

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES; APPROVING A LEASE AMENDMENT OF COAL MINING LEASE NO. 14-20-0603-9910 BETWEEN PEABODY WESTERN COAL COMPANY AND THE NAVAJO NATION FOR THE ADJUSTMENT OF THE WATER RATE

SECTION 1. POWERS AND AUTHORITIES

- A. Pursuant to 2 N.N.C. § 701 (A)(2), the Naabik'íyáti' Committee shall have the power to oversee the conduct and operations of entities of the Navajo Nation not otherwise under the oversight authority of other standing committees.
- B. Pursuant to 2 N.N.C. § 500 (C)(1), the Resources and Development Committee exercises oversight authority over water, environment and minerals for the purpose of overseeing the regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward.

SECTION 2. FINDINGS

- A. The Navajo Nation and Peabody Coal Company, assignee of Sentry Royalty Company's rights, entered into a mining lease, No. 14-20-0603-9910, on June 6, 1966.
- B. The mining lease for a long term coal supply agreement included a rate for water used each month from any wells located on the leased premises.

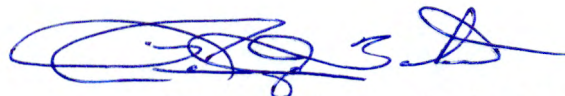
- C. The Navajo Nation and Peabody Western Coal Company's 1987 Amendment to Coal Mining Lease, No. 14-20-0603-9910, provides for the adjustment of the water rate. 1987 Lease Amendment attached as Exhibit A.
- D. The Navajo Nation and Peabody Western Coal Company have negotiated an adjustment of the water rate, which is subject to the approval of the Navajo Nation and the Secretary of the Interior.
- E. It is in the best interest of the Navajo Nation to approve the adjustment of the water rate for Peabody Western Coal Company.

SECTION 3. APPROVING A LEASE AMENDMENT OF COAL MINING LEASE NO. 14-20-0603-9910 FOR THE ADJUSTMENT OF THE WATER RATE

- A. The Navajo Nation hereby approves the Lease Amendment of Coal Mining Lease No. 14-20-0603-9910, attached as Exhibit B, between the Navajo Nation and Peabody Western Coal Company which provides for a new water rate and does not amend other portions of the lease.
- B. The Navajo Nation hereby authorizes the Navajo Nation President to execute all necessary documents relative to the new water rate adjustment and recommends the Secretary of the Interior approve the lease amendment.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 10 in favor, 04 oppose, this 2nd day of March, 2016.

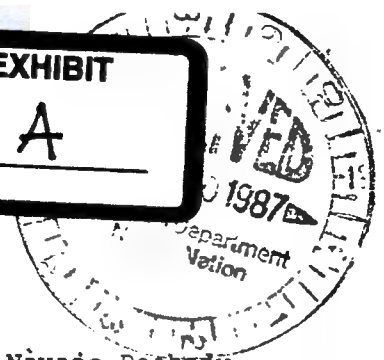
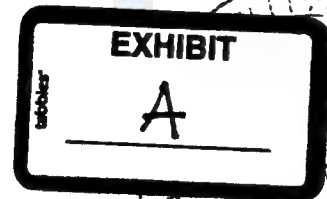


LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Leonard Tsosie
Second: Honorable Alton Joe Shepherd



THE SECRETARY OF THE INTERIOR
WASHINGTON



SECRETARIAL APPROVAL

Based upon a review of all the terms of the amendments to Navajo-Peabody Coal Lease Numbers 14-20-0603-8580 and 14-20-0603-9910, and Hopi-Peabody Coal Lease Number 14-20-0450-5743, I find the amendments, subject to the following clarifications, findings, and condition, are in the two Tribes' best interests and do hereby approve said amendments.

Assignments

The advance assignment provision is approved. However, any future assignee must satisfy all other requirements of 25 CFR §211.26(a), including notice to the Secretary and the posting of a satisfactory bond at the time of assignment.

Rights-of-Way

Lessee must apply to the Secretary and obtain all off-lease rights-of-way on tribal lands pursuant to 25 U.S.C. §323 and the implementing regulations at 25 CFR Part 169.

Partition of the Former "Joint Use" Lands Requirement

I find that the lease amendments are substantially equivalent in what each Tribe will receive under its respective lease, taking into account the overall transaction.

Negotiation Requirement of 25 CFR §211.2

Without determining whether this regulation is applicable under these circumstances, I do hereby ratify the prior consent to negotiate given by the respective Area Directors and the Office of the Assistant Secretary - Indian Affairs.

Resolution of Outstanding Peabody Appeal

With the approval of these lease amendments, I direct the Assistant Secretary - Indian Affairs to dismiss Peabody Coal Company's appeal of the June 18, 1984, decision of the Bureau of Indian Affairs' Navajo Area Director readjusting the royalty rate to Navajo-Peabody Lease No. 14-20-0603-8580.


Documents to be Supplied by Lessee

Approval of the lease amendments shall not relieve lessee from any of its current duties to provide documentation and information to the Government.

NEPA

Based upon the Environmental Assessment and the Finding of No Significant Impact approved by the Assistant Secretary - Indian Affairs dated December 9, 1987 covering these lease amendments, the mining of additional coal dedicated to the leases by the amendments will not take place until the necessary NEPA review(s), as required by law, is triggered and appropriate action taken upon the submission of a revised mine plan(s) to cover the additional coal dedicated by the lease amendments.

Executed this the 14th day of December, 1987.



DONALD PAUL HODEL

EXHIBIT A

AMENDMENTS TO COAL MINING LEASE NO. 14-20-0603-9910 BETWEEN THE NAVAJO TRIBE AND PEABODY COAL COMPANY

WHEREAS, a mining Lease designated No. 14-20-0603-9910 was made and entered into on June 6, 1966, between the Navajo Tribe and Sentry Royalty Company; and

WHEREAS, this Lease was approved by the designated representative of the Secretary of the Interior on July 7, 1966; and

WHEREAS, Peabody Coal Company, a Delaware corporation, has been assigned all of Sentry Royalty Company's right, title and interest in and to the Lease; and

WHEREAS, Peabody Coal Company has entered into and is currently performing under a long term coal supply agreement with the Participants in the Mohave Project who are Southern California Edison Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, and Salt River Project Agricultural Improvement and Power District (hereinafter referred to as "Mohave Participants"), for the sale and purchase of certain coal from the leased premises to the Mohave Project; and

WHEREAS, Peabody Coal Company has also entered into and is currently performing under a long term coal supply agreement with the Co-Owners in the Navajo Generating Station who are Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company, and, along with the Bureau of Reclamation of the United States Department of the Interior, are hereinafter referred to as "Navajo Participants" for the sale and purchase of certain coal from the leased premises to the Navajo Generating Station; and

