follows: Beginning at a point on the South boundary of Montana Highway #212 which is 1276 feet East from the West boundary of Section 22; Thence East a distance of 792 feet parallel and adjacent to said South boundary; Thence South a distance of 660 feet parallel and adjacent to the West boundary of a 4.4 acres tract; Thence West a distance of 792 feet; Thence north a distance of 660 feet to the point of beginning, containing 12 acres, more or less.

Section 26: All

Section 27: All

Section 34: All

T4S, R45E M.P.M. Powder River County, MT

Section 3: All

Section 9: S2NE4, N2SE4

Section 10: S2N2, N2S2

Section 11: All

The Agreement contains the following principal terms among others:

1. Grant of Surface Access and Use. Owners have granted, and hereby confirm a grant to Ark Land, for the benefit of Ark Land and Otter Creek Coal, L.L.C. ("OCC"), of a license to enter upon, access, cross, use and occupy so much of the Lands as are needed to conduct environmental, wildlife, biological and geologic sampling, studying, monitoring, assessment and exploration drilling activities.
3. Term. Subject to the provisions of the Agreement, the Agreement is for a primary term of two (2) years from the Effective Date, provided that Ark Land may extend the Agreement for an

additional two (2) years and may further request an extension to complete restoration and reclamation activities.

4. Notice. All notices and other communications to either party shall be delivered as follows. Owners jointly and severally appoint Ross Denson, or his legally designated successor, as their agent for the purpose of receiving notices for their benefit under the terms of the Agreement.

If to Ark Land:

Ark Land Company
Attn: President
One CityPlace Drive, Suite 300
St. Louis, MO 63141
Telephone: (314) 994-2950
Fax: (314) 994-2940

If to Owners:

Keith and KP Stevens, Inc.
P.O. Box 91
Ashland, Montana 59003
Telephone (406)784-2459

5. Assignment. The Agreement is binding upon and shall inure to the benefit of the parties thereto and their respective permitted successors and assigns. Neither party shall assign the Agreement, or any rights or obligations therein, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Ark Land may assign the Agreement without consent to an affiliate or in connection with sale of all or substantially all of its assets held in conjunction with mining operations proposed for or conducted in the vicinity of the Lands.

6. No Waiver or Modification. This Memorandum is executed for the purpose of placing of record notice of the Agreement and the terms and provisions thereof. Nothing herein shall, nor shall it be interpreted to, amend, modify or waive any of the terms and conditions of the Agreement. All capitalized terms used in this Memorandum, not otherwise defined, shall have the meanings assigned in the Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be signed and executed.

OWNERS

Keith and KP Stevens, Inc.

By: *KP Stevens*
Title: *President*

ARK LAND

Ark Land Company

By: *[Signature]*
Title: *President*

STATE OF MONTANA)
County of Furber River) ss.

This instrument was acknowledged before me on this 10th day of August, 2012 by K.P. Stevens, known to me to be the PRESIDENT of KEITH AND K.P. STEVENS, INC., a Montana corporation.



GEORGE G. LUTHER, JR.
NOTARY PUBLIC for the
State of Montana
Residing at Missoula City, Montana
(Seal) Commission Expires
September 27, 2013

George Luther, Jr.
George Luther, Jr.
[Type, Stamp or Print Name]
Notary Public for the State of MT
Residing at Missoula City MT
My commission expires 9-17, 2013

STATE OF Missouri)
County of St. Louis) ss.

This instrument was acknowledged before me on this 19th day of August, 2012, by David J. Finerly, known to me to be the President of ARK LAND COMPANY, a Delaware corporation.



Carla A. Veizer
Carla A. Veizer
[Type, Stamp or Print Name]
Notary Public for the State of Missouri
Residing at St. Louis
My commission expires Oct 28, 2012

Simpson & Associates, LLC
P. O. Box 250
Clancy, MT 59634

406-933-5384

December 13, 2010

Mr. Chris Yde
Coal Program Supervisor
Industrial and Energy Minerals Bureau
Montana Department of Environmental Quality
P. O. Box 200901
Helena, MT 59620-0901

Re: Otter Creek Coal Project; NOI Update

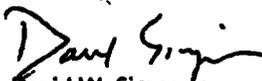
Dear Chris:

I herewith submit two copies of the following to update the Otter Creek Coal, LLC Notice of Intent to Prospect originally submitted July 20, 2010:

- Ross Denson Surface access Agreement.
- Revised Exhibit 3 Map showing updated Denson surface access.

Please contact me or Heidi Kaiser at Hydrometrics, Inc. if there are any questions regarding this NOI update.

Sincerely,


David W. Simpson

C. Heidi Kaiser (Via e-mail)



ARK LAND COMPANY

SCOTT L. KEHRER
Senior Property Analyst

VIA EXPRESS MAIL

November 30, 2010

Mr. George Luther, Jr.
Luther Appraisal Services, Inc.
P.O. Box 1745
Miles City, MT 59301-1745

**RE: Surface Access and Use License Agreement dated effective November 1, 2010 (the "Agreement"), between Ross Denson, Faye Denson & Robert Dennis Denson and Ark Land Company & Otter Creek Coal, L.L.C.
Ark File: OC-019**

Dear Mr. Luther:

Enclosed please find an original Memorandum of Surface Access and Use License Agreement, as referenced above, which I would ask that you please record in the Powder River County Recorder's Office.

