

**DECISION NOTICE**  
**and**  
**FINDING OF NO SIGNIFICANT IMPACT**  
**Federal Coal Lease Modifications COC-1362 &**  
**COC-67232**



**Paonia Ranger District**  
**Grand Mesa, Uncompahgre and Gunnison National Forests**  
**Gunnison County, Colorado**

## I. INTRODUCTION

An Environmental Assessment (EA) has been prepared by Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG), Uncompahgre Field Office of the Bureau of Land Management (BLM) and Office of Surface Mining, Reclamation and Enforcement (OSM) which analyzes the impacts of modifying federal coal leases COC-1362 and COC-67232 in response to an application received by the BLM Colorado State Office. ArkLand Company applied to modify existing federal coal leases, COC-1362 and COC-67232, by adding about 800 and 922 acres, respectively, to them. Coal in the existing leases is mined by Mountain Coal Company (MCC) from their West Elk Mine near Somerset, Colorado. The applications were made to prevent bypass of federal coal reserves and are being processed according to procedures set forth in 43 CFR 3432.

The coal lease modification areas lie in portions of sections 10, 11, 14, 15, 22 and 23 of T. 14S., R. 90W., 6<sup>th</sup> PM in Gunnison County, Colorado. The modification areas include National Forest System (NFS) surface lands managed by the GMUG. The coal estate is administered by the BLM.

The BLM is required, by law, to consider leasing Federally-owned minerals for economic recovery. With respect to lands managed by the Forest Service, the agency considers consenting to the BLM leasing coal reserves underlying lands under its jurisdiction, and prescribes stipulations for the protection of non-mineral resources.

Within the lease modification areas, the coal would be accessed and recovered by underground longwall mining methods from the existing West Elk Mine. The coal would be transported using MCC's existing coal transportation system and surface facilities. At the leasing stage, the federal agencies evaluate the effects of subsidence (i.e. the land surface lowered as a result of mining) on surface resources, and identify where surface resources may require specific protection from subsidence or foreseeable surface uses. Under a foreseeable mine plan scenario, surface uses on these modifications may include methane drainage wells (MDWs) and associated access roads required to safely mine the coal resources. Specific locations of the MDWs and roads are not known at the leasing stage, and will not be known until the time specific mine plans are approved by the State, BLM, MSHA and OSM during the subsequent permitting process. However, the surface uses were reasonably projected for cumulative effects analysis purposes in the NEPA at the leasing stage.

Approximately 1,450 acres of the modification areas are within the West Elk Inventoried Roadless Area. If the lease modifications are approved, temporary roads and timber cutting may be needed to construct, operate and maintain MDWs. This leasing action itself does not authorize actual mining or any surface disturbing activities; however, it does evaluate the need for stipulations for subsequent use of the land surface. In this case, stipulations on the existing leases would apply to the modifications, and include a stipulation for activities in roadless areas, which states that lands in the leases may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.

## II. SCOPE OF DECISION AND AUTHORITY

### Scope of Decision

With respect to modifying federal coal leases, the GMUG, as the surface managing agency, is responsible for deciding whether or not to consent to the BLM modifying existing Federal Coal Lease COC-1362 by adding 800 acres according to the Federal Coal Leasing Amendments Act of 1976; whether or not to consent to the BLM modifying existing Federal Coal Lease COC-67232 by adding 922 acres according to the Federal Coal Leasing Amendments Act of 1976; and if so, prescribing stipulations needed for the protection of non-mineral resources by determining if the existing stipulations on the parent lease are sufficient. If they are not sufficient, prescribe additional stipulations that will provide for the protection of non-mineral resources to comply with regulations, policy and Forest Plan direction (EA, Section 1.5).

### Authorities

The primary authorities for issuing coal lease modifications are found in the EA, Section 1.6 and restated below.

#### **Mining and Minerals Policy Act of 1970 and Mineral Leasing Act of 1920, as amended**

The Forest Service and BLM manage their minerals programs under guidance given in the Mining and Minerals Policy Act of 1970 which states in part that it is the “continuing policy of the federal government in the national interest to foster and encourage private enterprise in...(t)he development of economically sound and stable domestic mining minerals and mineral reclamation industries...(and) the orderly and economic development of domestic mineral resources....” Further, federal mineral leasing follows the Mineral Leasing Act of 1920 as amended by the Federal Coal Leasing Amendments Act of 1976 (MLA), and specific procedures set forth in 43 CFR 3400.

Federal coal leasing follows the Mineral Leasing Act of 1920 (MLA) as amended by the Federal Coal Leasing Amendments Act of 1976 , and specific procedures set forth in 43 CFR 3400.

These lease modification applications are being processed according to procedures set forth in 43 CFR 3432. Lease modifications can be non-competitive leasing actions. In this case, ArkLand applied for these modifications to add acreage to existing leases and no other coal company could obtain the rights to the coal if it is approved; therefore, this is a non-competitive leasing action.

Subsequent permitting actions to allow mining and changing of the approved mine permit boundary to include the modification areas would be evaluated by the Colorado Division of Reclamation Mining Safety (DRMS) under procedures set forth in 30 CFR PART 906.30 Appendix B and the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining. These modifications may also require approval from the USDI through the Office of Surface Mining, Reclamation and Enforcement (OSM).

#### **Energy Policy Act of 2005**

The purpose of the Energy Policy Act of 2005 was to ensure jobs for the future with secure, affordable, and reliable energy.

This Act Amends 30 U.S.C. 203(c)(4)(A) to ``secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease...(3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)--(A) exceed 960 acres; or (B) add acreage larger than that in the original lease."

### **III. DECISION**

I have decided to select the Proposed Action Alternative as described in the EA (EA, Section 2.1) and summarized in Section V of this document. Selection of this alternative provides the BLM-Colorado State Office my consent to lease the NFS lands included in federal coal lease modifications COC-1362 and COC-67232 as described in EA, Table 1.2 and shown on the map in Appendix A. My consent decision includes the application of terms and conditions, identified as stipulations, to protect surface resources on NFS lands (Appendices B and C of this document, EA Tables 2.1a and 2.1b).

This decision will be implemented through issuance of this Decision Notice (DN), followed by BLM's actions of: 1) making a subsequent and independent decision on whether to lease and 2) issuing lease. The lessee would then be responsible to secure any Local, State or Federal permits and approvals as applicable and required by law for future operations or development on the lease modifications.

In the event of any contradiction or conflict between descriptions or depictions of authorized actions, my decision is to be taken from the project documents in the following order of precedence: first the description in this DN, second the representations on the Appendix A- Decision Map and Stipulations in Appendices B & C, and finally descriptions in the EA.

### **IV. REASONS FOR THE DECISION**

#### **Applicable Laws, Regulations, and Policy**

This decision is consistent with applicable laws, regulations, and policies (refer to Section VIII of this document and EA, Chapter 1) and are consistent with Forest Land and Resource Management Plan (LRMP) direction (EA, Section 1.7).

#### **How Issues Were Considered**

Issues were identified by the interdisciplinary team (IDT) and through public involvement. Significant issues were identified in EA (Section 1.9) and carried forward for analysis in EA in both the development of the Proposed Action and in the individual resource sections (Chapter 3). Other issues brought forward were reviewed and addressed in Reponse to Comments available in the EA Appendices, in the project file and made available to the public on the internet and in Alternatives Considered but Eliminated from Detailed Study (EA, Section 2.2).

#### **Cumulative Effects**

Consenting to lease does not result in any direct effects on the ground; however, potential future development of the lease may result in indirect and cumulative effects. Indirect and cumulative effects (EA, Chapter 3) were addressed based on a Reasonably Foreseeable Mine Plan for each resource area based on MCC's currently permitted activities on the parent lease, coal reserve available in the modification areas,

anticipated mining sequence, and subsidence potential. Lease stipulations (Appendix B, and EA, Section 2.1) are being prescribed for: cultural and paleontological resources; endangered or threatened species; Canada lynx; raptors; big game winter range; water depletions; breeding birds; geologic hazards; baseline studies; monitoring requirements; riparian, wetland or floodplain; subsidence; roadless; visuals; and BLM's addendum to allow methane flaring, capture or use or other alternatives to venting.

### **Mitigation Measures & Methane Venting**

Commenters have suggested that "mitigation measures be *identified* even if they are outside the jurisdiction of the lead agency" as in the case of methane released to the atmosphere. These non-jurisdictional mitigations have been *identified* and further addressed in the EA, Sections 2.2 and 3.3. The lease stipulations which have been *adopted* (CEQ terminology) are the mitigation measures identified to protect non-mineral, surface resources. The analysis presented in the EA considers the lease stipulations as part of the Proposed Action; therefore, they are analyzed in detail (under the CEQ described as having been "explained and committed"). Further, the parent leases have a stipulation added by BLM (that will also be carried forward to the lease modifications) which allows capture and/or use of methane as a by-product of mining coal, if it is economically feasible for MCC to do so.

Commenters further contend that the Forest Service should force MCC to capture or/use methane vented to the atmosphere. Methane is currently an unregulated constituent under the Clean Air Act as managed by the Environmental Protection Agency (EPA) and through their agent Colorado Department of Public Health and Environment (CDPHE). I agree capturing or using methane would be beneficial; however, the Forest Service is not a permitting agency for underground coal mining activities nor do we have the authority to promulgate or enforce air quality regulations pursuant to the Clean Air Act. Since methane is released as a by-product of mining approved by other state and federal entities, I would be exceeding my authority by requiring such mitigation under 43 CFR 3432.3(d), other laws, and agency memorandums of understanding which specify that my role is to consent to leasing and prescribing protections for NFS surface resources.

### **Air Quality and Climate Change**

The EA (Section 3.3) documents issues related to air quality standards and possible effects globally and locally from climate change. A few commenters undoubtedly would like to see modeling impacts of criteria pollutants and climate change from this project. However, regulations at 40 CFR 1502.14-1502.16 describe that a comparison between the existing or baseline condition and the proposed activities be described "as is necessary to support the comparisons" and "provide a clear basis for choice by the decisionmaker". This has been sufficiently described to me as extending the existing condition which is in compliance with Clean Air Act permits issued to MCC. The addition of the lease modification areas would add 1.6 years to the permitted baseline condition because the rate of mining and mining systems will not change. Additionally, trends in air quality and climate change impacts have been identified.

Recently for coal projects throughout the West, commenters and others have been focusing on air quality standards and modeling global climate change and cite that NEPA significance has not been addressed in their appeals and litigation of federal coal projects. NEPA significance is defined by context and intensity considerations (40 CFR 1508.27) which are addressed in section VII of this document. 40 CFR 1508.27(a) also states "significance varies with the setting of the proposed action. For instance, in the

case of a site specific action, significance would usually depend upon the effects in the locale rather than the world as a whole.”