WHEREAS, Peabody Coal Company has, pursuant to a package of amendments to Lease Nos. 14-20-0603-9910 and 14-20-0603-8580, both between Peabody and the Navajo Tribe, proposed to the Navajo Tribe to

lease the Navajo Tribe's undivided one-half interest in 180 million additional tons of surface mineable coal within the boundaries of the leasehold under Lease No. 14-20-0603-9910 as well as to lease 90 million additional tons of surface mineable coal within the boundaries of the leasehold under Lease No. 14-20-0603-8580; and

WHEREAS, these amendments to Lease No. 14-20-0603-9910 are a part of such package; and

WHEREAS, Peabody Coal Company, pursuant to amendments to Lease No. 14-20-0450-5743 between Peabody Coal Company and the Hopi Tribe of Indians has proposed to the Hopi Tribe to lease that Tribe's undivided one-half interest in the same 180 million tons of surface mineable coal as are proposed for lease under these amendments to Lease No. 14-20-0603-9910; and

WHEREAS, in consideration for various additional undertakings of Peabody Coal Company commencing on the effective date of these amendments rather than at the end of the current Lease, the Navajo Tribe does hereby agree to amend Lease No. 14-20-0603-9910 to authorize Peabody Coal Company to mine this additional coal rather than executing a separate lease or leases to cover the areas containing this coal, it being understood that the additional 180 million tons will all be mined within the surface area covered by Lease No. 14-20-0603-9910;

NOW, THEREFORE, it is agreed between the Navajo Tribe (hereafter referred to as "Lessor") and Peabody Coal Company (hereafter referred to as "Lessee") that Coal Mining Lease No. 14-20-0603-9910 is hereby amended as follows:

1. Water Rate. In the first paragraph of Article II, page 3, the words "at the rate of \$5.00 per acre-foot annually" shall be stricken and the following language shall be substituted:

To the Lessor at the following rates:

(a) \$150 per acre-foot for all water used each month from any of the wells located on the leased premises or the premises under Lease No. 14-20-0603-8580, this amount to be subject to a cumulative annual adjustment of 100 percent of the change in the Consumer Price Index for all urban consumers, United States city average, all items

(196/=100) issued by the United States Department of Labor (the "CPI"), for the preceding twelve calendar months commencing with the end of the first calendar year following the effective date of these 1987 amendments; plus

(b) an additional fixed monthly charge, R, calculated in accordance with the following formula:

$$R = A + B$$

Where

R = Amount paid each month

$$A = \$150 \times \frac{(Q)}{12}$$

$$B = \$300 \times \frac{(Q-2800)}{12}$$

Q = Recorded amount of water in acre-foot utilized in the preceding calendar year

B shall be zero if Q is less than 2800 acre-feet

These above rates shall continue in effect until Lessee commences mining the additional coal leased by Lessor under Article II herein as amended. For the purposes of these amendments, Lessee shall not be deemed to be mining such additional coal until such time as Lessee has mined a total of 200 million tons from within the premises under this Coal Mining Lease No. 14-20-0603-9910 and Lessee proceeds to mine coal in excess of that 200 million tons from within those premises. Upon that date, new rates shall take effect pursuant to the procedure specified in this subparagraph as follows:

Lessee shall give written notice to Lessor at least nine (9) months prior to its planned commencement of the mining of additional coal, and Lessor and Lessee shall begin good faith negotiations within fifteen (15) calendar days of Lessor's receiving such notice for the establishment of a mutually agreeable new water rate.

If no agreement has been reached within four (4) months of Lessor's receiving such notice, the issue will be taken to arbitration under procedures provided in Article XXXIV; provided, however, that the decision in arbitration shall in no case result in

payments to Lessor at less than the then current rate under the Lease; and provided further that the arbitration process shall not impair in any way the rights of Lessee to continued water usage in accordance with these amendments.

Lessor and Lessee shall, within ninety (90) days after the effective date of these amendments, agree on a framework for a study which shall examine the long-term impacts of Lessee's water usage on the Navajo aquifer. This framework may be changed from time to time but only upon the mutual approval in writing of Lessor and Lessee. Lessor and Lessee shall jointly designate consultant(s) to perform this study. Lessee shall fund one-half the cost of the study and Lessor and the Hopi Tribe shall secure funding for the remaining one-half of the costs. The study shall be completed within nine (9) years of the effective date of these amendments. The results of this study will be submitted to the Secretary of the Interior. Should the Secretary of the Interior determine, based on the results of that study, that the operation of wells by Lessee is endangering the supply of underground water in the vicinity or is so lowering the water table that other users of such water are being damaged, he may, at his option, either (1) require Lessee, at its sole expense, to provide water in quantity and of quality equal to that formerly available from such underground supply to such other users, by deepening the latter's wells or otherwise, or (2) require Lessee, at its own sole expense, to obtain water for its mining and pipeline operations from another source, that will not significantly affect the supply of underground water in the vicinity.

Lessee, with assistance from Lessor, shall also undertake an inspection and analysis by a reputable consultant of wells selected by mutual agreement on the Navajo Reservation to determine the performance level of existing Navajo wells. Lessee shall promptly complete the study and shall provide to Lessor within four (4) months of the study's completion the results of that inspection and analysis in order to allow Lessor to take necessary steps to improve the performance level of such wells. Lessee shall also provide appropriate technical consulting assistance to Lessor to remedy deficiencies documented by the study.

It is understood by the parties that Lessee presently maintains nine (9) wells on lands leased hereunder and under Lease No. 14-20-0603-8580, one of which wells is not in use and that Lessee shall pay for use of such water at the rates provided herein. Lessee agrees to seek permits from Lessor for any new wells and to comply with the provisions of the Navajo Tribe Water Code. Lessee will provide prior written notice to Lessor of any plans to replace or rejuvenate the existing wells described herein.

2. Additional Coal. The fourth paragraph of Article 11 of the Lease is deleted and the following paragraph is put in its place:

Lessor does hereby lease to Lessee its undivided one-half interest in 380 million tons of surface mineable coal in the leased premises comprising the 200 million tons originally leased plus an additional 180 million tons as of the effective date hereof. Such coal shall be mineable by strip, auger, or other generally approved surface mining methods to the extent economically feasible as determined by appropriate federal agencies using standards applicable to federal coal. Lessor and Lessee agree that, for purposes of Navajo taxes, if applicable on any of the premises leased hereunder, the value of and expenses attributable to such additional 180 million tons of coal or any portion thereof shall not be considered part of the active mining activities of Lessee until the earlier of (a) issuance of any mining permit(s) (conditional, temporary or otherwise) by applicable governmental authority authorizing commencement of mining of any coal in excess of 200 million tons from the leased premises; or (b) January 1, 2005. Until such inclusion in active mining activities, such additional coal and associated expenses shall be deemed, for such tax purposes, as an inactive, non-productive leasehold interest and shall be assessed on the per acre basis established by Lessor for such reserves for the areas of additional coal shown on Exhibit A-1. Lessee agrees that, to the extent possible, Lessee will mine the

additional coal granted hereunder in proportion to the amount of additional coal granted under the amendments to Lease No.