Once you receive the recorded original, I would ask that you please forward to my attention.

If you have any questions, please feel free to contact me directly at the number or email below.

Thank you for assistance with this matter.

Sincerely,

Scott L. Kehrer

A Subsidiary of

ARCH COAL, INC.

MEMORANDUM OF SURFACE ACCESS AND USE LICENSE AGREEMENT

NOTICE IS HEREBY GIVEN BY THIS MEMORANDUM (this "Memorandum"), that under and pursuant to a separate agreement entitled Surface Access and Use License Agreement ("Agreement") dated effective as of November 1, 2010 ("Effective Date"), by and between Ross Denson, Faye Denson and Robert Dennis Denson, with an address of 11 Ten Mile Creek Road, Ashland, MT 59003 (collectively the "Owners"), and Ark Land Company, a Delaware corporation with an address of One CityPlace, Suite 300, St. Louis, Missouri 63141, and Otter Creek Coal, L.L.C., a Delaware limited liability company, with an address of 401 North 31st Street, Suite 770, Billings, Montana 59101 (collectively "Ark Land"), Owners have granted surface access and use to, and do hereby grant surface access and use to, Ark Land of the following described lands located in Powder River County, Montana ("Lands"):

Township 4 South, Range 45 East, M. P. M.
Section 25: Lots 1, 2, 3, 4, 5, 6, 7, 8, S½ (All)
Section 26: All
Section 35: All

The Agreement contains the following principal terms among others:

1. Grant of Surface Access and Use. Owners have granted, and hereby confirm a grant to Ark Land, for the benefit of Ark Land and Otter Creek Coal, L.L.C. ("OCC"), licenses to enter upon, access, cross, use and occupy so much of the Lands as are reasonably necessary to conduct environmental, wildlife, cultural and biological sampling, studying, monitoring, assessment activities on the Lands, and geologic and exploration drilling activities on a portion of the Lands, as defined in the Agreement.
2. Term. The Agreement is for a primary term of two (2) years from the Effective Date, provided that Ark Land may extend the Agreement for an additional two (2) years and may further extend the Agreement for an additional six (6) months to complete restoration and reclamation activities.
3. Notice and Agency. Owners jointly and severally appoint Ross Denson, or his legally designated successor, as their agent for the purpose of receiving and distributing the consideration and receiving notices as provided for under the terms of the Agreement. All notices and other communications to either party shall be delivered as follows.

If to Ark Land:

Ark Land Company
Attn: President
One CityPlace Drive, Suite 300
St. Louis, MO 63141
Telephone: (314) 994-2950
Fax: (314) 994-2940

If to Owners:

Ross Denson
11 Ten Mile Creek Road
Ashland, MT 59003
Telephone: (406) 784-6140

4. Assignment. The Agreement is binding upon and shall inure to the benefit of the parties thereto and their respective permitted successors and assigns. Neither party shall assign the Agreement, or any rights or obligations therein, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Ark Land may assign the Agreement without

10/28/2010

consent to an affiliate or in connection with the sale of all or substantially all of its assets held in conjunction with mining operations proposed for or conducted in the vicinity of the Lands.

5. No Waiver or Modification. This Memorandum is executed for the purpose of placing of record notice of the Agreement and the terms and provisions thereof. Nothing herein shall, nor shall it be interpreted to, amend, modify or waive any of the terms and conditions of the Agreement. All capitalized terms used in this Memorandum, not otherwise defined, shall have the meanings assigned in the Agreement.

6. Access By Montana Department of Environmental Quality. Owners understand and acknowledge that the Montana Department of Environmental Quality and certain other governmental agencies may from time to time enter the Lands for the purposes of reviewing and inspecting the Data Collection Activities as contemplated under this Agreement.

7. Miscellaneous. The rights granted to Ark Land under the Agreement shall run with the Lands.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be signed and executed.

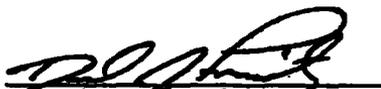
OWNERS

ARK LAND



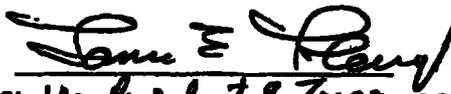
Ross Denson

Ark Land Company

By: 
Title: President
Otter Creek Coal, L.L.C.



Faye Denson

By: 
Title: Vice President & Treasurer



Robert Dennis Denson

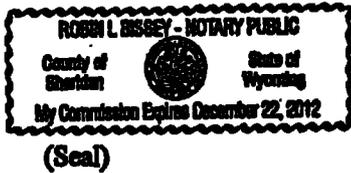
10/28/2010

STATE OF WYOMING)

: ss.

County of Sheridan)

Signed and acknowledged before me on this 9th day of November, 2010, by ROSS DENSON.