### **Roadless**

The Roadless Area Conservation Rule has been the subject of various litigation and interim direction and will not be back in effect until the injunction is removed by the Wyoming District Court. The Proposed Colorado Roadless Rule (released in April, 2011) is currently under draft analysis and also not in effect. The Forest Service is currently operating under Secretary’s Memorandum 1042-155, which is a process by which the Secretary of Agriculture reviews certain projects within Inventoried Roadless Areas. This project has been consistent with current direction.

The majority of both lease modifications is located in the West Elk Inventoried Roadless Area (IRA). The “Sunset Trail Roadless Area”, which the lease modification area is referred to by various groups, is a small subset of the West Elk Roadless Area that came about in the Draft Forest Plan Revision, a draft plan that has been rescinded because of litigation over the Planning Rule(s) it was prepared under. Much of the West Elk Roadless Area (current Forest Plan designation) has compromised character due to management activities before and after 1979 including roads, ditches, reservoirs, full-size trails, etc. Forest Plan prescriptions have guided the management of the area from the date of the Plan and intermittently when the Roadless Rule has been in effect. The Forest Plan allows for road building in this area.

The decision to consent to the coal lease modifications and subsequent mining of the coal will not affect roadless status as subsidence does not create roads or remove timber. However, any post-leasing development may temporarily impact roadless character on an estimated 24 acres where roads may be constructed. Lease modifications will be restricted by whatever roadless area management direction or rule-making of the Secretary of Agriculture is in place or will be complaint with Forest Plan direction if there is no roadless direction in place. The leases contain a stipulation regarding roadless issues and that road construction could be affected by rules for roadless area management.

### **Factors Other Than Environmental Effects Considered In Making the Decision**

The purpose and need of this project is to consider consenting to and issuing coal lease modifications for federal coal lands immediately adjacent to exiting federal coal leases COC-1362 and COC-67232. The purpose of the lease modifications is to ensure that compliant and super-complaint coal reserves are recovered.

The BLM, charged with administration of the mineral estate on these Federal lands, is required, by law, to consider leasing Federally-owned minerals for economic recovery. Under 43 CFR 3432 (as amended by the Energy Policy Act of 2005), the holder of a federal coal lease may apply to modify a lease by adding up to 960 acres. The federal agencies are responding to applications to modify existing leases.

The need is also linked to the GMUG Land and Resource Management Plan (LRMP) Plan which emphasizes environmentally sound mineral and energy development (LRMP, page II-61). My decision supports the Purpose and Need for this project and is consistent with Forest Plan direction.

My decision fulfills the Federal Government's policy to foster and encourage mineral development (Mining and Mineral Policy Act of 1970), the Federal Land Policy and Management Act (FLPMA), and complies with GMUG Forest Plan direction.

I considered the Forest Service Strategic Plan which calls for the Forests to "help meet energy resource needs," the Forest Service Implementation of the National Energy Plan (2001) generally directing the agency to expedite federal actions necessary for energy-related project approvals including those related to geothermal energy, and Executive Order 13212 directing federal agencies to take steps to increase the energy supply to our nation.

## **Identification of the Environmental Documents Considered in Making the Decision**

This decision was made after carefully considering the contents of the EA, public comments, agency response to comments, and the supporting project file including the Combined Geologic and Engineering Report and Maximum Economic Recovery Reports and Unsuitability Analysis & Report for Federal Coal Lease COC-1362, Modification 3 & Federal Coal Lease COC-67232, Modification 1. The GMUG Forest Plan was reviewed and this decision determined to be consistent with it. Other environmental documents (EA, Section 1.10) prepared for activities in the immediate vicinity were also consulted.

## **How Considerations Were Weighed and Balanced In Arriving At the Decision**

The resource effects analyses presented in the EA (Table 2-3 and Chapter 3) describes potential impacts to surface resources from leasing as minor. Stipulations and lease addenda were carried forward from the parent leases for the protection of cultural and paleontological resources, threatened or endangered species; Canada lynx; raptors; big game winter range, water depletions, breeding birds, geologic hazards, surface water, subsidence, roadless; alternatives to methane venting and baseline data and monitoring requirements. Because of the surface protections in place, I chose to consent to lease modification parcels as applied for by Arkland to BLM.

My decision to consent to leasing included evaluating the role and responsibility of the Forest Service in meeting overall energy needs for the nation. This consideration, along with our legal responsibilities led me to the consent to lease decision.

## **Relationship to Public Involvement**

Public and agency comments were sought during preparation of the EA (refer to Section VI of and EA, Section 1.7 and Chapter 4). Using the comments from the public, environmental groups, other agencies, and those developed internally, the interdisciplinary team developed a list of issues to address (EA, Section 1.9).

The Forest Service addressed comments received during scoping on the project which are included in Sections 1.9, 2.1, 2.2 and Appendix C of the EA and Response to Scoping Comments on the internet and in project file. The manner in which I have considered specific public comments in my decision is described in Section IV.

## **V. SUMMARY OF ALTERNATIVES CONSIDERED**

Nine alternatives were considered in the EA (Sections 2.1 and 2.2) with two carried forward for detailed analysis. The selected action is the Proposed Action, conditioned with stipulations. A summary of the Alternatives Considered in Detail in the EA follows:

### **No Action Alternative**

Analysis of the No Action alternative is required by CEQ 40 CFR Part 1502.14(d). Under the no action alternative, the lease modifications would not be approved, and no mining would occur in these specific areas. Impacts from mining coal under these areas would not occur on these lands, and the effects from on-going land uses could continue including coal mining activities such as exploration and monitoring related to mine activities, as well as continued recreation and grazing. The land would continue to be managed according to Forest Plan standards, goals and guidelines.

### **Proposed Action Alternative**

Within the jurisdiction of the Forest Service, the proposed action is to consent to BLM modifying MCC's existing federal coal leases COC-1362 and COC- 67232 by adding 800 and 922 additional acres (respectively) to ensure that compliant and super-complaint coal reserves are recovered and not bypassed, and to identify stipulations for the protection of non-mineral (i.e. surface) resources.

It is assumed that longwall mining practices would be used to develop the lease modifications. Only minor surface disturbing activities would occur on Forest Service lands as a result of subsidence. A Reasonably Foreseeable Mine Plan (RFMP) has been developed to address potential environmental effects and is detailed to the extent possible (EA, Section 3.2).

### **Stipulations for Action Alternative**

As part of the Proposed Action alternative the GMUG Forest Supervisor must decide if the existing stipulations on the existing parent leases are sufficient for the protection of non-mineral (i.e. surface) resources. If not, additional stipulations that will provide for the protection of non-mineral resources must be prescribed. Appendix B shows the stipulations on the parent leases, and their applicability to the lease modifications.

In accordance with Forest Service Manual (FSM) 2820, the Standard Notice for Lands under the Jurisdiction of Agriculture is part of the parent leases, and hence would apply to the lease modifications. This Standard Notice includes requirements for Cultural and Paleontological Resources, and Threatened and Endangered Species as noted in Appendix B. Further, the Standard Notice contains the following language: "The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior."

## **VI. PUBLIC INVOLVEMENT**

The Notice of Opportunity to Comment was published in *the Grand Junction Daily Sentinel* (newspaper of record) and in the *Delta County Independent* on April 21, 2010. The Notice of Opportunity to Comment asked for public comment on the proposed lease modifications from April 21-May 21, 2010. In addition, as part of the public involvement process, the agency sent out approximately 120 letters to state, federal, local agencies, tribes, environmental groups, and interested individuals; posted scoping materials to the GMUG's website; and posted to the Forest Service's Schedule of Proposed Actions.

During the comment period, approximately 684 versions of email form letters were received from Wild Earth Guardians supporters; 1900 versions of email form letters were received from Defenders of Wildlife supporters; 23,771 versions of email form letters were received from supporters of Natural Resources Defense Council; 5647 versions of email form letters were received from supporters of Earth Justice; 576 hardcopy/faxed form letters were received from local community members in four counties in support of mining in this area; 74 original or somewhat original comments were received; and 4 original comments with attachments were received in response to this scoping effort.

Using the comments from the public, environmental groups, other agencies, and those developed internally, the interdisciplinary team developed a list of issues to address (EA, Section 1.9).

## **VII. FINDING OF NO SIGNIFICANT IMPACT**

Based on my review of the EA, public comments on the EA, the agency responses to comments, resource analysis (EA, Section 1.9, 2.1, 2.2, Chapter 3 and EA, Appendix C and project file), the supporting project record, and upon my analysis immediately below, I find that actions resulting from my decision do not constitute major Federal actions significantly affecting the quality of the human environment, as defined in the Code of Federal Regulations Title 40 Part 1508, Section 27 (40 CFR 1508.27) in terms of either context or intensity; and therefore, an environmental impact statement need not be prepared.

### **Context**

#### **Locality**

This decision would commit approximately 1,722 acres of NFS lands on the Paonia Ranger District to mineral leasing. However, it is estimated under the Reasonably Foreseeable Mine Plan analyzed (EA, Section 3.2) that if the land were subsequently leased and surface development incidental to underground mining were proposed, approximately 4% of this acreage may actually see short-term surface disturbance and long-term surface disturbance would be limited to post-mining monitoring activities.

Lands in the coal lease modification areas are managed for multiple uses including range management and dispersed recreation (EA, Section 3.1). Lands immediately adjacent to the lease modifications have had underground coal mining for the past 100 years. Given the extent of other activities occurring in the vicinity of the coal lease modifications, leasing and potential subsequent development would not appreciably add to existing surface uses. Potential post-leasing activity would be similar to existing activities and it would be managed through lease stipulations to reduce overall effects. Therefore, the effects on public land and users over both the short-term and long-term

would remain consistent with that which is presently occurring. No short or long term significant impacts are expected as a result of this decision in the local context (EA, Chapter 3).

### **Affected Interests and Affected Region**

Affected interests for this project are range permittees with authorizations in the project area; people using the area for dispersed recreation, wildlife watching and hunting; public and Forest road users; residents in Delta and Gunnison County; and adjacent private landowners. Concerns raised focus mainly on local issues in the immediate vicinity of the lease nomination area. The decision to consent to leasing allows continued use by livestock permit holders and recreational users of the area. Monitoring and mitigation measures in the form of lease stipulations have been identified and prescribed to protect and preserve other forest uses in the immediate area. Other required permits would specify terms of use to further reduce effects on other forest uses. Gunnison and Delta Counties will receive economic benefit (royalties, jobs, local expenditures, etc) from the lease modifications consistent with existing conditions. No short or long term significant impacts on affected interests are expected as a result of this decision in the regional context (EA, Chapter 3).