14-20-0603-8580, so that with 90 million tons of additional coal on Lease No. 14-20-0603-8580 and 180 million tons of additional coal on Lease 14-20-0603-9910, Lessee would attempt to mine one ton of additional coal from the premises covered by Lease No. 14-20-0603-8580 for every two tons of additional coal mined from the premises covered by this Lease No. 14-20-0603-9910. This mining would be monitored on an annual basis. It is understood that Lessee can adhere to this method of operation so long as it does not have a material and adverse effect on Lessee's ability to meet the coal quality required by the Mohave and Navajo Participants for those Projects. Lessee shall provide Lessor reasonable access to the records maintained under Article VII hereof for the purpose of monitoring Lessee compliance with the terms of this Lease, including audits of customer invoices and reasonable access to technical information used for assessment of the coal reserve leased hereunder. Lessee may continue to utilize water from wells located on the leased premises in accordance with the terms of the Lease and these amendments for the transportation by slurry pipeline of coal leased and mined from the leased premises under this Lease No. 14-20-0603-9910 and under Lease No.

14-20-0450-5743 between Lessee and the Hopi Tribe as such leases are or may hereafter be amended, including all additional tonnages thereunder, and coal leased and mined from the premises covered by Lessee's lease No. 14-20-0603-8580 with the Navajo Tribe, as such lease is or may hereafter be amended, including all additional tonnages thereunder.

3. Royalty Rate. Article III of the Lease, pp. 4-6, is replaced in its entirety with the following language:

In consideration of the foregoing, Lessee hereby agrees to pay or cause to be paid to the Secretary of the Interior or his authorized representative for the use and benefit of the Navajo Tribe, royalties for mining under this Lease as follows:

(a) Commencing on the effective date of these amendments, six and one-quarter percent (6.25%) of the monthly gross realization for all coal obtained from the premises leased under this Lease as herein amended, computed based on F.O.B mines in accordance with the method utilized by the United States Government for computing royalties on federal coal leases, as such method may be revised from time to time; except that, (i) in the event the method utilized by the United States Government for computation of royalties on federal coal leases is modified by the United States Government after May 1, 1987, such modification shall be applicable only to coal sold by Lessee after the law or regulation changing such method comes into force; and (ii) in the event of a modification of the method of calculation of gross realization utilized by the United States Government for federal coal leases, the change (upward or downward) in the amount calculated as gross realization hereunder resulting from such modification shall be limited to an amount not to exceed five percent (5%) of gross realization calculated in accordance with the United States Government method applicable to federal coal leases prior to such modification. The parties hereby agree that for the purposes of this subsection, the current method utilized by Lessee in calculating gross realization under Lease No.

14-20-0603-9910, as illustrated in Exhibit A-2, which is attached hereto and incorporated herein by reference, shall be deemed to constitute the current method of calculating gross realization utilized by the United States Government for federal coal leases as of May 1, 1987. Exhibit A-2 also contains a formula and examples illustrating the application of the five percent (5%) limitation referenced above. Exhibit A-2 shall be revised by Lessor and Lessee as necessary to reflect and account for modifications in the United States Government method of calculating gross realization applicable to federal coal leases.

(b) Ten (10) years from the effective date of these amendments, and at the end of each successive ten (10) year period thereafter for the duration of the lease term, the coal royalty percentage rate will either stay at six and one-quarter percent (6.25%) of gross realization or move to one-half the minimum

percentage rate for royalty applicable to federal coal leases for surface mineable coal, whichever is then greater.

Notwithstanding the foregoing, if either Lessor or Lessee determines it will be dissatisfied with this automatic revision of the royalty rate at the conclusion of any such ten (10) year period, the dissatisfied party shall notify the other party of such dissatisfaction no later than nine (9) months prior to the expiration of the applicable ten (10) year period. Promptly after any such notice is given, Lessor and Lessee shall begin good faith negotiations to reach agreement on a royalty rate for the succeeding ten (10) year period. If no agreement on royalty rate is reached within four (4) months of delivery of the notice, the issue of royalty rate may be taken to arbitration under the procedures provided in Article XXXIV herein for determination, consistent with the terms hereof, of an equitable royalty rate, considering the interests of Lessor, Lessee, and the Navajo and Mohave Participants. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than six and one quarter percent (6.25%) of gross realization computed in accordance with this Article as, amended. The parties shall utilize their best efforts to complete the arbitration prior to the expiration of the applicable ten (10) year period and shall direct the arbitrators to conduct the proceedings and render a decision prior to such expiration. Any new adjustment in royalty rate established by arbitration shall be applicable from and after the later of either the date of the arbitration award or the expiration of the applicable ten (10) year period.

(c) Whenever uranium ores are mined and sold by Lessee, royalty shall be paid to Lessor at one-half of the rate provided in Exhibit E of the original Lease. In the event that either Lessor or Lessee is at any time dissatisfied with such rate or any adjustment hereunder as an accurate reflection of prevailing economies for uranium under the particular circumstances, Lessor and Lessee shall begin good faith negotiations to reach agreement on an adjusted royalty rate. If no agreement is reached within six (6) months, the

issue will be taken to arbitration under the procedures provided in Article XXXIV to establish a rate consistent with such economies. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than one-half of the rate provided in Exhibit E of the original Lease. Whenever minerals other than coal or uranium are mined and sold by Lessee, royalty shall be paid to Lessor at the rate of five percent (5%) of the gross F.O.B. mine or mill price, whichever is greater. In the event that either Lessor or Lessee is at any time dissatisfied with this royalty rate or any adjustment hereunder as an accurate reflection of prevailing economies for any such mineral under the particular circumstances, Lessor and Lessee shall begin good faith negotiations to reach agreement on an adjusted royalty rate. If no agreement is reached within six (6) months, the issue will be taken to arbitration under the provisions provided in Article XXXIV to establish a rate consistent with such economies. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than the five percent (5%) rate specified above.

(d) Except for those processes associated with the crushing of quarry stone to aggregate for road maintenance purposes or other public uses, the right to extract non-coal minerals granted in this paragraph does not grant approval for any on-site milling operations. Specifically, the Lessor prohibits all uranium or gold/silver milling on the Lease areas or operations located adjacent to the Lease area.

(e) All royalties accruing for any month shall be due and payable on or before the 15th of the succeeding month by electronic transfer.

(f) No coal or other minerals mined hereunder shall be sold to any affiliate or subsidiary of Lessee with the effect of reducing monthly gross realization.