Robin L. Bissey
Robin L. Bissey

[Type or Print Name]

Notary Public for the State of Wyoming

Residing at Sheridan, Wyoming

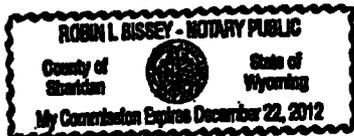
My commission expires Dec 22, 2012.

STATE OF WYOMING)

: ss.

County of Sheridan)

Signed and acknowledged before me on this 9th day of November, 2010, by FAYE DENSON.



Robin L. Bissey
Robin L. Bissey

[Type or Print Name]

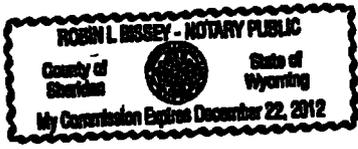
Notary Public for the State of Wyoming

Residing at Sheridan, Wyoming

My commission expires Dec 22, 2012.

WYOMING
STATE OF MONTANA)
: ss.
County of Sheridan)

Signed and acknowledged before me on this 9th day of November, 2010, by ROBERT DENNIS DENSON.



(Seal)

Robin L. Bissey
Robin L. Bissey

[Type or Print Name]

Notary Public for the State of Montana Wyoming

Residing at Sheridan, Wyoming

My commission expires Dec. 22, 2012

STATE OF Missouri)
: ss.
County of St. Louis)

This instrument was acknowledged before me on this 9th day of November, 2010, by David T. Finnerly, known to me to be the President of ARK LAND COMPANY, a Delaware corporation.

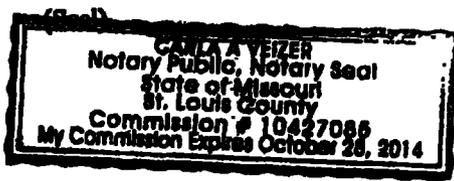
Carla A. Veizer
Carla A. Veizer

[Type or Print Name]

Notary Public for the State of Missouri

Residing at St. Louis County

My commission expires 10/28, 2014



10/28/2010

STATE OF Missouri)

: ss.

County of St. Louis)

This instrument was acknowledged before me on this 2nd day of November, 2010, by James E. Florczak, known to me to be the VP & Treasurer of OTTER CREEK COAL, L.L.C., a Delaware limited liability company.

Carla A. Veizer
CARLA A VEIZER

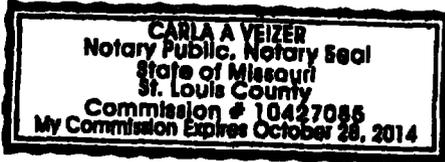
[Type or Print Name]