### **Society as a Whole**

This decision provides the opportunity for federal coal resources to be made available for commercial production that, in turn, would be used to meet U.S. demand for compliant and super-compliant coal to aid in meeting air quality standards in electrical generation and further maintaining affordable energy supplies to the American people. While this decision could result in small scale, short-term use of the land surface, requirements for careful project design and ultimate reclamation would keep these effects to low levels. Therefore, no negative impacts to society as a whole are expected. In fact, some positive benefit may be derived from the development of these coal sources (as opposed to lower quality coals) regarding air quality and socio-economic concerns (EA, Chapter 3).

## **Intensity**

### **Consideration of Beneficial and Adverse Impacts**

Beneficial and adverse impacts were described in the EA (Chapter 3) and considered in Section IV and VII of this Decision Notice. A benefit of this decision will be the continued employment of a high percentage of the local communities and the resultant more widespread economic factors that extend throughout four counties in Colorado. Although both beneficial and adverse effects are disclosed, they are of small scale and focused geographically and in duration. None are severe enough to be considered significant (EA, Table 2.3). None of the expected beneficial or adverse impacts have a significant amount of intensity that would require documentation in an EIS.

### **Consideration of Public Health and Safety**

I considered public health and safety issues (EA, Sections 3.29 and 3.32) in this decision. Leasing in and of itself does not impart any risk to public health and safety. Potential post-leasing surface use would have to comply with lease terms, DRMS permit, and Mine Health and Safety Administration requirements. Further, any post-leasing development such as roads on NFS lands would be required to be designed and constructed in accordance with Forest Service policy and direction and would not be

open to public travel. Due to the very limited access into this area, public hazards would be consistent with other areas of the forest managed for range and dispersed recreation.

**Consideration of Unique Characteristics such as Proximity to Historic or Cultural Resources, Park Lands, Prime Farmlands, Wetlands, Wild and Scenic Rivers, or Ecologically Critical Areas**

Historic and cultural resources are addressed in the subsequent paragraphs. There are no prime farmlands, rangeland, or forest land as defined in the Secretary of Agriculture's Memorandum Number 1827, Supplement 1, identified on the Grand Mesa or Gunnison National Forests. Within the lease modifications there are some wetlands, however, lease stipulations provide occupancy restrictions in these areas. There are no identified parklands or Wild and Scenic rivers in proximity to the project. The area of my decision has not been identified by any source as an ecologically critical area.

**Consideration of the Degree to Which the Effects on the Quality of the Human Environment Are Likely to be Highly Controversial**

This decision and its effects are not unique. Mineral-related (oil/ gas and coal) leasing decisions have been made on the GMUG for the past 30 years. The quality and use of the human environment in the project area is understood (EA, Chapter 3), has been analyzed, and is not highly controversial from a scientific standpoint. Although the Forest Service is consenting to lease, subsequent actions must be taken by BLM to issue the lease, and subsequent post-lease operations brought forward in a mine plan must be approved by the State in order for any effects to be realized. This sequence and future surface activities which are projected to occur at a low level, would pose a very low risk of effects spreading to local communities. Information or data demonstrating that the effects described in the EA are highly controversial have not been brought forward. Given the small scale, localized impacts associated with this project, the intensity of this factor does not require documentation in an EIS.

**Consideration of the Degree to Which the Possible Effects on the Human Environment are Highly Uncertain or Involve Unique or Unknown Risks**

This decision is not unique for the GMUG from the standpoint of understanding potential effects. The GMUG has decades of experience analyzing and managing similar projects that involve mineral leasing and subsequent post-lease activity. The GMUG has experience implementing and monitoring similar projects, the effects of which have been found to be reasonably predictable. Based on review of this analysis and compared to our local conditions, the risks associated with leasing and post-lease activities and associated operations are understood, and can be evaluated and reasonably predicted. No effects from this decision would be classified as highly uncertain or involving unique or unknown risks. The intensity of this factor does not require documentation in an EIS.

**Consideration of the Degree to Which the Action May Establish a Precedent for Future Actions with Significant Effects or Represents a Decision in Principle about a Future Consideration**

Consenting to leasing the modification areas will not create a precedent for future similar leasing actions. The GMUG Forest Plan acknowledges and allows for coal leasing and resource development in areas where such activities would be consistent with the Plan. Further, my decision follows the legal direction for coal resource management (EA, Section 1.6). Because mineral leasing is a discretionary decision on the part of the surface managing agency, any future lease proposals would have to be evaluated on their own merits based on the issues and effects related to the location, timing and

intensity of each action. My decision does not set a precedent or represent a decision in principle about a future consideration; therefore, documentation in an EIS is not required.

#### **Consideration of the Action in Relation to Other Actions with Individually Insignificant but Cumulatively Significant Impacts**

The lands in proximity to the coal lease modifications are managed for multiple uses or are developed for public access and private use. Since leasing itself does not impart specific direct or indirect effects related to post-lease activity are projected to be of limited scale, minimal individual effects and minimal cumulative effects are expected when added to the existing situation and other potential activities (EA, Chapter 3). The proposed action will not result in significant effects.

#### **Consideration of the Degree to Which the Action May Adversely Affect Areas or Objects Listed in or Eligible for Listing in the National Register Of Historic Places or May Cause Loss or Destruction of Significant Scientific, Cultural, or Historical Resources.**

The project record and field reviews support that cultural or historic sites would not be significantly affected by this decision (EA, Section 3.30 and project file). Stipulations and requirements for site-specific surveys at the time operations may be proposed will serve to further protect cultural resources. SHPO consultation was not necessary based on negative findings. When implementing the decision, any previously unidentified sites inadvertently discovered would be avoided or mitigated so there would be no effect upon them (EA, Section 2.1 and Appendix B).

#### **Consideration of the Degree to Which the Action May Adversely Affect an Endangered or Threatened Species or Its Habitat Has Been Determined Not to be Critical Under The Endangered Species Act.**

A Biological Assessment (BA) was prepared for this decision (EA, Sections 3.9-3.10, Project File, and Internet). All known endangered or threatened species in the area were considered. Due to “may affect, likely to adversely affect” determinations for Canada Lynx and water depletions related to the Four Endangered Colorado River fish, formal consultation with the USFWS was required. Depletions are covered under the GMUG’s Programmatic Biological Opinion ES/GJ-6-CO-F-033-CP062 and Canada lynx are covered under the Southern Rockies Lynx Amendment. USFWS has concurred with our findings. If additional findings regarding threatened or endangered, proposed or sensitive species are discovered, a new biological assessment or evaluation will be written, and formal consultation reinitiated.

#### **Consideration of Whether the Action Threatens a Violation of Law or Requirement Imposed for the Protection of the Environment.**

To the best of my knowledge, this decision does not threaten violation of any laws and regulations imposed for the protection of the environment (see Section VIII).

## **VIII. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

To the best of my knowledge, this decision complies with all applicable laws and regulations. In the following, I have summarized the association of my decision to some pertinent legal requirements.

## **Executive Order 13212 of May 18, 2001**

This Order called the federal agencies to expedite their review of permits for energy-related projects while maintaining safety, public health, and environmental protections. My decision is consistent with this Order.

## **Federal Land Policy and Management Act of 1976**

The Federal Land Policy and Management Act of 1976 states that public lands are to be managed in a manner that recognizes the need for the domestic sources of minerals, including renewable and non-renewable resources. My decision is consistent with this act.

## **National Forest Management Act of 1976**

The Forest Plan was approved in 1983 and amended in 1991, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Forest. The National Forest Management Act requires all projects and activities to be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project (EA, Section 1.7). My decision is consistent with the Forest Plan.

## **Mining and Minerals Policy Act of 1970**

This Act declared it would be the continuing policy of the Federal government and in the national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining industries, and the orderly and economic development of domestic mineral resources (EA, Section 1.6). My decision is consistent with this act.

## **Mineral Leasing Act of 1920, as amended**

Federal coal leasing follows the Mineral Leasing Act of 1920 (MLA), as amended, and specific procedures set forth in 43 CFR 3400. These lease modification applications are being processed according to procedures set forth in 43 CFR 3432. Therefore, my decision is consistent with this act.

## **Surface Mining Control and Reclamation Act of 1977**

The Surface Mining Control and Reclamation Act of 1977, as amended, (SMCRA) gives OSM primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations in the United States. Pursuant to Section 503 of SMCRA, DRMS developed, and the Secretary of the Interior approved, Colorado's permanent regulatory program authorizing DRMS to regulate surface coal mining operations and the surface effects of underground coal mining on private and State lands within the State of Colorado. In September 1982, under Section 523(c) of SMCRA, DRMS entered into a cooperative agreement with the Secretary of the Interior authorizing DRMS to regulate surface coal mining operations and the surface effects of underground coal mining on Federal lands within the State. My decision is consistent with this act and cooperative agreements.

## **Energy Policy Act of 2005**

The purpose of the Energy Policy Act of 2005 was to ensure jobs for the future with secure, affordable, and reliable energy.

This Act Amends 30 U.S.C. 203(c)(4)(A) to ``secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease...(3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)--(A) exceed 960 acres; or (B) add acreage larger than that in the original lease." My decision is consistent with this act.

## **Clean Air Act of 1955, as amended 1977**

This Clean Air Act (CAA) required States to develop plans to implement, maintain, and enforce primary and secondary ambient air quality standards for any criteria air pollutants, and called federal agencies to prevent deterioration of air quality. Effects on air quality as a result of this project were analyzed and showed that this project will have negligible effects on air quality. Further, MCC is required to hold and maintain state air quality permits for their activities under the CAA. This decision is consistent with this Act.

## **Clean Water Amendments of 1972**

This Act requires State and Federal agencies to control and abate water pollution. This project was designed to comply with this Act (Appendix B and EA, Section 2.1) through the inclusion of stipulations for surface water, water depletions, baseline data and monitoring and further compliance with all state and local laws. This decision is consistent with this Act.

## **Executive Order 11990 and 11988**

The management of wetlands and floodplains are subject to Executive Orders 11990 and 11988, respectively. The purpose of the EOs are to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative. This order requires the Forest Service to take action to minimize destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. In compliance with this order, Forest Service direction requires that an analysis be completed to determine whether adverse impacts would result (EA, Chapter 2 and Appendix B). The project was designed to avoid impacts to wetlands and floodplains through the addition of lease stipulations. My decision is consistent with these orders.

## **National Historic Preservation Act**

Three cultural resource inventories have occurred within the project area and no heritage resources were located. Therefore the lease modifications are found to have no potential to affect cultural resources, as defined in regulations 36 CFR 800. The addition of the standard lease clause will protect currently undiscovered sites (EA, Section 3.30 and Project File). Therefore, no inventory will be carried out and no

consultation with the State Historic Preservation Office is required. My decision is consistent with this and other acts protecting heritage resources.

## **Endangered Species Act**

Compliance with this Act is addressed in Section VII, of this document.

