

APPENDIX D

**BLM SPECIAL COAL LEASE STIPULATIONS,
FOREST SERVICE STIPULATIONS,
AND
FORM 3400-12 COAL LEASE**

SPECIAL COAL LEASE STIPULATIONS

In addition to observing the general obligations and standards of performance of current regulations, the lessee shall comply with and be bound by the following stipulations. These stipulations are also imposed on the lessee's agents and employees. Failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require agents, contractors, and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time, to adjust to changed conditions or to correct an oversight.

CULTURAL RESOURCES

- (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the authorized office of the Bureau of Land Management (BLM) or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas or exploration plan area that may be adversely affected by lease-related activities and which were not previously inventoried at the required level of intensity. The cultural resources inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, or historical architect, as appropriate) and authorized officer (AO) of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protection of any cultural resources identified shall be submitted to the Assistant Director of the Western Support Center of the Office of Surface Mining, the BLM AO (if activities are associated with the coal exploration outside an approved mining permit area) and the AO of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Assistant Director or AO to protect cultural resources on the lease lands. The lessee shall not commence the surface-disturbing activities until permission to proceed is given by the Assistant Director or AO.
- (2) The lessee shall protect all cultural resource properties within the lease area from lease-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.
- (3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.
- (4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director or AO of the surface managing agency. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director or AO. Within two working days of notification, the Assistant Director or AO will evaluate or have evaluated any cultural resources discovered and will

determine if any action is required to protect or preserve such discoveries. The cost of data recovery for cultural resources during lease operations shall be borne by the surface managing agency unless otherwise specified by the BLM AO or the surface managing agency AO (if different).

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

PALEONTOLOGICAL RESOURCES

If a paleontological resource, either large and conspicuous and/or of significant scientific value, is discovered during any surface-disturbing activities, the find will be reported to the AO immediately. Surface-disturbing activities will be suspended within 250 ft of said find. An evaluation of the paleontological discovery will be made by a BLM-approved professional paleontologist within five working days, weather permitting, to determine the appropriate action(s) and prevent the potential loss of any significant paleontological value. Operations within 250 ft of such a discovery will not be resumed until written authorization to proceed is issued by the AO. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant interest discovered during the operation.

OIL AND GAS RESOURCES

The BLM realizes that coal mining operations conducted on leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as oil and gas leases issued in a coal lease may inhibit coal

production. BLM retains complete authority to alter and/or modify coal operations or oil and gas operations on lands covered by federal leases so as to obtain maximum resource recovery of either or both resources with due regard to valid existing rights.

RESOURCE RECOVERY AND PROTECTION

Any proposed bypass of federal coal determined to be economically recoverable must have the written approval of the BLM AO in the form of an approved modification to the Resource Recovery and Protection Plan (R2P2) prior to the federal coal being bypassed (43 CFR 3482.2[c][2]). Failure to comply with this requirement shall result in the issuance of a Notice of Noncompliance by the AO. The Notice of Noncompliance will include the amount of damages to be assessed for the unauthorized bypass of federal coal as determined by the AO. The amount of damages, at a minimum, will be the amount of royalty to be assessed as determined by the AO to compensate the federal government for the unauthorized bypass federal coal.

PUBLIC LAND SURVEY PROTECTION

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease area. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to re-establish or restore the monuments, corners, or accessories at the same location, using surveying procedures in accordance with the *Manual of Surveying Instructions for the Survey of Public Land of the United States*.

The survey will be recorded in the appropriate county records, with a copy sent to the AO.

RAILROAD RIGHT-OF-WAY

No mining activity of any kind may be conducted within the Burlington Northern/Chicago and Northwestern railroad right-of-way. The lessee shall recover all legally and economically recoverable coal from all leased lands not within the foregoing right-of-way. Lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number

COAL LEASE

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 _____, hereinafter called lessee, is effective (date) _____, 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 of 1920;
- 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:

containing _____ 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 shall pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ _____ 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 _____ 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 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 \$ _____. The authorized officer 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 shall be excused when operations under the lease are interrupted by strikes, elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation if payment of advance royalties in accordance with the regulations does not exist at the time of the suspension. Lessee's failure to produce in commercial quantities at the end of 10 years shall terminate the lease. Lessee shall 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 terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec. 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 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 in which this lease is a part is dissolved, the lessee 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 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 or 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 18 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. 15. SPECIAL STIPULATIONS -

Sec. 9. (a) TRANSFERS

- This lease may be transferred in whole or in part to any person or association or corporation qualified to hold such lease interests.
- This lease may be transferred in whole or in part to another public body or to a person who will mine the 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 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 deposit and place all workings in condition for suspension or abandonment. Within 130 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 land beyond 130 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 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 a 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 hereunder 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. 1357 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 (Cont'd) -

THE UNITED STATES OF AMERICA

By

Company or Lessee Name

(Signature of Lessee)

(Title)

(Date)

(Signing Officer)

(Title)

(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 false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require OMB approval.

**NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM
UNDER JURISDICTION OF
DEPARTMENT OF AGRICULTURE**

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 the 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 an exploration plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed

to: District Ranger

at: 809 S. 9th Street, Douglas, WY 82633

Telephone: 307/358-4690.

who is the authorized representative of the Secretary of Agriculture.

NOTICE

CULTURAL AND PALEONTOLOGICAL RESOURCES - The Forest Service (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 the 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 of 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 lease, and shall leave such discoveries intact until directed to proceed by FS and BLM.

FOREST SERVICE REGION 2 SENSITIVE 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 as sensitive by the Regional Forester. The findings of this examination may result in some restrictions to the operator's plan or even disallow use and occupancy that would lead to the listing of a sensitive species under the Endangered Species Act of 1973.

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, and the anticipated effects and impacts to FS Region 2 Sensitive Species that may occur or have habitat in the area.