Notary Public for the State of Missouri

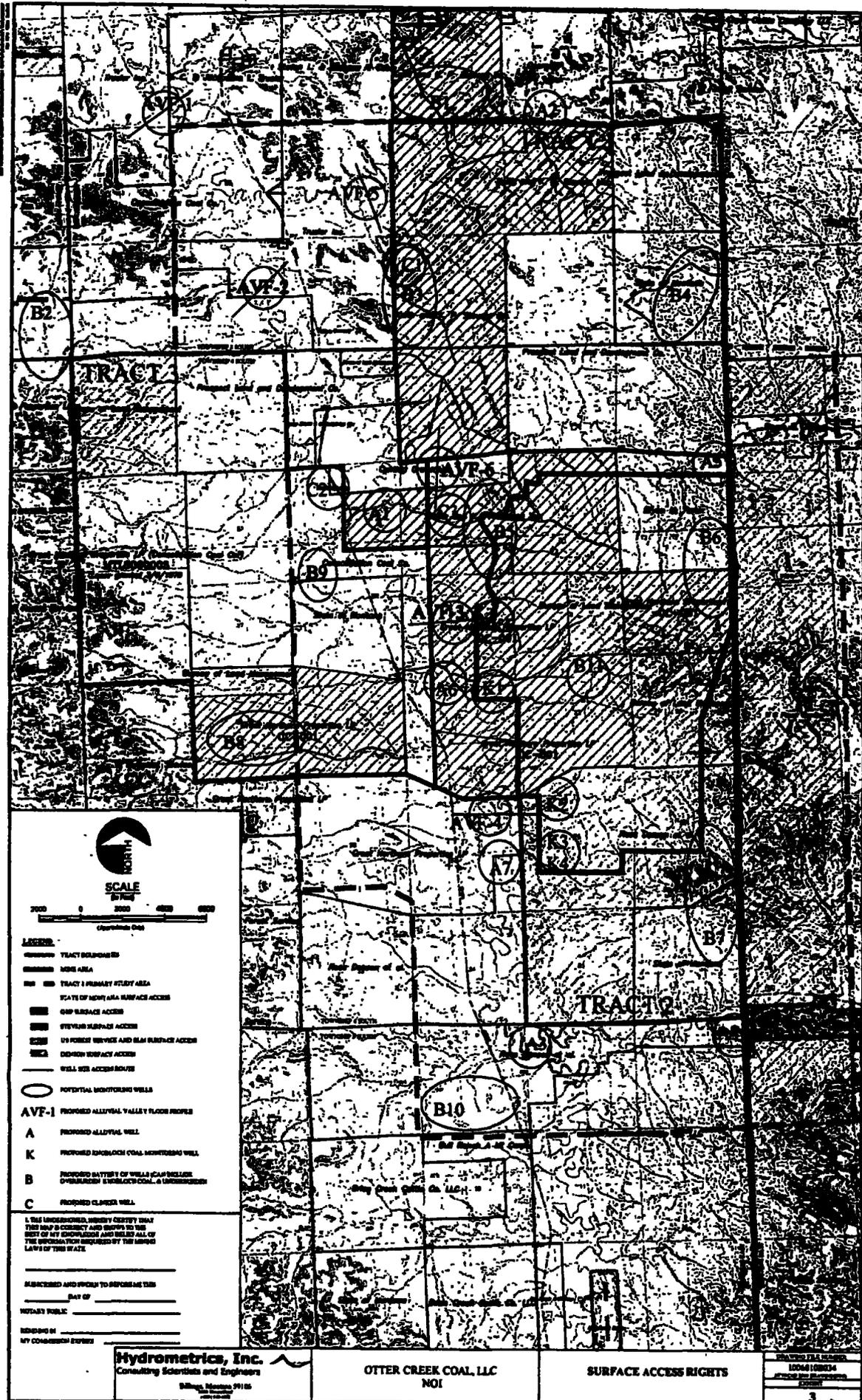
Residing at St. Louis County

My commission expires 10/28, 2014

(Seal)



10/28/2010




SCALE
 1" = 200'
 0 200 400 600
 Feet

LEGEND

- TRACT BOUNDARY
- ADJACENT AREA
- TRACT 1 PRIMARY STUDY AREA
- POINTS OF SURFACE ACCESS
- OSP SURFACE ACCESS
- STEVENS SURFACE ACCESS
- US FORD SERVICE AND BLAN SURFACE ACCESS
- DEWON SURFACE ACCESS
- WELL WEB ACCESS ROUTE
- POTENTIAL MONITORING WELLS

AVF-1 PROPOSED ALLIANCE VALLEY FLOOD PROOF

A PROPOSED ALLIANCE WELL

K PROPOSED KANBLOOM COAL MONITORING WELL

B PROPOSED BATTERY OF WELLS CAP WELLS

C PROPOSED CLASSED WELL

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE AND BELIEF AND ALL OF THE INFORMATION INDICATED BY THE ABOVE LAYERS OF THIS STATE.

PREPARED AND FORW TO PREPARE THIS
 DAY OF _____

NOTARY PUBLIC _____

WITNESSED BY _____
 MY COMMISSION EXPIRES _____

Hydrometrics, Inc.
 Consulting Scientists and Engineers
 11111, Houston 77036

OTTER CREEK COAL, LLC
 NOI

SURFACE ACCESS RIGHTS

STATE OF TEXAS
 COUNTY OF _____
 3

EXHIBIT 8
PROSPECTING ROADS

Access routes to drill sites have been located to minimize overland travel distance and avoid known cultural sites. It is not anticipated that new road construction or improvement of existing trails will be necessary. However, there has been significant erosion of existing trails, and many ephemeral drainages are deeply incised as a result of natural erosion. If improvement of an existing trail or access route is required to allow access by the drill rig and support vehicles, Otter Creek Coal, LLC will submit a minor revision application to the department showing the section of road affected, and provide documentation of surface owner concurrence.

Road construction will consist of blading and windrowing "A" horizon soil (where present) and grading a temporary road surface. New temporary roads will be reclaimed at the conclusion of prospecting operations by resspreading windrowed soil and seeding unless otherwise requested or approved by the surface owner. Improvement to existing trails will be permanent, and any windrowed soil will be seeded. Minor surface disturbance requiring re-vegetation will be hand broadcast seeded at the rate of 30-35 bulk pounds per acre with the following seed mix in equal parts: Western Wheatgrass, Slender Wheatgrass, and Thickspike Wheatgrass.

As required by ARM 17.24.100692), any road improvement or construction will meet the requirements of ARM 17.24.601 through 608 and 609(2):

ARM 17.24.601:

- (1) Not applicable.

- (2) Not applicable (access and haul roads only).

- (3) Cut slopes, if required, will be no more than 1v:1.5h.

(4) Temporary erosion controls will be used during construction to control sedimentation and minimize erosion. These will consist of interception ditches and sediment traps.

(5) Any cut and fill slopes not reclaimed immediately will be resoiled and revegetated at the first seasonal opportunity.

(6) Roads will not cause damage to fish, wildlife and related environmental values and will not cause additional contributions of suspended solids to stream flow or to runoff, or degrade the quality or quantity of surface or ground water. This will be accomplished by locating roads in grassland areas to the extent possible, and controlling sediment.

(7) Road surfacing material, if used, will consist of gravel or scoria. Temporary roads will not be surfaced.

(8) Not applicable.

(9) The need for dust control on temporary roads or trails used only occasionally is not anticipated.