## **National Environmental Policy Act**

The documentation for this project supports compliance with this Act. The process of environmental analysis and decision making for this proposed action, and the associated documentation, have been conducted to fully comply with the requirements of NEPA. These include requirements of the Act itself, CEQ regulations at 40 CFR 1500, Forest Service policies at Forest Service Handbook 1909.15 and 36 CFR 220, requirements that evolved through the practice of NEPA, and from case law.

# **IX. IMPLEMENTATION DATE AND ADMINISTRATIVE REVIEW AND APPEAL OPPORTUNITY**

## **Implementation Date**

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15<sup>th</sup> business day following the date of the last appeal disposition.

In relation to the Forest Service role in this project as the federal surface land management agency, BLM decision making relating to leasing these lands could not occur until after the appeal period and the 5 day stay thereafter. Should an appeal be filed, BLM could not act until any appeals on this Forest Service decision have been resolved.

## **Administrative Review or Appeal Opportunities**

This decision is subject to administrative review pursuant to Federal Regulations at 36 CFR 215. Appeals (including attachments) must be in writing and filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the Appeal Deciding Officer (§ 215.8) within 45 days following the date of publication of a legal notice of this decision in the *Grand Junction Daily Sentinel*. Attachments received after the 45-day appeal period will not be considered. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§ 215.15 (a)). Those wishing to appeal should not rely upon dates or timeframe information provided by any other source.

The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer at:

Appeals Deciding Officer  
U.S.D.A. Forest Service  
Rocky Mountain Region  
740 Simms Street  
Golden, CO 80401

Fax: 303-275-5134 to the attention of Appeals

Email: [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us)

The office business hours for those submitting hand-delivered appeals are 8:00 AM to 4:30 PM Monday through Friday, excluding federal holidays. Electronic appeals must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or MSWord (.doc). In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Individuals or organizations who expressed interest during the comment period (identified as the scoping period in early 2010) specified at 36 CFR 215.6 may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

## Contact

For more information about this project, contact Niccole Mortenson, 2250 Highway 50, Delta, CO 81416, phone 970-874-6616, or at [nmortenson@fs.fed.us](mailto:nmortenson@fs.fed.us).

## XI. SIGNATURE AND DATE



11/8/2011

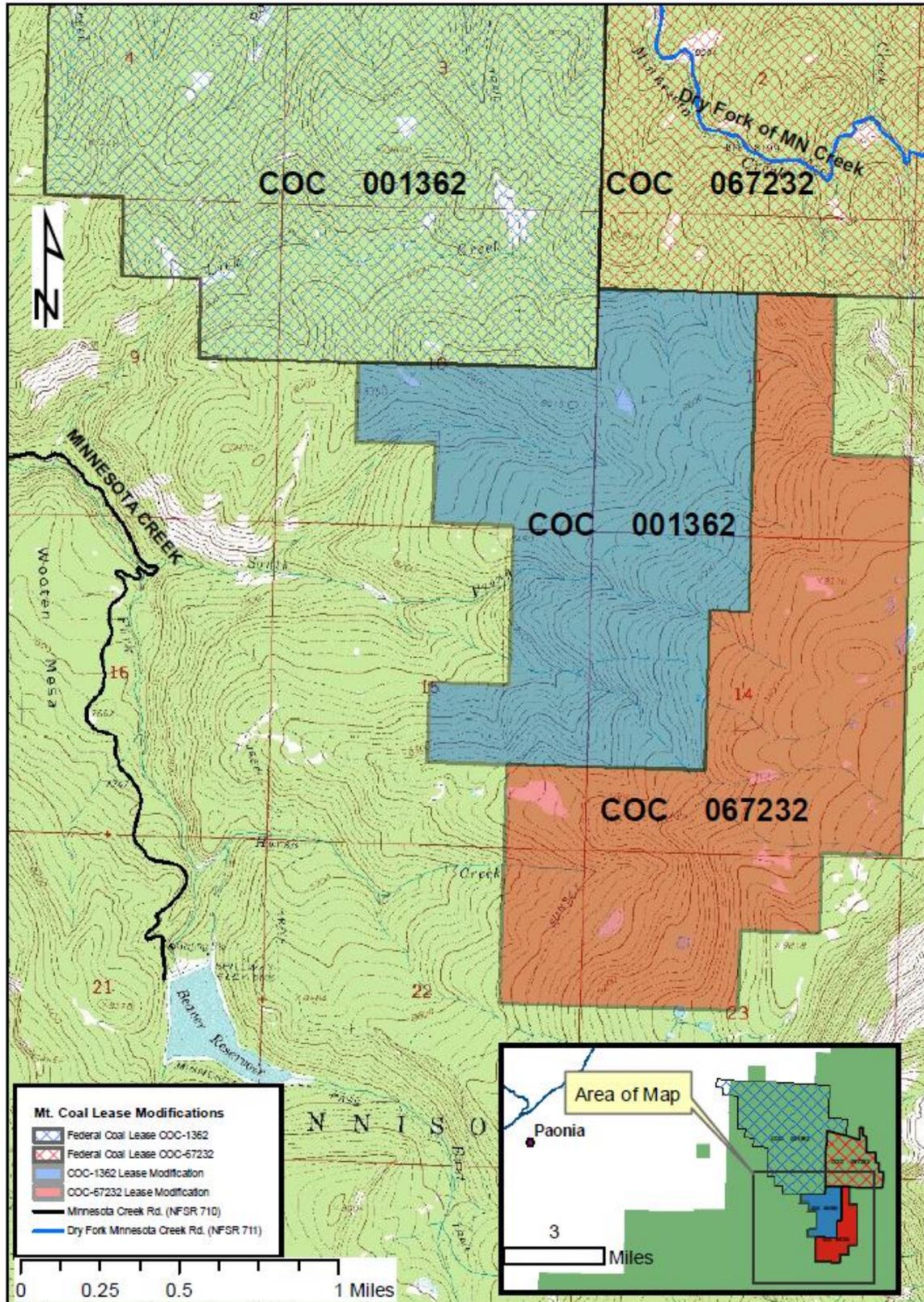
CHARLES S. RICHMOND  
Forest Supervisor  
Grand Mesa-Uncompahgre-Gunnison National Forests

DATE

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

# Appendix A- Decision Map



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## Appendix B- Stipulations for National Forest System Lands Federal Coal Lease COC-1362 & COC-67232

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
Cultural and Paleontological Resources	<p>The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:</p> <ul style="list-style-type: none"> <li>• Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then:</li> <li>• Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other</li> </ul>	<p>The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:</p> <ul style="list-style-type: none"> <li>• Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then:</li> <li>• Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other</li> </ul>	Use language from parent leases from required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.</p> <ul style="list-style-type: none"> <li>• Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.</li> <li>• The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this</li> </ul>	<p>considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.</p> <ul style="list-style-type: none"> <li>• Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.</li> <li>• The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this</li> </ul>	

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	license, and shall leave such discoveries intact until directed to proceed by FS and BLM.	license, and shall leave such discoveries intact until directed to proceed by FS and BLM.	
<b>Endangered Threatened Species</b>	<p>or The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.</p> <p>The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of</p>	<p>The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.</p> <p>The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of</p>	Use language from parent leases, required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	a proposed action on endangered or threatened species or their habitats.	a proposed action on endangered or threatened species or their habitats.	
	<p>If there is reason to believe that Forest Service Sensitive species, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall include species or groups of species identified by the FS, and will be conducted to by a qualified specialist. A report of findings will be prepared and provided to the FS. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance consistent with the Forest Plan. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.</p>	<p>If there is reason to believe that Sensitive, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist, and a report of findings prepared. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.</p>	<p>Use language from parent leases, required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.</p>
<b>Canada Lynx</b>	To comply with the USDA Forest Service Conservation Agreement with Fish and Wildlife Service, to follow the conservation measures in	To comply with the Canada Lynx Assessment and Strategy (Ruediger <i>et al.</i> 2000), the following special constraints will apply if post-lease	To comply with the GMUG Forest Plan 2008 amendment, the following special constraints will apply if surface use on the lease

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>the Canada Lynx Conservation Assessment and Strategy (Ruediger et al. 2000), the following special constraints will apply if surface use on the lease is proposed in lynx habitat:</p> <ul style="list-style-type: none"> <li>• Winter access will be limited to designated routes.</li> <li>• Further, should surface disturbing operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:</li> <li>• Remote monitoring of the development sites and facilities may be required to reduce snow compaction.</li> <li>• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.</li> <li>• Public motorized use on new roads constructed for project-specific purposes will be restricted.</li> <li>• Access roads will be designed to provide for</li> </ul>	<p>surface use is proposed in lynx habitat:</p> <ul style="list-style-type: none"> <li>• Winter access will be limited to designated routes.</li> </ul> <p>Further, should post-lease operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:</p> <ul style="list-style-type: none"> <li>• Remote monitoring of the development sites and facilities may be required to reduce snow compaction.</li> <li>• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.</li> <li>• Public motorized use on new roads constructed for project-specific purposes will be restricted.</li> <li>• Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no</li> </ul>	<p>is proposed in lynx habitat:</p> <ul style="list-style-type: none"> <li>• Winter access will be limited to designated routes.</li> </ul> <p>Further, should surface disturbing operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:</p> <ul style="list-style-type: none"> <li>• Remote monitoring of the development sites and facilities may be required to reduce snow compaction.</li> <li>• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.</li> <li>• Public motorized use on new roads constructed for project-specific purposes <b>will</b> be restricted unless otherwise authorized by the District Ranger.</li> <li>• Access roads will be</li> </ul>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.</p> <ul style="list-style-type: none"> <li>• New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers.</li> </ul>	<p>longer needed for other management objectives.</p> <ul style="list-style-type: none"> <li>• New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers.</li> <li>• If post lease surface use occurs in lynx habitat, the Lessee will be required to submit an annual report to the USDA-FS and USFWS of all activities having occurred in lynx habitat.</li> </ul>	<p>designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.</p> <ul style="list-style-type: none"> <li>• New permanent roads will not be built on ridge tops or in saddles, <b>if possible</b>, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers, if possible.</li> </ul>
<b>Raptors</b>	<p>For raptors (except American kestrel) the Lessee will be required to:</p> <ul style="list-style-type: none"> <li>• Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and</li> <li>• No surface activities will be allowed within ¼ mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest</li> </ul>	<p>For raptors (except American kestrel) the Lessee will be required to:</p> <ul style="list-style-type: none"> <li>• Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and</li> <li>• No surface activities will be allowed within ½-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest</li> </ul>	Use language from COC-67232.

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>Service on a site-specific basis.</p> <ul style="list-style-type: none"> <li>No surface activities will be allowed within 1-mile radius of active bald eagle or peregrine falcon nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis.</li> </ul>	<p>Service on a site-specific basis.</p>	
<b>Big game winter range</b>	<p>In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.</p>	<p>In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.</p>	<p>Use language from parent leases</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
<b>Water depletions</b>	In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.	In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.	Use language from parent leases
<b>Breeding birds</b>	If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance as prescribed by the Forest Service.	If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance.	Use language from COC-1362 parent lease.
<b>Geologic hazards</b>	No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential, or on slopes which exceed 60%.	No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential.	Use language from COC-67232.