4. The second paragraph of Article VII, entitled Monthly Statements, p. 11, is deleted from the Lease.

5. Assignment of Lease. Article IX of the Lease, p. 13, is replaced in its entirety with the following language:

Lessor recognizes that Lessee has granted the Navajo Participants and the Mohave Participants certain existing rights to conditional partial assignments of Lease No. 14-20-0603-9910 and first rights of refusal to purchase Lessee's interest in the mining operation thereunder. Lessee further shall have the right by notice to Lessor but without further consent of Lessor or the Secretary of the Interior to assign, transfer or sublease its interest hereunder to the Mohave Participants or the Navajo Participants or any one of them or Peabody Holding Company, Inc., or a subsidiary or affiliate in which Peabody Holding Company, Inc. or Peabody Coal Company has a greater than fifty percent (50%) interest, provided Lessee remains a guarantor of the performance of any such subsidiary or affiliate assignee. However, subject to those rights, Lessee shall not assign this Lease or any interest therein by an operating agreement or otherwise, or sublet any portion of the leased premises, without the written approval of the Lessor and the Secretary of the Interior and, in the event the Navajo Participants and the Mohave Participants elect not to exercise their first right of refusal to acquire Lessee's interest herein as provided in their respective Coal Supply Agreements with Lessee, the Navajo Tribe and the Hopi Tribe shall have the next first right of refusal to any bona fide offer acceptable to Lessee from a third party to purchase Lessee's interest in the mining operation, including all mining equipment and facilities located thereon at the same price and on the same terms offered. Lessee shall give written notice to Lessor of any such bona fide offer which Lessee desires to accept as promptly as possible following receipt of notice from the Navajo Participants and the Mohave Participants expressly declining to exercise their rights of first refusal or following expiration of the time period in which the Navajo Participants and the Mohave Participants were required to exercise their rights of first refusal, whichever occurs first. Lessor shall notify Lessee in writing within one hundred and eighty (180) days of the receipt of such notice of its decision on

the exercise of such right of first refusal. In the event Lessor fails to notify Lessee in writing within said one hundred and eighty (180) day period, or in the event Lessor expressly declines to exercise such right of first refusal, Lessee shall be free to accept such offer from a third party. Any purchase and sale of Lessee's interest in the mining operation hereunder shall be subject to the obligations herein and except as provided herein, any required approvals from governmental authorities. In the event Lessor exercises its right of first refusal herein granted, the parties shall by mutual consent determine the various details pertaining to such purchase. Any disagreement relating to any details of the purchase herein provided for shall be subject to arbitration in accordance with the provisions of Article XXXIV herein.

Lessor acknowledges that such transfers by Lessee of its interest herein as are authorized hereunder to be completed without Lessor consent are not subject to Lessor disapproval under terms of the Navajo Tribal Code, applicable to transfers of such interests. For any processing of such transfers, Lessor may charge Lessee a fee which shall not exceed One Hundred Thousand Dollars (\$100,000) and which shall be in lieu of any other charges or fees charged by Lessor in connection with the processing of such transfers. Both Lessor and Lessee acknowledge that, in the event of a transfer of Lessee's interest, in whole or in part, to the Navajo or Mohave Participants, or any one of them, Lessor and the Mohave and Navajo Participants agree that for the purposes of determining royalties and Navajo taxes (to the extent relevant to tax assessments or computations), the gross mine price per ton shall be that price which the respective assignee would have paid to Peabody for coal pursuant to their respective Coal Supply Agreements which were in effect at the time of the assignment. The mine price per ton will be adjusted annually thereafter, pursuant to the provisions of the Coal Supply Agreements, as though those agreements were still in effect and no assignment had taken place. In the event that any such assignee enters into an agreement with a third party for the mining of the coal leased hereunder and the consideration paid such third party on a per ton basis for such mining exceeds the per ton

price which would have been paid Peabody pursuant to such respective Coal Supply Agreements, the percentage royalty rate applicable hereunder shall be applied to the consideration paid under such new supply agreement.

In the event of such assignment to the Navajo or Mohave Participants or any one of them, the mine price per ton will be adjusted either pursuant to the provisions of the existing Coal Supply Agreement(s) as though those agreements were still in effect and no assignment had taken place, or on the basis of a new supply agreement, whichever is determined by Lessor to be most beneficial.

6. A new Article XXVIII shall be added to the lease as follows:

XXVIII. Scholarships

Following the effective date of these amendments, Lessee shall contribute annually to the fund to provide educational opportunities for members of the Navajo Tribe established under the 1987 amendments to Lease No. 14-20-0603-8580. The initial contribution shall be Fifty thousand Dollars (\$50,000) and shall be made within thirty (30) days after the effective date of these amendments. The amount of this contribution shall be increased by One Thousand Dollars (\$1,000) per year for the next twelve (12) years and shall thereafter remain at Sixty-Two Thousand Dollars (\$62,000) per year annually for the remainder of the term of this Lease as amended, with such contributions to be made each year within thirty (30) days after the anniversary of the effective date of these amendments.

7. A new Article XXIX shall be added to the lease as follows:

XXIX. Effective Date of Amendments.

These amendments shall take effect upon the approval by the Secretary of the Interior (without delegation) of the package of amendments to Lease Nos. 14-20-0603-8580 and 14-20-0603-9910 between Lessee and Lessor of which package these amendments are a part and like approval of the amendments to Lease No. 14-20-0450-5743 between Lessee and the Hopi Tribe, whichever approval occurs later. If these necessary Secretarial approvals are not obtained within ninety

(90) days of the resolution adopted by the Navajo Tribal Council approving the amendment package, either Lessor or Lessee may at its option rescind its agreement to the amendment package by written notice to the other.

8. A new Article XXX shall be added as follows:

XXX. Bonus Payments

In consideration of these amendments, Lessee hereby agrees to pay or cause to be paid to the Secretary of the Interior or his authorized representative for the use and benefit of the Navajo Tribe, bonuses as follows:

(a) One Million, Five Hundred Thousand Dollars (\$1,500,000) payable upon the effective date of these amendments.

(b) One Million Dollars (\$1,000,000) payable upon completion of the first coal royalty reopener process pursuant to Article III, as herein amended, scheduled ten (10) years from the effective date of these amendments. "Completion of the first coal royalty reopener process" shall be understood to mean (i) automatic adjustment pursuant to Article III(b), as amended, or if the royalty rate is not adjusted automatically, (ii) the execution of a binding agreement between the parties on a royalty rate for the succeeding ten (10) year period, or (iii) the rendering of an arbitration decision within the arbitration process with regard to such royalty rate pursuant to Articles III and XXXIV herein, without regard to any judicial review of that decision. Nothing contained herein shall be construed to require a bonus payment at the completion of any coal royalty reopener process other than the first.

(c) Ten Million Dollars (\$10,000,000) payable at such time as Lessee commences mining of the additional coal granted under these lease amendments. In the event such mining of the additional coal does not commence by December 31, 2004, the amount of this bonus payment shall be escalated to reflect changes in the Consumer Price Index during the period January 1, 2005, until mining of the additional coal commences when payment of the bonus, as escalated, is due. For the purposes of this subsection (c), mining of the

additional coal shall not be deemed to have commenced until such time as Lessee has mined a total of 200 million tons from within the premises under this Coal Mining Lease No. 14-20-0603-9910 and Lessee proceeds to mine coal in excess of 200 million tons from within those premises.