(10) Roads will be reclaimed as required upon abandonment. Windrowed soil will be respread and seeded.

(11) Not applicable.

ARM 17.24.602:

(1) Locations of proposed roads will be identified by visible markings prior to the commencement of construction.

(2) Insofar as possible, roads will be located on ridges and flatter ground to minimize erosion. Crossings of ephemeral streams will utilize culverts as specified or fords approved by the department. Roads will not be located in stream channels.

ARM 17.24.603: No embankments are planned; this section is not applicable.

ARM 17.24.604: REPEALED

ARM 17.24.605:

(1) Not applicable (access and haul roads and rail loops only).

(2) Drainage ditches will be placed at the toe of any cut slope, and ephemeral stream crossings will not affect the flow or sediment load.

(3) Ditches and culverts will be used where necessary to assure adequate drainage.

(4) For any roads to be used and maintained for more than six months, ditches and culverts will be sized to pass safely the peak runoff from a 10-year, 24-hour precipitation event.

(5) Bridges are not planned.

(6) Drainage pipes and culverts will be constructed to avoid plugging and prevent collapse, and minimize erosion at inlets and outlets.

(7) Natural channel drainage ways will not be altered or relocated for road construction without prior approval of the department.

(8) Unless a ford of an ephemeral channel is approved by the department, a culvert will be employed; riprap may be used where an ephemeral channel is too shallow for placement of a culvert.

(9) Vegetation will be cleared only for the width necessary for road and ditch construction.

ARM 17.24.606: REPEALED

ARM 17.24.607:

(1) Roads in place for more than 6 months will be maintained by scraping as necessary to maintain suitability for travel.

(2) Culverts will be maintained as necessary to assure their intended function.

(3) Roads damaged by natural events or equipment will be reconstructed or reclaimed as soon as practicable.

ARM17.24.608: Not Applicable.

ARM 17.24.609(2): Road construction, use and maintenance will be conducted to avoid or minimize damage, destruction or disruption of use of any existing facilities. There are no known such facilities in the prospecting area.

EXHIBIT 9
PROPOSED PUBLIC NOTICE

Draft public notice to be published in the Powder River Examiner, Broadus, Montana, for four consecutive weeks upon determination by the Department that the application is administratively complete:

NOTICE OF APPLICATION FOR COAL PROSPECTING PERMIT

On January __, 2011, Otter Creek Coal, LLC filed with the Montana Department of Environmental Quality (DEQ) an application for a permit to prospect for coal on the Otter Creek Tracts near Ashland in Powder River County, Montana, using exploration drilling methods. On _____, 2011, DEQ determined the application to be administratively complete.

The name and business address of the applicant is:

Otter Creek Coal, LLC
P. O. Box 7152
Billings, Montana 59101

The area of the application is known as the "Otter Creek Tracts" located approximately five miles southeast of Ashland via U.S. Highway 212 and Montana Route 484. The area of the application comprises 19,836 acres including all or parts of the following Sections as shown on the map below:

Twp.3S,Rge.45E: Sections 25,26,27,34,35,36

Twp.4S,Rge.45E: Sections 1,2,3,5,6,7,8,9,10,11,12,13,14,15,16,17,18,20,21,22,23,24,25,26,27,35,36

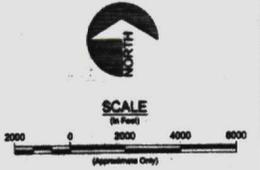
(Map showing Tracts 1, 2 and 3 with section lines and numbers, township and range, Ashland, highways U. S. 212 and Montana 484, Otter Creek and the Tongue River, with north arrow)

The area is located within the Ashland, Willow Crossing, Coleman Draw, King Mountain and Yager Butte U. S. Geological Survey 7.5-minute quadrangle maps.

A copy of the Application for Prospecting Permit is available for public inspection at the office of the Powder River County Clerk and Recorder located at the Powder River County Court House in Broadus, Montana, and at the offices of the Montana Department of Environmental Quality located at 2001 11th Avenue, Helena, Montana, and Airport Business Park IP-9, 1371 Rimtop Drive, Billings, Montana.

Written comments, objections or requests for informal conferences on the application may be submitted by any person with an interest that is or may be adversely affected to the Montana Department of Environmental Quality, P. O. Box 200190, Helena, Montana, 59620. Such comments, objections or requests must be received by the Department by _____, 2011, or within thirty days of the last publication of this notice.

(To be published in the Powder River Examiner, Broadus, Montana, for four consecutive weeks upon determination by the Department that the application is administratively complete.)



LEGEND

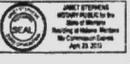
- TRACT BOUNDARIES
- ▨ STATE OF MONTANA COAL LEASE
- ▩ GREAT NORTHERN PROPERTIES COAL LEASE

NOTE: LEASES HELD BY GNC / ARE UNLESS OTHERWISE NOTED

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND SHOWS TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE INFORMATION REQUIRED BY THE MINING LAWS OF THIS STATE.