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.</p>	<p>Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.</p>	<p>Use language from parent leases.</p>
<p><b>Baseline Information</b></p>	<p>The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources.</p>	<p>The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources in the Dry Fork lease tract.</p>	<p>Use language from parent leases</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
<b>Monitoring Program</b>	The operator/lessee would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities on the lease area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.	The operator/lessee of the lease tract would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities in the lease tract area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.	Use language from parent leases
<b>Riparian, wetland or floodplain</b>	Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will avoid riparian, wetland or floodplain areas, and a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical	Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will not be permitted in riparian, wetland or floodplain areas, or within a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines)	Use language from parent leases

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	alternatives exist.	unless no practical alternatives exist.	
<b>Subsidence</b>	<p>If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.</p> <p>The Lessee/Operator shall be responsible for monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation, if needed, would be performed at the Lessee's expense. These requirements will be coordinated with the District Ranger and the</p>	<p>If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.</p> <p>The Lessee/Operator shall be required to perform the following with respect to monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation will be performed at the Lessee's expense. The Lessee may request variations on timing for surveys,</p>	<p>Use language from parent leases</p> <p>As parent lease for COC-67232 deals specifically with the ditch, use language from COC-1362 on lease modifications.</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	Special Use Permittee.	<p>monitoring and reporting. Approving such requests would be at the discretion of the District Ranger.</p> <p>a. Baseline condition surveys of existing facilities will be completed the Fall following award of lease. Reports of this survey will be deliverable to the Forest Service by December 1 of that same year.</p> <p>b. In consultation with the Special Use Permittee and the Forest Service, install equipment to monitor flow on water conveyance facilities during the Fall following award of lease. Flow monitoring shall commence the following spring and continue until one year post mining. Flow data shall be provided to the Forest Service annually by December 1.</p> <p>c. A Surface Facility Monitoring and Mitigation Plan (Plan) will be submitted to the Forest Service for review and approval not later than 12 months prior to scheduled undermining. The Plan will detail measures to be taken to monitor, repair and mitigate subsidence effects of the facilities during actual mining and for one year.</p>	
<b>Roadless</b>	The permittee/lessee must comply with all the rules and regulations of	All or parts of the following lands encompassed in this lease are in the	All or parts of the following lands encompassed in this lease are in an

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior.</p> <p>Federal Coal Lease C-1362, as modified October 2001</p> <p>All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the</p>	<p>West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.</p> <p>Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.</p>	<p>Inventoried Roadless Area. These lands shall be subject to all future rules and regulations of the Secretary of Agriculture concerning management of roadless areas including restrictions on road building.</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	lease.  Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.		
<b>Visuals</b>	n/a	n/a	Within the lease modification area, the lessee will work with the District Ranger and his/her representative to see that all mine operations are situated on the ground in such a manner that reasonably minimizes impacts to the scenic integrity of that landscape, as prescribed in the Forest Plan.

**BLM Lease Addendums for Protection of Non-Mineral (Surface) Resources.**

Resource Area	Addendum Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Addendum Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Addendum Specific to Lease Modifications
<b>Methane Flaring, Capture/Use or other alternatives to venting</b>	Sec. 3. Notwithstanding the language in Sec.2 of this lease and subject to the terms and conditions below, lessee is authorized to drill for, extract, remove, develop, produce and capture for use or sale any or all of the coal mine methane from the	Sec. 3. Notwithstanding the language in Sec.2 of this lease and subject to the terms and conditions below, lessee is authorized to drill for, extract, remove, develop, produce and capture for use or sale any or all of the coal mine methane from the	This stipulation (lease addendum) has been developed was developed in response to direction from the Secretary of Interior, and is a negotiated addendum between the Department of Interior (BLM) and the lessee.

above described lands that it would otherwise be required to vent or discharge for safety purposes by applicable laws and regulations. For purposes of this lease, "coal mine methane" means any combustible gas located in, over, under, or adjacent to the coal resources subject to this lease, that will or may infiltrate underground mining operations.

Sec. 4. Notwithstanding any other provision of this lease, nothing herein shall, nor shall it be interpreted to, waive, alter or amend lessee's right to vent, discharge or otherwise dispose of coal mine methane as necessary for mine safety or to mine the coal deposits consistent with permitted underground mining operations and federal and state law and regulation. Lessee shall not be obligated or required to capture for use or sale coal mine methane that would otherwise be vented or discharged if the capture of coal mine methane, independent of activities related to mining coal, is not economically feasible or if the coal mine methane must be vented in order to abate the potential hazard to the health or safety of the coal miners or coal mining activities. In the event of a dispute between lessor and lessee as to the economic or other

above described lands that it would otherwise be required to vent or discharge for safety purposes by applicable laws and regulations. For purposes of this lease, "coal mine methane" means any combustible gas located in, over, under, or adjacent to the coal resources subject to this lease, that will or may infiltrate underground mining operations.

Sec. 4. Notwithstanding any other provision of this lease, nothing herein shall, nor shall it be interpreted to, waive, alter or amend lessee's right to vent, discharge or otherwise dispose of coal mine methane as necessary for mine safety or to mine the coal deposits consistent with permitted underground mining operations and federal and state law and regulation. Lessee shall not be obligated or required to capture for use or sale coal mine methane that would otherwise be vented or discharged if the capture of coal mine methane, independent of activities related to mining coal, is not economically feasible or if the coal mine methane must be vented in order to abate the potential hazard to the health or safety of the coal miners or coal mining activities. In the event of a dispute between lessor and lessee as to the economic or other

Use language from parent leases.

feasibility of capturing for use or sale the coal mine methane, lessor's remedy as a prevailing party shall be limited to recovery of the compensatory royalties on coal mine methane not captured for use or sale by lessee. Lessee shall have the right to continue all mining activities under the lease, including venting coal mine methane, pending resolution of any dispute regarding the application of the terms of Sections 3 and 4.

Sec. 2 (c) COAL MINE METHANE OPERATIONS AND ROYALTIES- Notwithstanding the language in Part II, Section 2 (a) of this lease, the royalty shall be 12.5 percent of the value of any coal mine methane that is captured for use or sale from this lease. For purposes of this lease, the term "capture for use or sale" shall not include and the royalty shall not apply to coal mine methane that is vented or discharged and not captured for the economic or safety reasons described in Part I, Section 4 of this lease. Lessee shall have no obligation to pay royalties on any coal mine methane that is used on or for the benefit of mineral extraction at the West Elk coal mine. When not inconsistent with any express provision of this lease, the lease is

feasibility of capturing for use or sale the coal mine methane, lessor's remedy as a prevailing party shall be limited to recovery of the compensatory royalties on coal mine methane not captured for use or sale by lessee. Lessee shall have the right to continue all mining activities under the lease, including venting coal mine methane, pending resolution of any dispute regarding the application of the terms of Sections 3 and 4.

Sec. 2 (c) COAL MINE METHANE OPERATIONS AND ROYALTIES- Notwithstanding the language in Part II, Section 2 (a) of this lease, the royalty shall be 12.5 percent of the value of any coal mine methane that is captured for use or sale from this lease. For purposes of this lease, the term "capture for use or sale" shall not include and the royalty shall not apply to coal mine methane that is vented or discharged and not captured for the economic or safety reasons described in Part I, Section 4 of this lease. Lessee shall have no obligation to pay royalties on any coal mine methane that is used on or for the benefit of mineral extraction at the West Elk coal mine. When not inconsistent with any express provision of this lease, the lease is

subject to all rules and regulations related to Federal gas royalty collection in Title 30 of the Code of Federal Regulations now or hereinafter in effect and lessor's rules and regulations related to applicable reporting and gas measurement now or hereinafter in effect

SEVERABILITY- In the event any provision of this addendum is subject to a legal challenge or is held to be invalid, unenforceable or illegal in any respect, the validity, legality and enforceability of this lease will not in any way be affected or impaired thereby and lessee will retain, in accordance with the terms of this lease, the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits ,upon, or under the lands described in this lease, including the right to vent or discharge coal mine methane for safety purposed as required by applicable laws and regulation.

subject to all rules and regulations related to Federal gas royalty collection in Title 30 of the Code of Federal Regulations now or hereinafter in effect and lessor's rules and regulations related to applicable reporting and gas measurement now or hereinafter in effect

SEVERABILITY- In the event any provision of this addendum is subject to a legal challenge or is held to be invalid, unenforceable or illegal in any respect, the validity, legality and enforceability of this lease will not in any way be affected or impaired thereby and lessee will retain, in accordance with the terms of this lease, the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits ,upon, or under the lands described in this lease, including the right to vent or discharge coal mine methane for safety purposed as required by applicable laws and regulation.

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# **Appendix C- Federal Coal Leases COC-1362 & COC-67232**



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7076

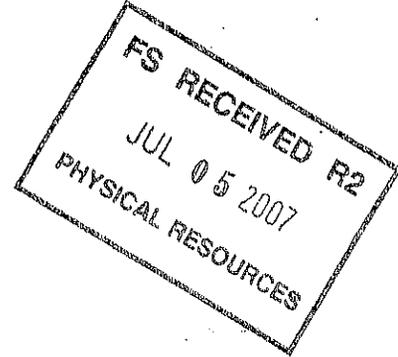


www.co.blm.gov

IN REPLY REFER TO:

CO-921(KB)  
3451  
COC-01362  
Coal

JUL 02 2007



Certified Mail

Decision

Mountain Coal Company, LLC  
One City Place Dr., Ste. 300  
St. Louis, MO 63141

Lease Terms and Conditions Readjusted

Coal lease COC-01362 was issued effective September 1, 1967; and the last readjustment was on September 1, 1997. This lease becomes subject to readjustment of its terms and conditions on September 1, 2007.

Notice of intent to readjust the coal lease was sent to the lessee on September 01, 2005. As provided in the Mineral Leasing Act of 1920, as amended (41 Stat. 437, 30 U.S.C. 181 et seq.), and the regulations at 43 CFR 3451, we are hereby readjusting the terms and conditions of the lease. A copy of the lease is enclosed. The readjusted terms and conditions shall become effective September 01, 2007. This action has been reviewed for conformance with the Bureau of Land Management's public land health standards adopted February 12, 1997. The readjustment will not adversely affect achievement of the public land health standards.

The annual rental remains at \$3 per acre or fraction thereof as provided in the current lease. The royalty rates established by law and by regulation at 43 CFR 3473.3-2 remain at 12½ percent of the value of the coal removed from a surface mine and at 8 percent for coal removed from an underground mine. The value of the coal shall be determined in accordance with the regulations at 30 CFR 206, as amended. The adequacy of the lease bond is reviewed periodically and adjusted when necessary to reflect changed conditions. The required bond amount remains at \$265,000.