9. A new Article XXXI shall be added as follows:

XXXI. Tribal Taxation

(a) By approval of the lease amendments adding this Article XXXI, Lessor, through its Tribal Council, acting in its governmental and proprietary capacities, expressly confirms the validity of Sections 7(e) and 7(f) of the Indenture of Lease for Navajo Units 1, 2 and 3 (the "Navajo Lease") and Advisory Committee Resolution No. ACS-126-81 relating to such Navajo Lease provisions. Lessor agrees that, in the event it is alleged that Lessor or its subordinate agencies or units have acted in contravention of Navajo Lease Sections 7(e) and 7(f), Lessor and its subordinate agencies and units consent to be sued by Lessee, the Navajo Participants, individually or collectively, or the Black Mesa and Lake Powell Railroad in the United States District Court for the District of Arizona for the limited purpose of securing a declaration of the parties' rights under Sections 7(e) and 7(f) of the Navajo Lease and injunctive relief as may be necessary to enforce those referenced provisions of the Navajo Lease. Lessor and its subordinate agencies and units further agree they will not raise sovereign immunity or failure to exhaust administrative or tribal remedies as defenses to any such declaratory or injunctive actions by Lessee, the Navajo Participants, or the Black Mesa and Lake Powell Railroad. During the pendency of any good faith challenge to such claim, neither Lessee, the Navajo Participants, nor the Black Mesa and Lake Powell Railroad shall be required to make payment of any amounts claimed due by the Navajo Tribe or its subordinate agencies or units in alleged violation of Navajo Lease Sections 7(e) and 7(f), except that if Lessee, the Navajo Participants, or the Black Mesa and Lake Powell Railroad decide to appeal an adverse decision of a challenge, such appealing party shall, within thirty (30) days of such adverse

decision, post a bond in favor of Lessor with an established financial institution reasonably acceptable to Lessor in an amount equal to the amount determined by an appealable judgment of the United States District Court or the decision of the Secretary of the Interior to be owing by such bonding party to Lessor, each such bond to remain in force until the earlier of: (i) a determination by a federal appellate court that the District Court's or Secretary's ruling as to the fact of the bonding party's liability to Lessor was erroneous; or (ii) payment to Lessor of the amounts claimed by Lessor. Nothing in this subparagraph (a) shall be interpreted as a consent to suit by the Navajo Tribe or its subordinate agencies or units to any challenge to the fact or amount of a Navajo Tribe tax or other levy not alleged to be in violation of Navajo Lease Sections 7(e) and 7(f) except in accordance with the procedures specified under Navajo tribal law and by the Navajo Tax Commission.

(b) Except as provided in the Navajo Lease, in the Section 323 grants, and in Articles XXXI and XXXII hereof, Lessee expressly acknowledges: (i) the right and authority of the Navajo Tribe to levy the Possessory Interest Tax and the Business Activity Tax on Lessee, as permitted by law, on the Lease Interests and Activities as defined in Article XXXII herein within the Navajo Reservation, excepting those areas designated as the Navajo Partitioned Lands of the Former Joint Use Area; and (ii) the right and authority of the Navajo Tribe to levy the Business Activity Tax on Lessee, as permitted by law, on the activities taking place on the surface areas within the Navajo reservation designated as the Navajo Partitioned Lands of the Former Joint Use Area. These acknowledgments are based on the Navajo Tribe's ownership and control of surface and subsurface rights or other rights in the area described in subsection (i) hereof, and on the Navajo Tribe's ownership and control of surface rights in the area described in subsection (ii) hereof, and its exercise of territorial governance over both such areas. These acknowledgments shall not be construed as recognition by Lessor or Lessee of any subsurface rights which the Hopi Tribe may have or assert in the Navajo Partitioned Lands of

the Former Joint Use Area. Within thirty (30) calendar days of the effective date of these lease amendments and consistently with the exceptions to the acknowledgments in the first section of this subsection (b), Lessee shall file tax returns and pay all Business Activity Tax and interest thereon for periods commencing on or after January 1, 1985, due from Lessee under Navajo tribal law based on the Lease Interest and Activities as defined in Article XXXII herein within the Navajo Partitioned Lands of the Former Joint Use Area. Provided such payment is made within such thirty (30) day period, Lessee shall not be obligated to pay penalties for non-payment of or non-filing of returns for such Business Activity Tax for the period from January 1, 1985 through the effective date hereof. Nothing in this Article shall be construed as a waiver by Lessee, the Navajo Participants, or the Mohave Participants of the rights granted under Article XXXI or any other right to challenge the amount of the Business Activity Tax, or other fee, charge, assessment or similar exaction associated therewith (or penalties or interest thereon) levied by the Navajo Tribe or its subordinate agencies or units.

(c) Lessor and its subordinate agencies and units consent to be sued by Lessee in the United States District Court for the District of Arizona for the limited purpose of securing such declaratory relief as may be necessary to ascertain Lessor's rights and authority to impose taxes, fees, or other charges other than the Business Activity Tax on the Lease Interests and Activities as defined in Article XXXII herein in and on those areas designated as Navajo Partitioned Lands in the Former Joint Use Area. Lessor and its subordinate agencies and units further agree not to raise sovereign immunity or failure to exhaust administrative or tribal remedies as defenses to any such action by Lessee. Payment of prospective taxes due from Lessee to Lessor under Navajo tribal law, other than the Business Activity Tax, for Lease Interests and Activities within the Navajo Partitioned Lands of the Former Joint Use Area may be deferred by Lessee pending the entry of final judgment in the action for declaratory relief contemplated by this Article XXXI(c), provided Lessee initiates such action within one

hundred and eighty (180) days of the effective date of these lease amendments; and provided further, within thirty (30) days of the effective date of these lease amendments, Lessee arranges for and maintains a bond in favor of Lessor with an established financial institution reasonably acceptable to Lessor in an amount equal to the taxes (plus interest thereon as provided by Navajo tribal law) for which payment is deferred under this Article XXXI(c). The amount of such bond shall be increased no less frequently than once every six (6) months after its establishment to reflect the balance of deferred taxes and interest at the end of each such six (6) month period, and the bond shall remain in effect until the earlier of (i) entry of a final judgment in such declaratory relief action declaring that none of the deferred taxes or interest thereon are due and owing to Lessor; or (ii) payment of such deferred taxes and interest to Lessor. Lessor may claim against such bond if payment of deferred taxes and interest is not made to Lessor within thirty (30) days of final judgment. Lessee shall not be liable for nor be required to make payment of any penalties or fees assessed for nonpayment or failure to file (except interest) in relation to such deferred taxes which may otherwise be applicable to the period from execution of these lease amendments until the final unappealable decision by the Federal Courts.

