

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FEB 19 2019

FORM APPROVED
OMB NO. 1004-0073
Expires: January 31, 2020

COAL LEASE

Serial Number
UTU-81895

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)

Alton Coal Development, LLC
463 North 100 West
Cedar City, Utah 84721

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.

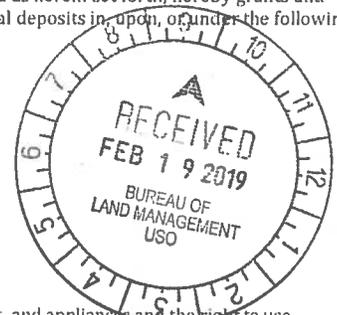
Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

- The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 - 287; or
- The Mineral Leasing Act for Acquired Lands, 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. 39 S., R. 5 W., SLM
 - sec. 7, SE1/4SW1/4, S1/2SE1/4;
 - sec. 18, lots 3 and 4, E1/2, E1/2NW1/4, E1/2SW1/4;
 - sec. 19, lots 1 to 4, NE1/4, E1/2NW1/4, E1/2SW1/4, N1/2SE1/4, SE1/4SE1/4;
 - sec. 20, lots 4 and 5, N1/2SW1/4.
- T. 39 S., R. 6 W., SLM
 - sec. 13, SE1/4;
 - sec. 24, NE1/4, N1/2NW1/4, SE1/4NW1/4, E1/2SW1/4, N1/2SE1/4, SE1/4SE1/4;
 - sec. 25, NE1/4NE1/4.



containing 2,108.71 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 or 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 per 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 the 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 20 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 \$6,400. 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 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 for the BLM's approval pursuant to 30 U.S.C. 207(c) prior to conducting any development or mining operations or taking any other action on a leasehold which might cause a significant disturbance of the environment.

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 or 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.

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 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 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 -

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.).

Sec. 15. SPECIAL STIPULATIONS (Cont' d.) - SEE ATTACHED

THE UNITED STATES OF AMERICA

Alton Coal Development, LLC
(Company or Lessee Name)



(Signature of Lessee)

Manager

(Title)

2-1-19

(Date)

By _____

(Department of Interior)

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

(Continued on page 4)

(Form 3400-12, page 3)

THE UNITED STATES OF AMERICA

(Company or Lessee Name)

By Joseph Balash _____

(Signature of Lessee)

[Signature] _____
(Department of Interior)

(Title)

ASLM _____
(Title)

(Date)

2/14/19 _____
(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 and 43 CFR 2.48(d) require that you be furnished with the following information in connection with the information requested by this form.

AUTHORITY: 30 U.S.C. 181 - 287 and 30 U.S.C. 351 - 359 permit collection of the information requested by this form.

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

ROUTINE USES: The BLM will only disclose this information in accordance with the provisions at 43 CFR 2.56(b) and (c).

EFFECT OF NOT PROVIDING INFORMATION: Submission of the requested information is necessary to obtain or retain a benefit. Failure to submit all of the requested information or to complete this form may result in delay or preclude the BLM's acceptance of your application for a coal lease.

The Paperwork Reduction Act requires us to inform you that:

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

Submission of the requested information is necessary to obtain or retain a benefit.

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: The public reporting burden for this form is estimated to average 25 hours per response when the form is used under the authority of 43 subpart 3422 (Lease Sales), or 800 hours per response when the form is used under the authority of 43 subpart 3430 (Preference Right Leases). The estimated burdens include the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. You may submit 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 DC 20240.

**Alton Coal Federal Coal Lease
UTU-81895
Special Lease Stipulations**

In accordance with 40 Code of Federal Regulations (CFR) 1505.2(c) and all applicable laws, regulations, rules, and policies, all practical means to avoid or minimize environmental impacts associated with the selection of Alternative K1 have been adopted. This appendix provides a summary of measures that will reduce the identified impacts of Alternative K1 (the Selected Alternative).