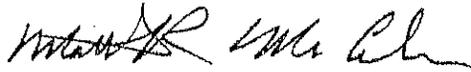
Payments of rentals and royalties must be submitted to the Minerals Management Service in accordance with that agency's regulations in Title 30, Code of Federal Regulations. In accordance with the regulations at 43 CFR 3451.2(b) and (e), this decision constitutes the final action of the Bureau of Land Management on all the provisions contained in the readjusted lease. The effective date of the readjusted lease shall not be affected by the filing of any appeal of, or subsequent civil suit regarding, any of the readjusted terms and conditions.

**CAONIA RANGER DISTRICT  
ACTION DATE**

**AUG 31 2007**

DISTRICT RANGER \_\_\_\_\_  
MINERALS \_\_\_\_\_  
LANDS/ENG \_\_\_\_\_  
RANGE \_\_\_\_\_  
WILDLIFE \_\_\_\_\_  
BIA \_\_\_\_\_  
ADMIN ASST \_\_\_\_\_  
LEO \_\_\_\_\_

Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. The appeal procedures are outlined in the enclosed form 1842-1. Information on Taking Appeals to the Board of Land Appeals must be strictly followed. The appellant has the burden of showing that the decision appealed from is in error.



Matt R. McColm  
Acting Chief, Branch of Solid Minerals  
Division of Energy, Lands and Minerals

Enclosures:

Readjusted Lease  
Appeal Form 1842-1

cc:

FOM, UFO w/lse  
USFS w/lse  
MMS w/lse  
OSMRE w/lse  
DOJ w/lse  
Governor

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Serial Number COC-01362

Lease Date September 1, 1967

**COAL LEASE READJUSTMENT**

**PART I. LEASE RIGHTS GRANTED**

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management, and

Mountain Coal Company, LLC  
One City Place Dr., Ste. 300  
St. Louis, Missouri 63141

hereinafter called lessee, is readjusted, effective September 1, 2007, for a period of 10 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of each 10-year lease period.

Sec.1. This lease readjustment is issued pursuant and subject to the terms and provisions of the Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act; and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec.2. Lessor, in consideration of any rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.  
sec. 27, lots 1-16 inclusive;  
sec. 28, lots 1-16 inclusive;  
sec. 29, lots 1-14 inclusive;  
sec. 30, lots 5, 6, and 9 inclusive;  
sec. 32, lots 1-9 inclusive, excluding 24.8 acres in the Independent Reservoir;  
sec. 33, lots 1-16 inclusive;  
sec. 34, lots 1-16 inclusive;

T. 14 S., R. 90 W., 6<sup>th</sup> P.M.  
sec. 3, lots 1-4 inclusive, S1/2N1/2, and S1/2;  
sec. 4, lots 1-3 inclusive, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4;  
sec. 9 N1/2NE1/4 and SE1/4NE1/4;  
sec. 10, N1/2.

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.  
sec. 35, Beginning at the northwest corner of said sec. 35;  
Thence S 89° 45'E, 2308.2 feet along the north line to the north 1/4 corner of said sec. 35;  
Thence S 89° 51'E, 755.52 feet along the north line of said sec. 35;  
Thence N 77° 34'26"W, 3118.74 feet to the west line of said sec. 35;  
Thence N 1° 33'E, 1946.48 feet along the west line of said sec. 35 to the Point of Beginning.

containing 4,836.36 more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

**PART II. TERMS AND CONDITIONS**

Sec. 1. (a) RENTAL RATE - Lessee shall pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$3.00 for each lease year.

(b) RENTAL CREDITS - Rental shall not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty

shall be 12½ percent of the value of the coal produced by strip or auger methods and 8.0 percent of the value of the coal produced by underground mining methods as set forth in the regulations. Royalties are due to lessor on the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the authorized officer may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee shall maintain in the proper office a lease bond in the amount of \$265,000. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec. 5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor or the lessee's application or at the direction of the lessor, this lease shall become an LMU or part of an LMU subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee shall comply at its own expense with all reasonable orders of the

Sec. 4. DILIGENCE - The lessee is subject to the conditions of diligent development and continued operations, except that these conditions are excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor in the public interest, may suspend the conditions of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years shall terminate the lease, pursuant to Section 7 of the Act. If not submitted already, lessee shall submit an operation and reclamation plan pursuant to Section 7 of the Act no later than 3 years after the effective date of this lease readjustment. The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized officer.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements of rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not

more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors shall maintain segregated facilities.

Sec. 9. (a) TRANSFERS - This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee shall deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the lessor, but lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor shall waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after

written notice thereof, this lease shall be subject to cancellation by the lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151-1175), the Clean Air Act (42 U.S.C. 1857 et. seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

Sec. 15. SPECIAL STIPULATIONS - See Attachment A for USFS stipulations.

(a) All stipulations concerning compliance with the requirements of the Surface Mining Control and Reclamation Act will be included in the document approving the mining plan.

- 1. A statement of the immediate impacts and long term effects of mining on transportation facilities within the State, including: (i) the estimated transportation mode(s), route(s), and frequency of trips for the extracted resource, (ii) contemplated construction of transportation facilities, (iii) the estimated effect of any truck movements on the rate of roadway pavement deterioration, on the design life of the transportation mode, on the level of service repair and on overall safety to the motoring public, and (iv) a discussion of those measures which can mitigate impact on those transportation modes such as proper signing, lighting, and design or access to and from public roadway(s).

- 2. A statement of the perceived roles and responsibilities of the lessee, the affected local governments, and the State of Colorado, relating to the technical and financial needs of the affected communities.

A determination for completeness will be made by the BLM. The Bureau will make this impact mitigation study available to the State and local governments.

(b) Lessee shall comply with all valid and applicable laws and regulations of Federal, State, and local governmental authority.

(c) RESOURCE RECOVERY AND PROTECTION. (1) Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

(2) The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coalbed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer (AO) to leave such reserves unmined. Upon approval by the AO, such coalbeds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

(3) In the event the AO determines that the R2P2, as approved, will not attain MER as

the result of changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

(4) Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

(5) The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

THE UNITED STATES OF AMERICA

By: 

Matt R. McColm  
Acting Chief, Branch of Solid Minerals  
Division of Energy, Lands and Minerals

Date: 7/2/07

**Attachment A**  
**USDA Forest Service**  
**Grand Mesa-Uncompahgre-Gunnison National Forests**  
**Gunnison County, CO**

**Standard Notice and Coal Lease Stipulations**  
**for**  
**National Forest System Lands**  
**Federal Coal Lease**  
**C-1362**

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.  
Sec. 27: lots 1-16 inclusive;  
Sec. 28: lots 1-16 inclusive;  
Sec. 29: lots 1-14 inclusive;  
Sec. 30: lots 5, 6, and 9;  
Sec. 32: lots 1-9, inclusive, excluding 24.8  
in the Independent Reservoir;  
Sec. 33: lots 1-16, inclusive;  
Sec. 34: lots 1-16, inclusive;

T. 14 S., R. 90 W., 6<sup>th</sup> P.M.  
Sec. 3: lots 1-4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ , and  
S $\frac{1}{2}$ ;  
Sec. 4: lots 1-3, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E  $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
Sec. 9: N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 10: N $\frac{1}{2}$ .

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.  
Sec. 35: Beginning at the northwest corner of  
said sec. 35;  
Thence S 89° 45'E, 2308.02 feet along the  
north line to the north  $\frac{1}{4}$  corner of said  
sec. 35;  
Thence S 89° 51'E, 755.52 feet along the  
north line of said sec 35;  
Thence N 77° 34'26"W, 3118.74 feet to the  
west line of said sec 35;  
Thence N 1 33'E, 1946.48 feet along the west  
line of said sec. 35 to the Point of  
Beginning.

**NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM UNDER JURISDICTION OF**  
**DEPARTMENT OF AGRICULTURE**  
**(R2-FS-2828-13(92))**

The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

**Forest Supervisor**  
Grand Mesa, Uncompahgre, and Gunnison National Forests  
2250 Highway 50  
Delta, CO 81416  
970-874-6600

who is the authorized representative of the Secretary of Agriculture.

## NOTICE

**CULTURAL AND PALEONTOLOGICAL RESOURCES** - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.
3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this license, and shall leave such discoveries intact until directed to proceed by FS and BLM.

**ENDANGERED OR THREATENED SPECIES** - The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.

The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

### Stipulations:

1. To comply with the USDA Forest Service Conservation Agreement with Fish and Wildlife Service, to follow the conservation measures in the Canada Lynx Conservation Assessment and Strategy (Ruediger et al. 2000), the following special constraints will apply if surface use on the lease is proposed in lynx habitat:
  - a. Winter access will be limited to designated routes.

Further, should surface disturbing operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:

- a. Remote monitoring of the development sites and facilities may be required to reduce snow compaction.
- b. A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.

- c. Public motorized use on new roads constructed for project-specific purposes will be restricted.
  - d. Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.
  - e. New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers.
2. If there is reason to believe that Forest Service Sensitive species, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall include species or groups of species identified by the FS, and will be conducted to by a qualified specialist. A report of findings will be prepared and provided to the FS. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance consistent with the Forest Plan. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.
3. For raptors (except American kestrel) the Lessee will be required to:
- a. Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and
  - b. No surface activities will be allowed within 1/4-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis.
  - c. No surface activities will be allowed within 1-mile radius of active bald eagle or peregrine falcon nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis.
4. In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.
5. In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.
6. Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will avoid riparian, wetland or floodplain areas, and a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical alternatives exist.
7. No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential, or on slopes which exceed 60%.
8. Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.
9. The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources.

10. The operator/lessee would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities on the lease area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.

11. If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance as prescribed by the Forest Service.

12. If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.

13. The Lessee/Operator shall be responsible for monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation, if needed, would be performed at the Lessee's expense. These requirements will be coordinated with the District Ranger and the Special Use Permittee.

14.

**Lease Notice**  
Federal Coal Lease  
C-1362, as modified October 2001

All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.

Sec. 27: lots 1-16 inclusive;  
Sec. 28: lots 1-16 inclusive;  
Sec. 29: lots 1-14 inclusive;  
Sec. 30: lots 5, 6, and 9;  
Sec. 32: lots 1-9, inclusive, excluding 24.8  
in the Independent Reservoir;  
Sec. 33: lots 1-16, inclusive;  
Sec. 34: lots 1-16, inclusive;

T. 14 S., R. 90 W., 6<sup>th</sup> P.M.

Sec. 3: lots 1-4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ , and  
S $\frac{1}{2}$ ;  
Sec. 4: lots 1-3, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E  $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
Sec. 9: N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 10: N $\frac{1}{2}$ .