David W. Simpson
 State of Montana, County of Beaverhead,
 SUBSCRIBED AND SWORN TO before me this
 14th DAY of January 2011 by David W. Simpson
 NOTARY PUBLIC *John A. Schep*

RESIDING IN _____
 MY COMMISSION EXPIRES _____

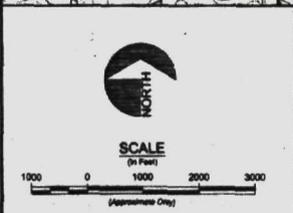
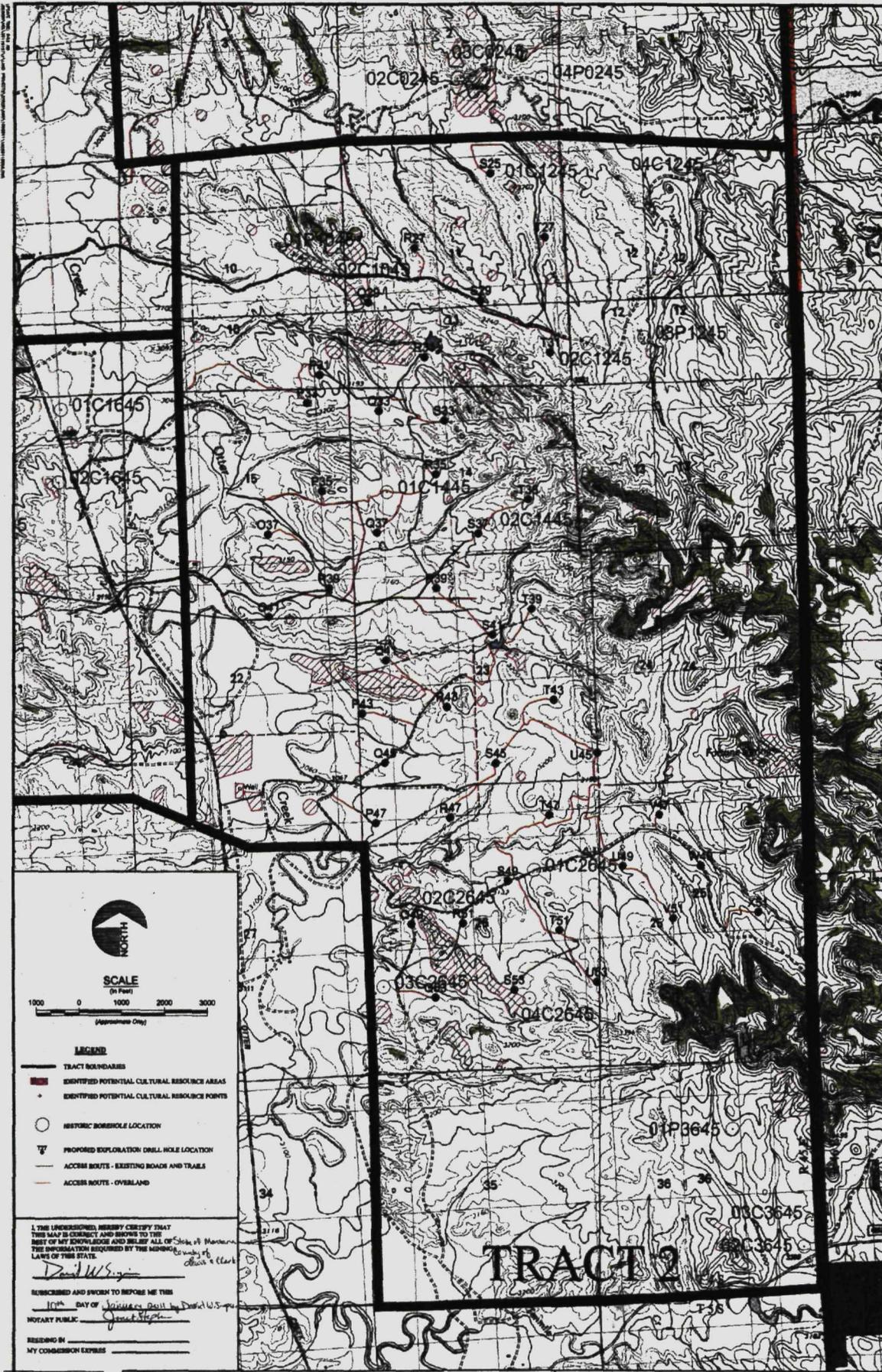


Hydrometrics, Inc.
 Consulting Scientists and Engineers
 Billings, Montana 59106
 406.328.1170

OTTER CREEK COAL, LLC
 PROSPECTING PERMIT APPLICATION

SITE LOCATION
 AND COAL LEASES

DRAWING FILE NUMBER
 1006811B006
 406.328.1170
 1



- LEGEND**
- TRACT BOUNDARIES
 - IDENTIFIED POTENTIAL CULTURAL RESOURCE AREAS
 - IDENTIFIED POTENTIAL CULTURAL RESOURCE POINTS
 - HISTORIC BOREHOLE LOCATION
 - ▽ PROPOSED EXPLORATION DRILL HOLE LOCATION
 - ACCESS ROUTES - EXISTING ROADS AND TRAILS
 - ACCESS ROUTES - OVERLAND

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE MAP IS CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE INFORMATION REQUIRED BY THE MINING LAWS OF THIS STATE.