Required regulatory compliance measures included in the Selected Alternative are extensive. These required measures are not described in this appendix but can be found in Section 2.6 of the Alton Coal Tract lease by application (LBA) final environmental impact statement (FEIS) (Bureau of Land Management [BLM] 2018¹). FEIS Table 1.5.1 and FEIS Table 2.6.1 include a summary of mandatory permits, approvals, and regulatory compliance requirements incorporated into the Selected Alternative.² The Lessee and its agents and employees shall comply with and be bound by all required measures; regulatory compliance requirements; all applicable local, state, and federal laws, rules, regulations; and the stipulations described below.

1. **Air resources.** Prior to the Lessee conducting surface-disturbing activities on the tract, an air monitoring plan must be submitted to the State of Utah for review and approval. The plan shall use the air monitoring adaptive management strategy found in Section 4.3.1.1 of the FEIS. The plan shall describe how the Lessee will conform to the provisions of the plan and the locations of where the activities will be conducted for plan compliance. The adaptive management strategy consists of the following three elements to be implemented in the order listed:

Element 1: Conduct targeted air monitoring to address potential impacts to air quality or air quality-related values (AQRVs) in Bryce Canyon National Park and the town of Alton.

Element 2: If monitoring shows episodic spikes in concentrations coupled with measured degradation in visibility or deteriorating air quality, refine air quality analyses and/or conduct modeling assessments needed to determine whether these spikes and degradations are reasonably attributable to mine operations.

Element 3: If elements 1 and 2 suggest that air quality degradation is reasonably attributable to mining activities, the Lessee will, with final approval by the BLM in consultation with the National Park Service (NPS) and the BLM Air Resources Technical Advisory Group (ARTAG), implement additional environmental protection and mitigation measures. Mitigation effectiveness will be assessed and demonstrated through the monitoring network.

Each element of this strategy will be funded and implemented by the lessee and will be approved by the BLM (in consultation with the NPS and ARTAG) upon issuance of the lease. To assess baseline conditions, monitoring operations will begin at least one year prior to any mining activities on the tract and will continue for a minimum of four years or longer if information indicates continuation of the strategy is necessary. The start date for monitoring will be contingent on the timing of the permitting process. Other air measures required, include the following:

- Use ultra-low sulfur diesel fuel (15 parts per million) for nonroad vehicles and generators.

¹ The *Alton Coal Tract Lease by Application Final Environmental Impact Statement* (FEIS) is referred to frequently throughout this document, and therefore the author-date citation is provided here at first mention only.

² Design features, stipulations, and mitigation measures would be applied consistent with IM-2018-093 (Compensatory Mitigation).

- Use generators and nonroad diesel engines that meet Tier 4 final emission standards.
 - Prepare a monitoring plan in time for the monitoring network to be fully implemented so that a full year of data can be collected before operations begin.
 - Do not permit surface mining where overburden depths exceed an average of 200 feet.
 - Conduct continuous ambient air monitoring for particulate matter of 10 micrometers or less (PM₁₀), particulate matter of 2.5 micrometers or less (PM_{2.5}), nitrogen dioxide (NO₂), and visibility according to the adaptive management strategy (all other elements of the adaptive management strategy are also incorporated as design features).
 - Install fencing to restrict public access to active mining areas.
 - Require diesel oxidation catalysts on heavy equipment.
 - Implement a dust control plan with the minimum requirements specified in Section 4.3.1 of the FEIS.
 - Enclose most coal transfer points and processing activities during coal production to reduce fugitive dust emissions.
 - Use post-combustion controls on nonroad vehicles.
 - Use watering or a combination of chemical suppressants and watering to reduce fugitive dust from unpaved roads and disturbed areas.
 - Use watering before predicted high-wind events to reduce windblown dust from portions of the tract, overburden storage piles, and coal storage piles.
 - See Section 4.3.1 and Table 4.3.1 of the FEIS for tract-specific design assumptions and adhere to the applicable design assumptions described in this table.
2. **Cultural and historic resources programmatic agreement.** The Lessee shall comply with the programmatic agreement between the BLM Kanab Field Office (BLM-KFO), Office of Surface Mining Reclamation and Enforcement (OSMRE), Utah Division of Oil, Gas and Mining (DOG M), and Utah State Historic Preservation Officer regarding the Alton Coal Tract LBA (Appendix N of the FEIS).
3. **Noise.** The Lessee will abide by the DOGM-approved mining plan permit, which will include a blasting plan that addresses noise impacts on wildlife, residents of the town of Alton, and points in Bryce Canyon National Park. The BLM, U.S. Fish and Wildlife Service (USFWS), NPS, and Utah Division of Wildlife Resources (UDWR) will be allowed to comment on the plan before it is approved by the DOGM and before any blasting activity takes place.
4. **Night sky/mine lighting plan.** Subject to approval by the BLM Authorized Officer (AO), the Lessee will develop a detailed mine lighting plan as part of the mining plan. In developing the mine lighting plan, further consultation will be required with NPS to fully examine techniques, technology/equipment, and mitigation measures available to effectively minimize effects on night sky quality, realizing technology may be improved at the time a lighting plan is developed, carrying forward an adaptive management approach, including the following:
- Light from all light sources (fixed position light poles, portable light towers, and equipment lighting) shall not exceed 3,150,000 initial lumens subject to approval by the BLM AO.
 - Use full shielding on fixed position light poles at centralized facilities.