(d) The parties agree that in exchange for all benefits associated with these lease amendments and any amendments to Lease No. 14-20-06U3-8580, Lessee, Black Mesa Pipeline, Inc., the Black Mesa and Lake Powell Railroad, and the Navajo and Mohave Participants are not liable for and will not be assessed for any taxes, assessments, fees, penalties, interest thereon, or other similar exactions or charges of the Navajo Tribe, its subordinate agencies or units, regardless of when assessed, relating to or based upon any ownership, operations or leasehold or other interest of Lessee, Black Mesa Pipeline, Inc., the Black Mesa and Lake Powell Railroad, or the Navajo and Mohave Participants during periods prior to January 1, 1985. Lessee and Black Mesa Pipeline, Inc. shall not be liable for and will not be assessed or be required to make

payment of penalties or fees for nonpayment or failure to file which may otherwise be applicable to the Possessory Interest Tax or the Business Activity Tax for the period from January 1, 1985 through the effective date of these lease amendments, provided Lessee makes the Business Activity Tax payment required under Article XXXI(b) herein. Until the effective date of these Lease amendments or their rescission by either party pursuant to Article XXIX of these amendments, whichever occurs first, Lessor agrees to stay any requirement of payment, enforcement actions, subpoenas, liens, accrual of interest or penalties, and the running of any time limits for the filing of any appeal or request for relief or other ruling with regard to any taxes, assessments, fees, penalties, interest thereon, or similar exactions or charges of the Navajo Tribe or its subordinate agencies or units, regardless of when assessed, relating to or based upon any ownership, operation, or leasehold or other interest of Lessee, Black Mesa Pipeline, Inc., or the Black Mesa and Lake Powell Railroad, or the Navajo and Mohave Participants for tax periods prior to January 1, 1985.

10. A new Article XXXII shall be added as follows:

XXXII. Royalty-Tax Cap

Lessor hereby covenants that, for any calendar year, the combined total collected, assessed, charged or otherwise sought to be collected by Lessor for the Royalty-Tax Cap Elements listed below shall not exceed fourteen and one-quarter percent (14.25%) of the gross realization received by Lessee for coal from the leased premises during such calendar year from the purchaser of such coal in a bona fide arms length transaction. The fourteen and one-quarter percent (14.25%) rate will be applied to gross realization determined on a per purchaser basis and not on a cumulative basis so that the total of Royalty-Tax Cap Elements related to coal purchased by a given buyer from the leased premises shall not exceed an amount equal to the gross realization received by Lessee from that buyer for such coal (computed in accordance with the method set forth in Article III and Exhibit A-2 herein)

multiplied by the percentage rate of the Royalty-Tax Cap as set forth in Exhibit A-3 hereto. For the purposes of this paragraph, gross realization shall be computed in accordance with the method set forth in Article III herein. The Royalty-Tax Cap Elements shall consist of the following:

(a) Coal royalty payable by Lessee to Lessor pursuant to Article III, as amended, for the applicable calendar year as the result of the specific transaction for the sale and purchase of such coal; plus

(b) The total of all taxes, assessments, fees, or similar exactions or charge of the Navajo Tribe, its subordinate agencies and units, for the applicable calendar year, regardless of when assessed, relating to or based upon any ownership, operations, or leasehold interest of Lessee, Black Mesa Pipeline, Inc., or other coal transporter, directly or indirectly associated with the specific transaction for the sale and purchase of such coal including, without limitation: the sale or delivery of such coal by Lessee and coal transporters, the severance or extraction of such coal by Lessee, this lease as it relates to such coal or lands overlying it, the severance, extraction, diversion or utilization of water for the leased premises by Lessee, Black Mesa Pipeline, Inc., or other coal transporter in the mining or transportation of such coal, the property of Lessee, Black Mesa Pipeline, Inc., or other coal transporter located on lands leased hereunder and on other lands of the Navajo Tribe to the extent used to supply such coal to the coal purchaser, or rights-of-way granted by Lessor to Lessee, Black Mesa Pipeline, Inc., or other coal transporter to the extent used to supply such coal to the coal purchaser, any improvements or property located thereon, any slurry line, railroad or related facilities used in the transportation of such coal, or the transportation of such coal (collectively referred to as "the Lease Interests and Activities"). Nothing contained in subparagraph (b) shall be construed to include within its scope any of the following:

(1) Water rates payable to Lessor under these amendments to Lease No. 14-20-0603-9910 or under any other lease or contract with the Navajo and/or Hopi Tribes;

(2) Royalties for uranium and other minerals payable to Lessor under Article III of this Lease, as amended;

(3) Annual right of way or rent amounts payable hereunder or under separate agreement with Lessor, Black Mesa Pipeline, Inc. or other coal transporter;

(4) Bonuses payable to Lessor under Article XXX;

(5) Scholarship amounts payable under Article XXVIII;

(6) Penalties, fines or interest thereon assessed by Lessor against Lessee, Black Mesa Pipeline, Inc., or other coal transporter for failure to comply with the terms of this Lease or other agreement(s) with Lessor, or with applicable laws or regulations;

(7) Taxes, fees, or assessments against Lessee, Black Mesa Pipeline, Inc. or other coal transporter for interests or activities not included in the Lease Interests and Activities.

(c) The royalties collectible hereunder are reduced to the extent, in any year, any amounts which would otherwise be collectible by the Navajo Tribe, its subordinate agencies and units, under the Royalty-Tax Cap elements described in subsections (a) and (b) above, are in excess of the percentage of gross realization herein provided, and collection of such amounts shall not be sought by the Navajo Tribe, its subordinate agencies and units. The excess amounts shall be credited to Lessee by deducting such amounts from the royalty amounts otherwise due to Lessor beginning with the monthly royalty payment made by Lessee after Lessee's payment in full of all taxes, assessments, fees and other similar charges for the applicable calendar year as assessed by Lessor or, where applicable, as finally adjudicated through available and proper administrative and judicial tribunals. However, in the event that such deductions from royalty amounts would reduce royalty to zero or to any level deemed unacceptable under federal requirements for

production in paying quantities, such excess amounts shall be deducted from tax amounts otherwise due Lessor, its subordinate agencies or units, to the extent necessary to maintain the applicable Royalty-Tax Cap percentage while providing a level of royalty necessary under federal requirements for production in paying quantities. Nothing in this Article XXXII shall be construed as relieving or imposing additional obligations on Lessee, Black Mesa Pipeline, Inc., other coal transporter or any of the Navajo or Mohave Participants with regard to filing tax returns or providing to Lessor other information otherwise required under applicable Navajo tribal law. Lessee agrees to provide reasonable cooperation to Lessor, its governmental agencies and units, in calculating deduction(s) credited to Lessor hereunder and reflecting such deduction(s) in the records of the Navajo Department of Natural Resources and the Navajo Tax Commission.

(d) Notwithstanding the foregoing, in the event (i) it is established by judicial decision binding on the State of Arizona (the "State"), or a political subdivision thereof, or a valid act of the United States Congress or the State or local Legislature that the State or political subdivision thereof is without authority to, or will not levy any or all State or local taxes against the property, interest or activities of Lessee, Black Mesa Pipeline, Inc. or other coal transporter described in Article XXXII(b) and the effect of such decision or act is to reduce taxes paid by Lessee, Black Mesa Pipeline, Inc., or other coal transporter to the State or political subdivision thereof, and (ii) Lessor assesses taxes or similar exactions as substitute or replacement therefor, there shall be deducted from the Royalty-Tax Cap amount, which is calculated by adding the Royalty-Tax Cap Elements under Articles XXXII(a) and (b), an amount equal to the lesser of eighty percent (80%) of such terminated State or local taxes otherwise assessable against Lessee, Black Mesa Pipeline, Inc. or other coal transporter, or eighty percent (80%) of the amount of such substitute or replacement taxes

or exactions to be paid by Lessee, the Navajo Participants, Black Mesa Pipeline, Inc. or other coal transporter.