David W. Sigafoos

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10th DAY OF January 2011 by David W. Sigafoos

NOTARY PUBLIC *Janet Steyer*

RESIDING IN _____

MY COMMISSION EXPIRES _____

TRACT 2

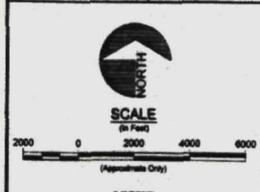
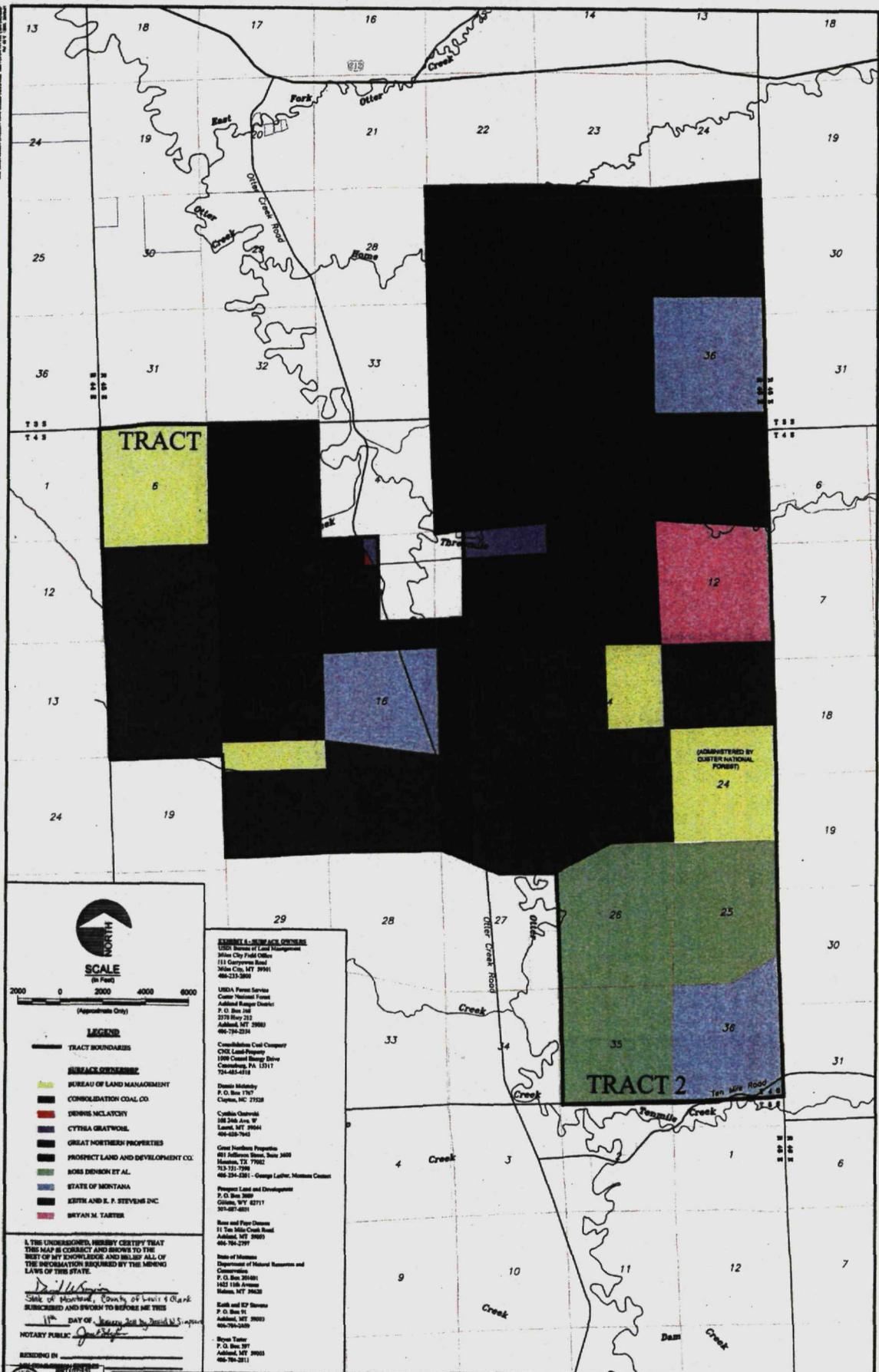


Hydrometrics, Inc.
 Consulting Scientists and Engineers
 Billings, Montana 59106
 406-656-1172

OTTER CREEK COAL, LLC
 PROSPECTING PERMIT APPLICATION

PROPOSED EXPLORATION
 DRILL HOLE LOCATIONS

DRAWING FILE NUMBER
 10068118006
 ALTERNATE FILE NUMBER
 000000
 SHEET
 2



- LEGEND**
- TRACT BOUNDARIES
 - PROSPECTING PERMIT
 - BUREAU OF LAND MANAGEMENT
 - CONSOLIDATION COAL CO.
 - DENNIS MCCLATCHY
 - CYTHIA GRAYWOLF
 - GREAT NORTHERN PROPERTIES
 - PROSPECT LAND AND DEVELOPMENT CO.
 - BOB DENSON ET AL.
 - STATE OF MONTANA
 - KERH AND S. F. STEVENS INC.
 - BRYAN M. TARTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND SHOWS TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE INFORMATION REQUIRED BY THE MINING LAWS OF THE STATE.