5. **Wildlife and special status species.** Subject to approval by the BLM AO, the Lessee will implement a wildlife management plan as part of the mining plan that is in conformance with resource planning requirements in the BLM-KFO resource management plan, as amended (RMP) (BLM 2008), and the minimum requirements specified in Section 4.17.6 and 4.18.3 of the FEIS. This plan will also be part of the DOGM-approved mine permit for the operation. The DOGM permit plan will include the following:
 - During all operations, inform and educate employees about wildlife protection issues.
 - Minimize new surface facility construction activities in big game crucial summer habitat from May 15 to July 15. Prior to surface-disturbing activities, develop a migratory bird and raptor conservation plan that includes a delivery schedule for surveys and monitoring. At a minimum, the plan shall outline nest surveys, avoidance, and minimization mitigation measures for impacts to migratory birds, birds of conservation concern, raptors, and their habitat.
 - Use barricades or fences where necessary to protect the wildlife, livestock, and the public.
6. **Sage-grouse mitigation plan.** Prior to the Lessee conducting surface-disturbing activities on the lease, a sage-grouse mitigation compliance plan must be submitted to the BLM AO for review and approval. The plan shall conform to the *Greater Sage-Grouse Mitigation Plan* as found in Appendix E of the FEIS. The Lessee shall use sage-grouse decisions identified in the BLM-KFO RMP, as amended. The plan shall describe how the Lessee will conform to the provisions of the plan and the locations of where the activities will be conducted for plan compliance.
7. **Aerial powerlines.** Aerial powerlines used on the tract in conjunction with the mining of coal from this lease shall be constructed to provide adequate protection for raptors and other large birds, incorporating USFWS Utah Field Office guidelines for raptor protection (Romin and Muck 2002). When feasible, powerlines will be located at least 100 yards from public roads.
8. **Surface subsidence.** Except at locations specifically approved by the BLM AO, highwall and or underground mining operations shall be conducted in such a manner to prevent surface subsidence that would 1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, 2) cause damage to existing surface structures, and 3) damage or alter the flow of perennial streams. The Lessee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.
9. **Ventilation breakout portals.** To avoid surface disturbance on steep canyon slopes and to preclude the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specific locations approved by the BLM AO.
10. **Underground mine portal closures.** Or as determined acceptable by the BLM AO, the Lessee shall solid block masonry seal all underground mine portals and place 25 feet or more of non-combustible material.
11. **Highwall Mining openings.** All openings created for highwall mining activities will be sufficiently sealed with at least 25 feet of noncombustible fill measured from inside the openings. This can be part of the pit reclamation.
12. **Toxic – hazardous substances.** The Lessee is responsible for compliance with reporting regarding toxic and hazardous material and substances under Federal Law and all associated amendments and regulations for the handling such materials on the land surface and in mine workings. The Lessee must remove mine equipment, materials, and liquids not needed for continued operations, roof support, and mine safety from surface and underground workings prior to abandonment for

underground or highwall sections or reclamation of surface operations. Exceptions can be approved in writing on a case-by-case basis by the BLM AO in consultation with the surface management agency/owner. Creation of a situation that would prevent removal of such material and by retreat or abandonment of mine sections without prior authorization would be considered noncompliance with lease terms and conditions and subject to appropriate penalties under the lease.