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.

Sec. 35: Beginning at the northwest corner of  
said sec. 35;  
Thence S 89° 45'E, 2308.02 feet along the  
north line to the north  $\frac{1}{4}$  corner of said  
sec. 35;  
Thence S 89° 51'E, 755.52 feet along the  
north line of said sec 35;  
Thence N 77° 34'26"W, 3118.74 feet to the  
west line of said sec 35;  
Thence N 1 33'E, 1946.48 feet along the west  
line of said sec. 35 to the Point of  
Beginning.

Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.

United States  
Department of the Interior  
Bureau of Land Management  
Coal Lease Addendum

Serial Number  
C-1362

Coal Lease C-1362 is hereby amended by this addendum:

PART I. LEASE RIGHTS GRANTED

\* \* \* \*

Sec. 3. Notwithstanding the language in Sec. 2 of this lease and subject to the terms and conditions below, lessee is authorized to drill for, extract, remove, develop, produce and capture for use or sale any or all of the coal mine methane from the above described lands that it would otherwise be required to vent or discharge for safety purposes by applicable laws and regulations. For purposes of this lease, "coal mine methane" means any combustible gas located in, over, under, or adjacent to the coal resources subject to this lease, that will or may infiltrate underground mining operations.

Sec.4. Notwithstanding any other provision of this lease, nothing herein shall, nor shall it be interpreted to, waive, alter or amend lessee's right to vent, discharge or otherwise dispose of coal mine methane as necessary for mine safety or to mine the coal deposits consistent with permitted underground mining operations and federal and state law and regulation. Lessee shall not be obligated or required to capture for use or sale coal mine methane that would otherwise be vented or discharged if the capture of coal mine methane, independent of activities related to mining coal, is not economically feasible or if the coal mine methane must be vented in order to abate the potential hazard to the health or safety of the coal miners or coal mining activities. In the event of a dispute between lessor and lessee as to the economic or other feasibility of capturing for use or sale the coal mine methane, lessor's remedy as a prevailing party shall be limited to recovery of compensatory royalties on coal mine methane not captured for use or sale by lessee. Lessee shall have the right to continue all mining activities under this lease, including venting coal mine methane, pending resolution of any dispute regarding the application of the terms of Sections 3 and 4.

PART II. TERMS AND CONDITIONS

Sec. 2

\* \* \* \*

(c) COAL MINE METHANE OPERATIONS AND ROYALTIES - Notwithstanding the language in Part II, Sec. 2 (a) of this lease, the royalty shall be 12.5 percent of the value of any coal mine methane that is captured for use or sale from this lease. For purposes of this lease, the term "capture for use or sale" shall not include and the royalty shall not apply to coal mine methane that is vented or discharged and not captured for the economic or safety reasons described in Part I, Sec. 4 of this lease. Lessee shall have no obligation to pay royalties on any coal mine methane that is used on or for the benefit of mineral extraction at the West Elk coal mine. When not inconsistent with any express

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provision of this lease, this lease is subject to all rules and regulations related to Federal gas royalty collection in Title 30 of the Code of Federal Regulations now or hereinafter in effect and lessor's rules and regulations related to applicable reporting and gas measurement now or hereinafter in effect.

\*\*\*\*

**SEVERABILITY** - In the event any provision of this addendum is subject to a legal challenge or is held to be invalid, unenforceable or illegal in any respect, the validity, legality and enforceability of this lease will not in any way be affected or impaired thereby and lessee will retain, in accordance with the terms of this lease, the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon or under the lands described in this lease, including the right to vent or discharge coal mine methane for safety purposes as required by applicable laws and regulations.

This Coal Lease Addendum is effective as of the date all parties have executed the Addendum.

**MOUNTAIN COAL COMPANY, LLC**

Name: *E. Claudio*  
Title: President  
Date: 1-13-09

**THE UNITED STATES OF AMERICA**

Name: *[Signature]*  
Title: Associate State Director  
Date: 1-14-09

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
**COAL LEASE**

FORM APPROVED  
OMB NO. 1004-0073  
Expires: January 31, 2007

Serial Number

**COC-67232**

**PART 1. LEASE RIGHTS GRANTED**

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management (BLM), and

(Name and Address)

Ark Land Company, One CityPlace Dr., Ste.300, St. Louis, MS 63141

hereinafter called lessee, is effective 03/01/2007, for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

T. 13 S., R. 90 W., 6<sup>th</sup> P.M.

sec. 35, lots 5 through 7, inclusive, and lots 9 through 16, inclusive, less and except land in coal leases C-1362 and COC-56447, as modified;

sec. 36, W1/2SW1/4NW1/4, and W1/2SW1/4, less and except land in coal lease COC-56447, as modified.

T. 14 S., R. 90 W., 6<sup>th</sup> P.M.

sec. 1, lots 3, 4, S1/2NW1/4, SW1/4, W1/2NW1/4SE1/4, and SW1/4SE1/4;

sec. 2, lots 1 through 4, inclusive, S1/2N1/2, and S1/2;

sec. 11, N1/2N1/2;

sec. 12, N1/2NW1/4, and NW1/4NE1/4.

Containing 1,517.13 acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

**PART II. TERMS AND CONDITIONS**

Sec. 1. (a) RENTAL RATE - Lessee must pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ 3.00 for each lease year.

(b) RENTAL CREDITS - Rental will not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty will be 8.0 percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee must maintain in the proper office a lease bond in the amount of \$ 605,000.00. The BLM may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease will become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease will then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

(Continued on page 2)

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee must keep open at all reasonable times for the inspection by BLM the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee must allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section will be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee must comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee must not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area must be submitted to the BLM.

Lessee must carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee must take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification of proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor must condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee must: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years should be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors should maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS

See Attachment A and Appendix A.

Sec. 9. (a) TRANSFERS

- This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee will be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee must deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee must remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the BLM. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, will become the property of the lessor, but lessee may either remove any or all such property or continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor will waive the requirement for removal, provided the third parties do not object to such waiver. Lessee must, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation by the lessor only by judicial proceedings. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease will extend to and be binding upon, and every benefit hereof will inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee must indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et seq.), the Clean Air Act (42 U.S.C. 4274 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

THE UNITED STATES OF AMERICA

ARK LAND COMPANY  
(Company or Lessee Name)

S. S. King  
(Signature of Lessee)

President  
(Title)

2/02/07  
(Date)

By Jim Edwards

James E. Edwards Jr.  
(BLM)

Chief, Branch of Solid Minerals  
(Title)

2/13/07  
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

### NOTICES

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished with the following information in connection with information required by this application.

**AUTHORITY:** 30 U.S.C. 181-287 and 30 U.S.C. 351-359.

**PRINCIPAL PURPOSE:** BLM will use the information you provide to process your application and determine if you are eligible to hold a lease on BLM Land.

**ROUTINE USES:** BLM will only disclose the information according to the regulations at 43 CFR 2.56(d).

**EFFECT OF NOT PROVIDING INFORMATION:** Disclosing the information is necessary to receive a benefit. Not disclosing the information may result in BLM's rejecting your request for a lease.

The Paperwork Reduction Act of 1995 requires us to inform you that:

The BLM collects this information to authorize and evaluate proposed exploration and mining operations on public lands.

Response to the provisions of this lease form is mandatory for the types of activities specified.

The BLM would like you to know that you do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

**BURDEN HOURS STATEMENT:** Public reporting burden for this form is estimated to average one hour per response including the time for reading the instructions and provisions, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, Mail Stop 401 LS, Washington, D.C. 20240.

Attachment A

COMPETITIVE COAL LEASE COC 67232  
SPECIAL STIPULATIONS

Stipulations Applicable To the Bureau of Land Management Lands:

**Sec. 15. (a) Cultural Resources.** (1) Before beginning any surface disturbing activities on the leased lands, lessee shall conduct a cultural resource intensive field inventory on those portions of the mine plan area and adjacent areas, or exploration plan area, which may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archaeologist or historian, as appropriate) approved by the authorized officer of the Bureau of Land Management (BLM) and shall be conducted in the manner that the authorized officer specifies.

(2) Lessee shall submit an inventory report, including recommendations for protecting any significant cultural resources, to the Regional Director, Western Regional Coordinating Center, Office of Surface Mining Reclamation & Enforcement (OSMRE), and the BLM authorized officer. Lessee shall not begin surface disturbing activities until permission to proceed is given by the appropriate authorized officer.

(3) Lessee shall protect all known cultural resource properties within the lease area from lease-related activities until cultural resources avoidance or mitigation measures can be implemented as part of an approved exploration plan or an approved mining and exploration plan.

(4) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(5) If cultural resources are discovered during operations under the lease, lessee shall immediately notify the authorized officer of the BLM or OSMRE. Lessee shall not disturb such discovered resources except as subsequently authorized. Within two (2) working days of notification, the authorized officer will evaluate, or have evaluated, any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. Cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the BLM authorized officer.

(6) All cultural resources discovered shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

**(b) Paleontological Resources.** (1) Before beginning surface disturbing activities on the leased lands, lessee shall contact the BLM authorized officer to determine whether lessee will be required to conduct a paleontological appraisal of lease areas that may be adversely affected by lease-related activities. Any paleontological appraisal required shall be conducted by a qualified paleontologist approved by the BLM authorized officer and in the manner the authorized officer specifies.

(2) Lessee shall submit an appraisal report, including recommendations for protecting any larger and more conspicuous fossils of significant scientific interest identified on the leased lands to the BLM authorized officer.

(3) If any such fossils are discovered during operations under this lease, lessee shall immediately notify the Regional Director, OSMRE. Operations may continue as long as the fossil specimen(s) would not be seriously damaged or destroyed by the activity. Within five (5) working days of notification, the

Regional Director, OSMRE, shall evaluate or have evaluated such discoveries and shall notify the lessee what action shall be taken with respect to such discoveries.

(4) Lessee shall not knowingly disturb, alter, destroy, or take any larger and more conspicuous fossils of significant scientific interest and shall protect all such fossils in conformance with the measures included in the approved mining and reclamation plan or exploration plan.

(5) These conditions apply to all such fossils of significant scientific interest discovered within the leased lands, whether discovered in the overburden, interburden, or coal seam or seams.

(6) All fossils of significant scientific interest shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(7) The cost of any required recovery of such fossils shall be borne by the United States. Copies of all paleontological resource data shall be provided to the Regional Director, OSMRE.

**(c) Resource Recovery and Protection.** (1) Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

(2) The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coalbed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the AO to leave such reserves unmined. Upon approval by the AO, such coalbeds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

(3) In the event the AO determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a modification, if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

(4) Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

(5) The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

**(d) Threatened and Endangered Species.** If there is reason to believe that Threatened or Endangered, or Sensitive (TES) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist and a report of findings will be

prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance. The cost of conducting the inventory, preparing reports and carrying out mitigating measures shall be borne by the lessee.