David M. Stevens
 State of Montana, County of Lewis & Clark
 SUBSCRIBED AND SWORN TO BEFORE ME THIS
 11th DAY OF January, 2011 by David M. Stevens

NOTARY PUBLIC: *David M. Stevens*

ROBERT L. NEWACE, OWNER
 1522 Bureau of Land Management
 Miles City Field Office
 111 Courtyard Road
 Miles City, MT 59711
 406-233-3800

USDA Forest Service
 Center National Forest
 Address Ranger District
 P. O. Box 268
 3178 Hwy 212
 Ashland, MT 59803
 406-794-2334

Consolidation Coal Company
 Chief Land Property
 1000 Central Energy Drive
 Coalingburg, PA 17111
 717-463-4111

Dennis McClatchy
 P. O. Box 1767
 Clayton, NC 27528

Cynthia Graywolf
 88 2nd Ave. W
 Laurel, MT 59041
 406-836-7666

Great Northern Properties
 681 Jefferson Street, Suite 3000
 Madison, TN 37002
 713-731-7992
 406-234-5261 - George Lusher, Montana Contact

Prospect Land and Development
 P. O. Box 3000
 Glades, NY 62711
 304-677-6000

Bob and Patsy Denson
 11 Ten Mile Creek Road
 Ashland, MT 59803
 406-794-2297

State of Montana
 Department of Natural Resources and
 Conservation
 P. O. Box 204801
 1425 13th Avenue
 Helena, MT 59620

Kerh and S.F. Stevens Inc.
 P. O. Box 91
 Ashland, MT 59803
 406-794-2459

Bryan M. Tarter
 P. O. Box 397
 Ashland, MT 59803
 406-794-2811



Hydrometrics, Inc.
 Consulting Scientists and Engineers
 Billings, Montana 59106
 406-252-1179

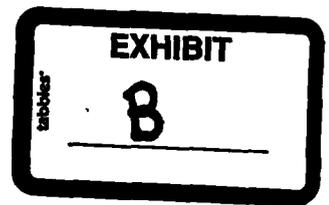
**OTTER CREEK COAL, LLC
 PROSPECTING PERMIT**

SURFACE OWNERSHIP

DRAWING FILE NUMBER
 1006811B001
 ATTACHED PERMITS DRAWING NUMBER
 EXHIBIT
 6



**Montana Department of
ENVIRONMENTAL QUALITY**



Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

February 2, 2011

Mr. Mike Rowlands, Director
Otter Creek Operations
Otter Creek Coal, LLC
P.O. Box 7152
Billings, MT 59101-7152

Permit ID: X2011334
Revision Type: None
Permitting Action: Completeness Determination
Subject: Permit Application X2011334; Completeness Determination

Dear Mike:

The Department has completed its initial review of Otter Creek Coal, LLC's application for prospecting permit #X2011334. Otter Creek Coal, LLC submitted an application for a prospecting permit on January 11, 2011. The prospecting permit would incorporate the three tracts within the Otter Creek development area, southeast of Ashland, Powder River County, Montana. Initially, the prospecting activity would be conducted within Tract II with 44 drill holes proposed. Otter Creek Coal, LLC has indicated that additional drill holes would be added through future amendments to the prospecting permit.

Otter Creek Coal, LLC's prospecting permit application addressed all of the rules pertaining to submittal of a prospecting application. Therefore, the Department finds that Otter Creek Coal, LLC's application for a prospecting permit X2011334 is administratively complete. Please proceed with publishing the Public Notice in a paper of general circulation in the locality of the proposed activity [ARM 17.24.401(3)]. The notice must be published at least once a week for four consecutive weeks. A 30-day comment period will follow the last date of publication. During the publication period and the required 30-day comment period, the Department will initiate its technical review and notify you of any deficiencies.

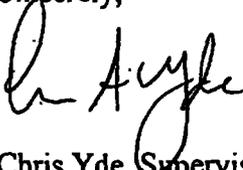
The Department has determined that an Environmental Impact Statement is not necessary and we will prepare an Environmental Assessment prior to issuing a final decision on the permit application.

February 2, 2011

Page 2 of 2

If you have any questions regarding the completeness determination or the Department's technical review of the application, please contact me.

Sincerely,



Chris Yde, Supervisor
Coal and Uranium Program
Industrial and Energy Minerals Bureau
Phone: 406-444-4967
Fax: 406-444-4988
Email: CYde@mt.gov

CY/ sg

Cc: Jeff Fleischman, Office of Surface Mining
Gene Hay, Office of Surface Mining

FC: Prospecting X2011334 (Permit Application)