(e) Nine (9) months prior to the ten (10) year anniversary of the effective date of these amendments, and nine (9) months prior to each successive ten (10) year anniversary thereafter for the duration of the lease term, the percentage rate of the Royalty-Tax Cap stated herein may reopen and Lessor and Lessee shall begin good faith negotiations to reach agreement on a percentage rate for the Royalty-Tax Cap for the succeeding ten (10) year period. If no agreement is reached within four (4) months, the issue of the percentage rate of the Royalty-Tax Cap may be taken to arbitration under the procedures provided in Article XXXIV herein for determination, consistent with the terms hereof, of an equitable percentage rate for the Royalty-Tax Cap, considering the interests of Lessor, Lessee and the Navajo and Mohave Participants. The parties shall utilize their best efforts to complete the arbitration prior to the applicable ten (10) year anniversary date and shall direct the arbitrator(s) to conduct the proceedings and render a decision prior to such anniversary date. However, the decision of the arbitrator or arbitrators in no case will result in a percentage rate for the Royalty-Tax Cap of less than fourteen and one-quarter percent (14.25%) of gross realization. Any adjustment of the Royalty-Tax Cap as a result of arbitration shall be applicable from and after the later of either the date of the arbitration award or the applicable ten-year anniversary date.

In the event the parties fail to reach a negotiated agreement and elect to arbitrate both royalty rates and the Royalty-Tax Cap for a specific ten (10) year reopener under Article III and XXXII, both such arbitrations shall be conducted as a single proceeding in accordance with the procedures set forth in Article XXXIV.

11. A new Article XXXIII shall be added as follows:

XXXIII. Rights-of-Way

Lessee may make application to Lessor for a permit or grant of any right-of-way reasonably related to Lessee's operations and

located within the area designated on Exhibit A-4 attached hereto. Lessor will not unreasonably withhold its consent to any such right-of-way. Compensation to Lessor for such rights-of-way shall be negotiated between Lessor and Lessee, and the grant or permit of any right-of-way shall be in accordance with all provisions of applicable law, including federal and Navajo tribal law and regulations.

The Participants in the Navajo and Mohave Projects may from time to time apply for a permit or grant of rights-of-way to construct and operate facilities over, across or beneath Navajo Reservation lands not already under lease to such Participant or Participants. Lessor will grant approval of such permits or grants of right-of-way if Lessor, in its sole discretion, determines that such permits or rights-of-way should be granted, subject only to (i) review and approval in an expeditious manner of facility site or route selection by the appropriate tribal agency, and (ii) payment of a fee for said permit or grant of right-of-way in accordance with the formulas established in Exhibit A-5 attached hereto.

12. A new Article XXXIV shall be added as follows:

XXXIV. Arbitration

Whenever under the provisions of this lease as amended arbitration is required to take place, it shall take place under the following procedures.

Unless, within thirty (30) days of the date arbitration is required to commence, the parties agree upon the appointment of a single arbitrator, a panel of arbitrators consisting of three (3) members shall be appointed as follows.

Within ten (10) working days time from the end the thirty (30) day period, one member shall be appointed by Lessor and one member shall be appointed by Lessee. The third (3) member shall be selected by agreement of the other two members. In the event the two members cannot agree upon the third arbitrator within fifteen (15) working days time from the end of the ten (10) day period, the

third arbitrator shall be chosen by the Chief Judge of the United States District Court for the District of Arizona, or by the Regional Vice-President of the American Arbitration Association for Arizona, if the Chief Judge is unable or unwilling to select an arbitrator. Expenses of arbitration shall be shared equally by Lessor and by Lessee. Meetings of the arbitrators may be in person or, in appropriate circumstances, by telephone. All decisions of the arbitration panel shall be by majority vote of the panel, shall be in writing and, together with any dissenting opinions, shall be delivered to Lessor and to Lessee. All decisions shall be made within four (4) months of the appointment of the arbitrator or arbitration panel, unless Lessor and Lessee agree on a longer period in writing.

The arbitrator or arbitration panel shall have power to administer oaths to witnesses, to take evidence under oath, and, by majority vote, to issue subpoenas to compel the attendance of employees and members of Lessor's tribe or employees of Lessee's company or for the production of books, records, documents and other relevant evidence by Lessor and Lessee.

The arbitrator or arbitration panel shall hold hearings in proceedings before it and shall give reasonable advance notice to Lessor and Lessee by registered mail not less than five (5) working days before any hearing. Appearance at a hearing waives such notice. Unless otherwise agreed by Lessor and Lessee, all hearings shall be held in Phoenix, Arizona and, where evidence is taken, held on the record. The arbitrator or arbitration panel may hear and determine the controversy only upon evidence produced before it and may determine the controversy notwithstanding the failure of either Lessor or Lessee duly notified to appear. The Lessor and Lessee is each entitled to be heard at all hearings, to present evidence material to the matter subject to arbitration, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at its own expense. A transcript shall be kept of all proceedings before the arbitrator or arbitration panel. Except as necessary for the enforcement or appeal of the arbitration decision, the parties

and arbitrator or arbitration panel shall maintain the confidentiality of any such transcript. The decision of the arbitrator or arbitration panel shall be limited to establishing the mineral royalty rates, water rates, royalty-tax cap rates or resolving disputes arising under Article IX herein, shall be presumed to be valid, and may be vacated only by the United States District Court for the District of Arizona on one of the following grounds: (a) the decision was procured by corruption, fraud or undue means; (b) there was evident partiality or corruption by the arbitrator, arbitration panel or by any member; (c) the arbitrator, arbitration panel, or any member was guilty of misconduct in refusing to hear the question or in refusing to hear evidence pertinent and material to the question, or any other clear misbehavior by which the rights of either party have been substantially prejudiced; (d) the arbitrator, the arbitration panel or any member exceeded their authority under the terms of this Lease as amended; or (e) the arbitrator or the arbitration panel's decision is contrary to law. Lessor and its officers acting in their official capacity consent to suit in the United States District Court for the District of Arizona for the limited purpose of the enforcement or appeal of any arbitration decision pursuant to this Article, and agree not to raise sovereign immunity or exhaustion of tribal remedies as a defense to such a suit. Arbitration awards shall be effective on the date of the arbitration decision. Sums due shall accrue interest from the date of the arbitration award at the prime rate then charged by the Bank of America or its successor.