(e) Wildlife. (1) Raptors. (1) With respect to Bald Eagle winter concentration areas:

a) No surface activities, except subsidence, may occur within the bald eagle winter concentration area between the dates of December 1 through April 15. Any proposed activities in the bald eagle concentration area, during the closed period, must be approved by the authorized officer, after consultation with the U.S. Fish and Wildlife Service (USFWS).

(2) With respect to water depletions and impacts on endangered fish and critical habitat:

a) In the future, if water to be used for mine related activities is to be taken from a source that is not considered to be non-tributary waters by the USFWS or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the USFWS to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.

(3) With respect to bald or golden eagle nests which may be established on the review area during the life of the project, the following special stipulations shall be applied:

a) No new permanent surface facilities or disturbances, except subsidence, shall be located within a ¼ mile radius buffer zone around each bald or golden eagle nest site.

b) No surface ground activities will be allowed within a 1/2 mile radius buffer zone around each bald eagle active nest site from November 15 to July 30, and around each active golden eagle nest site from February 1 to July 15.

c) Any proposed surface facilities, disturbances or activities (as noted above) in, or adjacent to, these buffer zones will require approval from the Bureau of Land Management (BLM) or U.S. Forest Service (USFS) on a site-specific basis, after consultation with the USFWS.

(4) With respect to bald or golden eagle roost sites or concentration areas which may be established on the review area during the life of the project, the following special stipulations shall be applied:

a) No surface ground activity, except subsidence, shall occur within a 1/4 mile radius of winter roosts between November 15 and March 15, development may be permitted at other periods. If periodic visits are required within the buffer zone after development, activity should be restricted to the hours of 10 am and 2 pm from November 15 through March 15.

b) No surface activities, except subsidence, may occur within the bald eagle winter concentration area between the dates of December 1 through April 15. Any proposed activities in the bald eagle concentration area during the closed period must be approved by the authorized officer, after consultation with the USFWS.

(5) With respect to other raptors (except American Kestrel) which may occur or become established on the West Flatiron Tract during the life of the project, the following special stipulation shall apply:

a) Conduct surveys for nesting raptors on the lease tract prior to development of any surface facilities. No surface activities will be allowed within 1/2 mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by BLM or USFS on a site specific basis.

(e)(2) **Big Game Winter Range.** If areas are determined by the Colorado Division of Wildlife (CDOW) to be mule deer and elk crucial winter range, the following stipulation shall be applied:

a) Coal related facilities and surface disturbance, except subsidence, will be authorized in the review area only if no practical alternatives exist. The BLM and USFS will coordinate with the CDOW to determine the type and extent of allowable variances. Coal exploration, facility construction, and major scheduled maintenance will not be authorized within crucial winter ranges from December 1 through April 30. All unavoidable surface disturbances within the crucial winter ranges during these times will require approval of the BLM and USFS authorized officer.

(f) **Riparian Zones.** Riparian zones are present within the review area and are suitable for coal leasing only with inclusion of the following special stipulations to protect resident and migratory bird species:

a) A 1/8 mile buffer zone (660 ft.) will be protected on either side of Raven Gulch (or a buffer zone may be established in accordance with the surface management agency guidelines). No surface disturbances, except surface subsidence, will be permitted within these buffer zones unless no practical alternatives exist. All unavoidable surface disturbances will require approval of the USFS or BLM authorized officer. The BLM or USFS will coordinate with the USFWS and CDOW to determine the type and extent of allowable variances. A site specific analysis will determine if this stipulation will apply.

(g) **Subsidence.** (1) Except at specifically approved locations, mining that would cause subsidence will not be allowed under Raven Creek or within a buffer zone defined by projecting a 25 degree angle of draw (from vertical) from the surface expression of the creek down to the top of the coal seam to be mined.

(2) If subsidence activates a landslide, which adversely affects surface resources, or a documented water loss, the operator/lessee shall (where applicable): restore stream channels and surface drainage or protect stream flow with earthwork or temporary culverts; or re-vegetate, as necessary, to protect against erosion; or provide other mitigation (which could include water replacement).

(h) **Topography.** (1) The operator/lessee shall secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area. Existing data may be used if such data is adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the inter-relationship of the topography, geology, surface hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

(2) The operator/lessee shall establish a monitoring system to quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology, and vegetation. The monitoring system shall utilize techniques that will provide a continuing record of change over time. The monitoring shall incorporate and be an extension of the baseline data.

(3) No surface occupancy or use would be allowed on LBA tract lands defined as wetlands by the U.S. Army Corp of Engineers regulations and guidelines.

Stipulations Applicable To the U.S. Forest Service Lands:

(i) **Standard Stipulation for the Department of Agriculture Lands.** Attached to and made a part of the coal lease.

(j) **Big Game Winter Range.** Surface use (including monitoring activities), should be scheduled to minimize adverse impacts on elk from December 1 to April 30. Unscheduled use may be allowed in emergency situations with notice and coordination with the Forest Service.

(k) **Topography.** (1) The operator/lessee shall secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area. Existing data may be used if such data is adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the inter-relationship of the topography, geology, surface hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

(2) The operator/lessee shall establish a monitoring system to quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology, and vegetation. The monitoring system shall utilize techniques that will provide a continuing record of change over time. The monitoring shall incorporate and be an extension of the baseline data.

(3) Exploration, drilling and other development activity would not be allowed on NFS lands in the LBA tract during the period from December 1 to April 30. In the event of an emergency, surface use (including drilling) may be allowed with authorization from the Forest Service.

(4) No surface occupancy or use would be allowed on the LBA tract where slopes are greater than 60 percent.

(5) Surface occupancy or use would be controlled on lease tract slopes between 40 and 60 percent. Before any such occupancy or use on lands with such slopes, a special interdisciplinary team (IDT) analysis and mitigation plan detailing construction and mitigation techniques would be required. The IDT could include specialists such as a soil scientist, hydrologist, landscape architect, reclamation, and a mining engineer.

(6) No surface occupancy or use would be allowed on LBA tract lands defined as wetlands by the U.S. Army Corp of Engineers regulations and guidelines.

(7) No surface occupancy would be allowed in areas of high geologic hazard.

(l) **Subsidence.** (1) Except at locations specifically approved by the FS Responsible Official, mining that would cause subsidence will not be allowed under Raven Creek or within a buffer zone defined by projecting a 25 degree angle of draw (from vertical) from the surface expression of the creek down to the top of the coal seam to be mined.

(2) If subsidence activates a landslide, which adversely affects surface resources, or a documented water loss, the operator/lessee shall (where applicable): restore stream channels and surface drainage or protect stream flow with earthwork or temporary culverts; or revegetate, as necessary, to protect against erosion; or provide other mitigation (which could include water replacement).

(m) **Riparian Zones.** No surface disturbances will be permitted within a 1/8 mile buffer zone (660 ft.) on either side of the riparian zones of Raven Gulch (or a different buffer zone may be established in accordance with the surface management agency guidelines). Any surface disturbance will require approval of the USFS or BLM responsible official. The USFS will coordinate with the USFWS and CDOW to determine the type and extent of allowable variances. A site-specific analysis will determine if this stipulation applies.

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**APPENDIX A**  
**Standard Notice and Coal Lease Stipulations**  
**for**  
**National Forest System Lands**  
**Dry Fork Federal Coal Lease**  
**COC-67232**

**NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM UNDER JURISDICTION  
OF DEPARTMENT OF AGRICULTURE  
(R2-FS-2828-13(92))**

The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

**Forest Supervisor**  
Grand Mesa, Uncompahgre, and Gunnison National Forests  
2250 Highway 50  
Delta, CO 81416  
970-874-6600

who is the authorized representative of the Secretary of Agriculture.

**NOTICE**

**CULTURAL AND PALEONTOLOGICAL RESOURCES** - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An

acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.

3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this license, and shall leave such discoveries intact until directed to proceed by FS and BLM.

**ENDANGERED OR THREATENED SPECIES** - The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.

The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

**Stipulations:**

1. To comply with the Canada Lynx Conservation Assessment and Strategy (Ruediger *et al.* 2000), the following special constraints will apply if post-lease surface use is proposed in lynx habitat:

- a. Winter access will be limited to designated routes.

Further, should post-lease operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:

- a. Remote monitoring of the development sites and facilities may be required to reduce snow compaction.
- b. A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required.
- c. Public motorized use on new roads constructed for project-specific purposes will be restricted.
- d. Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.

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- e. New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers.
2. If post lease surface use occurs in lynx habitat, the Lessee will be required to submit an annual report to the USDA-FS and USFWS of all activities having occurred in lynx habitat.
  3. If there is reason to believe that Sensitive, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist, and a report of findings prepared. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.
  4. Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will not be permitted in riparian, wetland or floodplain areas, or within a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical alternatives exist.
  5. For raptors (except American kestrel) the Lessee will be required to:
    - a. Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and
    - b. No surface activities will be allowed within ½-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis.
  6. In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.
  7. In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.
  8. No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential.
  9. Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.

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10. The operator/lessee of the LBA tract would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources in the Dry Fork LBA tract.

11. The operator/lessee of the LBA tract would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities in the LBA tract area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.

12. If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance.

13. If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.

14. The Lessee/Operator shall be required to perform the following with respect to monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation will be performed at the Lessee's expense. The Lessee may request variations on timing for surveys, monitoring and reporting. Approving such requests would be at the discretion of the District Ranger.

a. Baseline condition surveys of existing facilities will be completed the Fall following award of lease. Reports of this survey will be deliverable to the Forest Service by December 1 of that same year.

b. In consultation with the Special Use Permittee and the Forest Service, install equipment to monitor flow on water conveyance facilities during the Fall following award of lease. Flow monitoring shall commence the following spring and continue until one year post mining. Flow data shall be provided to the Forest Service annually by December 1.

c. A Surface Facility Monitoring and Mitigation Plan (Plan) will be submitted to the Forest Service for review and approval not later than 12 months prior to scheduled undermining. The Plan will detail measures to be taken to monitor, repair and mitigate subsidence effects of the facilities during actual mining and for one year post mining.

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**Lease Notice**  
Dry Fork Federal Coal Lease  
COC-67232

All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.

T 13 S, R 90 W, 6<sup>th</sup> PM:

S2SENW; S2N2S2SWNW; E2NWSW; 2W2SESW; E2SESW; NESW; SE  
Section 35.

W2SWNW; W2SW Section 36

T 14 S, R 90 W, 6<sup>th</sup> PM

SWSWNE; NW; N2SW; W2NWSE; N2SWSE Section 1

NENE; E2NWNE; N2SENE; SESENE Section 2

S2NWNW Section 11

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Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.

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