13. **Hazardous substances – used oil.** The Lessee shall provide upon abandonment and/or sealing off a mined area and/or prior to lease termination/relinquishment, certification to the BLM AO that, based upon a complete search of all the Lessee's records for the mine and upon their knowledge of past operations, there has been no **hazardous substances** (per 40 CFR 302.4) or **used oil** as per Utah State Management Rule R-315-15, deposited within the lease, either on the surface or underground, or that all remedial action necessary has been taken to protect human health and the environment with respect to any such substances remaining on the property. The back-up documentation to be provided shall be described by the lessor prior to the first certification and shall include all documentation applicable to the Emergency Planning and Community Right-to-know Act (EPCRA, Public Law 99-499), Title III of the Superfund Amendments and Reauthorization Act of 1986 or equivalent.
14. **Underground inspections for sealing.** BLM access to underground workings and highwall entrances shall be timely provided for inspection prior to being sealed. The Lessee shall notify the BLM AO in writing 30 days prior to the sealing of any areas in the mine(s) and state the reason for closure. Prior to seals being put into place, the Lessee shall inspect the area and document any equipment/machinery, hazardous substances, and used oil that is to be left underground. If any equipment or machinery is left underground in a surface operation, an inspection will be required. The purposes of these inspections are 1) to provide documentation for compliance with 42 United States Code 9620 section 120(h) and State Management Rule R-315-15, and to assure that sufficient certification has been completed at the time of lease relinquishment; and 2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left underground.
15. **Surface facilities removal at end of use.** Support facilities, structures, equipment, and similar developments will be removed from the lease area within two years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the standard coal lease form is applicable. Disturbed areas and those areas previously occupied by such facilities will be stabilized and rehabilitated, drainages reestablished, and returned to the post-mining land use identified in the DOGM-approved mine permit.
16. **Survey monuments.** The Lessee will identify and protect evidence of the Public Land Survey System (PLSS) and related Federal property boundaries prior to commencement of any ground-disturbing activity. Contact BLM Cadastral Survey to coordinate data research, evidence examination and evaluation, and locating, referencing, or protecting monuments of the PLSS and related land boundary markers from destruction. In the event of obliteration or disturbance of the Federal boundary evidence, the Lessee shall immediately report the incident, in writing, to the BLM AO. BLM Cadastral Survey will determine how the marker is to be restored. In rehabilitating or replacing the evidence, the Lessee will reimburse the BLM for costs or, if instructed to use the services of a Certified Federal Surveyor, procurement shall be per qualification-based selection.

All surveying activities will conform to the Manual of Surveying Instructions and appropriate State laws and regulations. Cadastral Survey will review local surveys before being finalized or filed in the appropriate State or county office. The Lessee will pay for all survey, investigation, penalties, and administrative costs.

17. **Water.** The Lessee, at Lessee expense, will be responsible to replace any surface or developed groundwater specifically identified in the DOGM-approved mine permit for protection with water from an alternative source in sufficient quantity and quality to maintain existing riparian habitat, livestock, wildlife, and other land uses.

18. **Maximum Economic Recovery (MER) – Resource Recovery Protection Plan (R2P2).**

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 [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.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/Lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operations, the operator shall submit appropriate justification to obtain approval by the AO to leave such reserves unmined. Upon approval by the AO, such coal beds 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 a portion of the lease as authorized by statute and regulation.

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 new R2P2 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 reserve left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

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 unminable or at such time that the Lessee has demonstrated an unwillingness to extract coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Office of Natural Resource Revenue (ONRR) 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.