13. A new Article XXXV shall be added as follows:

XXXV. Third Party Beneficiaries

The Navajo Participants and the Mohave Participants, their successors and assigns, are intended third party beneficiaries of those provisions of Article IX, XXXI, XXXII and XXXIII herein which grant rights to such Participants for the sole and limited purpose of preserving and enforcing those rights in administrative

proceedings or judicial proceedings for declaratory and injunctive relief in the event of an alleged breach by Lessor of the terms hereof. Except as set forth above, nothing in this Lease shall be construed as granting the Navajo Participants or Mohave Participants, or any one of them, any rights of approval to changes in this Lease, right to participate as a party to litigation or disputes or arbitration under this Lease or any other right hereunder.

14. A new Article XXXVI shall be added as follows:

XXXVI. Validity of Amended Leases

Lessor and Lessee recognize Lease No. 14-20-0603-9910, as herein amended, to be valid and enforceable and in the best interests of Lessee and Lessor and its people. Lessor and Lessee hereby reaffirm their prior contractual commitments to provide for the compensation of individual Navajo tribal members for damages to improvements and customary use rights in areas affected by mining operations authorized hereunder. However, subject to the requirement that Lessee meet its existing contractual obligations for such compensation, Lessor shall not, in either its governmental or proprietary capacity, take any action which would empower such tribal members, by virtue of their ownership of improvements or customary use rights, to prevent Lessee from exercising its rights granted under this Lease as herein amended.

15. A new Article XXXVII shall be added as follows:

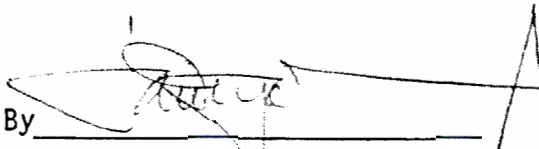
XXXVII. Lease to Continue in Effect Except as Expressly Modified

Except as expressly modified by these amendments, the original Lease and all its provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these lease amendments to be signed by their duly authorized officers on the dates written below.

THE NAVAJO TRIBE, Lessor

11/20/87
Date

By 
Peter MacDonald, Chairman
The Navajo Tribal Council

PEABODY COAL COMPANY, Lessee

11-20-87
Date

By Kenneth R. Moore
Kenneth R. Moore, Vice President

Attest:


Assistant Secretary

ACKNOWLEDGMENT OF LESSOR

State of Arizona)
) ss.
County of Maricopa)

Before me, a Notary Public, on this 20th day of November, 1987, personally appeared PETER MACDONALD, to me known to be the identical person who executed the within and foregoing lease amendments and acknowledged to me that he executed the same in his official capacity as Chairman of the Navajo Tribal Council for and on behalf of the Navajo Tribe of Indians as its free and voluntary act and deed for the uses and purposes therein set forth.


Notary Public

My Commission expires:

My Commission Expires May 31st, 1990.

ACKNOWLEDGMENT OF LESSEE

State of Arizona)
) ss.
County of Maricopa)

On this 20th day of November, 1987, before me appeared Kenneth R. Moore and Gregory J. Leisse, to me personally known, who being by me duly sworn, did say that they are Vice President and Assistant Secretary of Peabody Coal Company, and that the seal affixed to the foregoing instrument is the corporation seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Kenneth R. Moore and Gregory J. Leisse acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal the day and year first above written.


Notary Public

My Commission expires:

My Commission Expires May 31st, 1990.



LEASE AMENDMENT
between
THE NAVAJO NATION
and
PEABODY WESTERN COAL COMPANY

THIS LEASE AMENDMENT ("Amendment") is entered into this ____ day of _____, 201_, by and between THE NAVAJO NATION ("Navajo Nation") and PEABODY WESTERN COAL COMPANY ("PWCC"), hereafter collectively referred to as "the parties," to that certain coal lease, originally entered into by and between the Navajo Nation and PWCC's predecessor in interest, known as Lease No. 14-20-0603-9910 as amended to date (the "Coal Lease").

WHEREAS, the Navajo Nation and PWCC engaged in negotiation pursuant to Section (b) of Article II for determination of a new water rate; and

WHEREAS, the parties hereto negotiated and agreed to resolve the water rate in accordance with the terms and conditions contained in this Agreement.

IN CONSIDERATION OF the covenants, promises, terms and conditions contained herein, the parties agree:

1. Following Navajo Nation Council approval of this Amendment, the parties shall jointly submit it to the Secretary of the Interior ("Secretary") for his approval. This Amendment shall become effective on the date such approval is executed by the Secretary, without delegation (the "Lease Amendment Effective Date"). Upon such approval by the Secretary, this Amendment shall constitute an amendment to Lease No. 9910.

2. Effective as of the Lease Amendment Effective Date, the amendment to the first paragraph of Article II of the Coal Lease as provided in that Amendments to Coal Mining Lease No. 14-20-0603-9910 dated November 20, 1987 shall be stricken and the following language shall be substituted:

"To the Lessor, effective January 1, 2015, at the rate of \$1,304 per acre-foot for all water used each month from any of the wells located on the leased premises or the premises under Lease No. 14-20-0603-8580, this amount to be subject to a cumulative annual adjustment of 100 percent of the change in the Consumer Price Index for all urban consumers, United States city average, all items (1967=100) issued by the United States Department of Labor (the "CPI"), for the preceding twelve calendar months commencing with the end of the 2015 calendar year. CPI for November 2014 shall be used as the base for future CPI adjustments. The above rates shall continue in effect until January 1, 2030 subject to Lessor's continuous mining of coal pursuant to Lease No. 14-20-063-9910 and or Lease No. 14-20-0603-8580. Lessor shall have the option to call for a reopener of the water rate by providing notice to Lessee 90 days prior to January 1, 2030. Upon receipt of such notice, Lessor and Lessee shall begin good faith negotiations for the establishment of a mutually agreeable new water rate provided that in no event shall the new water rate result in an increase of more than 20% from the then existing water rate nor shall the new water rate be less than the then existing water rate."

3. Except as provided in this Amendment, all provisions of the Coal Lease shall remain the same.

4. By his signature below, each of the undersigned representatives of PWCC and of the Navajo Nation agrees, accepts and acknowledges that he has the authority to enter into this Amendment.

NAVAJO NATION, Lessor

PEABODY WESTERN COAL COMPANY,
Lessee

By: _____
RUSSELL BEGAYE, PRESIDENT

By: Audry Rappleyea
AUDRY RAPPLEYEA, PRESIDENT

Date: _____

Date: 10/20/15

APPROVED:

By: _____
Secretary of the Interior

Date: _____

NAVAJO NATION

RCS# 336

Naa'bik'iyati Committee

3/2/2016

08:27:18 PM

Amd# to Amd#

Legislation No. 0050-16

PASSED

MOT Tsosie

Approving a Lease Amendment of

SEC Shepherd

Coal Mining Lease No. 14-20-0603

9910 between Peabody WesternCoal

Yea : 10

Nay : 4

Not Voting : 10

Yea : 10

Begay, K
Begay, M
Bennett

Filfred
Phelps
Shepherd

Slim
Tso

Tsosie
Witherspoon

Nay : 4

Perry

Smith

Damon

Chee

Not Voting : 10

Bates
Begay, NM
BeGaye, N

Brown
Crotty
Daniels

Hale
Jack

Pete
Yazzie