

Attachment 5

LC# 2793-0002
DISPLAY # _____ BY _____
SCAN DATE _____

2793-0002-00

SURFACE USE AGREEMENT

This Surface Use Agreement is dated and effective as of this 3^d day of JUNE, 1980 between SANTA FE PACIFIC RAILROAD COMPANY ("SFP") and R.M. ALBERS and IMOGENE ALBERS, his wife, and Mrs. W.B. (BETTY) ALBERS, individually and as trustee for SHARON ALBERS ROBINSON (formerly Sharon Albers Fuller), REBECCA CLAIRE ALBERS and WILLIAM ALAN ALBERS, operating as "ALBERS BROTHERS", a Partnership ("Landowner").

A. WHEREAS, Landowner owns the surface estate on certain lands in McKinley County, New Mexico, which lands are described on Exhibit A attached hereto and incorporated herein by reference; and in addition Landowner leases the surface grazing rights on other lands from the State of New Mexico, Land Division and from the United States Bureau of Land Management, which lands are described on Exhibit B attached hereto and incorporated herein by reference. Such lands are referred to respectively in this Surface Use Agreement as the "Fee Lands" and the "Lease Lands" and collectively referred to as the "Ranching Unit".

B. WHEREAS, SFP owns in fee the entire mineral estate under portions of the Fee Lands and as to such portions of the Fee Lands SFP has the right to use a reasonable portion of the surface of those lands for SFP's exploitation of the mineral estate therein. Exhibit C to this Surface Use Agreement describes the portion of the Fee Lands in which SFP owns the entire mineral estate which lands are referred to in this Surface Use Agreement as "Mineral Lands".

C. WHEREAS, SFP either owns or may in the future acquire an interest in the mineral estate in certain lands in

the vicinity of the Ranching Unit which lands are described in Exhibit D to this Surface Use Agreement and are referred to as "Adjoining Lands".

D. WHEREAS, the parties desire to enter into an agreement relating to the entry by SFP upon any of the lands within the Ranching Unit and to provide for payment by SFP to Landowner for the right of entry and ingress and egress over, upon and across any of the lands within the Ranching Unit to gain access to the Mineral Lands and Adjoining Lands and for any damage or destruction to the surface estate in the Ranching Unit as a result of exploitation of the mineral estate of SFP in the Mineral Lands or the Adjoining Lands.

THEREFORE, in consideration of the promises set forth in this Surface Use Agreement, SFP and Landowner mutually agree to the following provisions:

1(a) Landowner agrees that, consistent with this Surface Use Agreement, SFP may use any portion of the surface estate of the Fee Lands and Landowner will not object to use of any portion of the surface estate of the Lease Lands which portions are reasonably required for SFP's exploitation of the mineral estate in the Mineral Lands. In its use of such portion of the surface estate of the Fee Lands and the Lease Lands, SFP shall be entitled, at SFP's expense, to erect and maintain fences to exclude Landowner's livestock from such portions of the surface estate.

For purposes of this Surface Use Agreement, exploitation shall mean all means and methods selected by SFP, whether now known or discovered in the future, for determining and recovering the value contained in the mineral estate in the Mineral Lands, including but not limited to, geological and

geophysical exploration activities, exploratory drilling operations, underground mining operations, surface mining operations including strip mining operations, open pit mining operations, drilling and operation of fluid recovery wells (subject however to the provisions of Paragraph 10), construction and maintenance of facilities in support of underground or surface mining operations, construction and maintenance of transportation facilities, utilization of materials from the mineral estate in connection with SFP's mining activities in the Mineral Lands, and withdrawal of water pursuant to the law of the State of New Mexico for use in SFP's activities (subject however to the provisions of Paragraph 10 concerning the use of water). Notwithstanding any provisions in this Surface Use Agreement to the contrary, it is specifically agreed that SFP shall not be permitted, and "exploitation" shall not be interpreted to include, the use of any portion of the Ranching Unit for construction or operation of a mill, smelter, refinery or other processing plant for milling, concentrating, refining, or other enhanced or secondary processing of minerals or other substances.

For purposes of this Surface Use Agreement, the mineral estate shall mean all materials and substances located at or below the topographic surface of the lands which presently or in the future may have economic value if recovered from the lands including, but not limited to, hydrocarbon substances, coal, gases of all types, sulfur, uranium-bearing minerals, precious metal-bearing minerals, base metal-bearing minerals, carbonate minerals, and all compounds of silicon.

1(b) Landowner hereby confirms, extends and grants to SFP the right and privilege to enter upon and through any part of the Fee Lands and Landowner will not object and will cooper-

ate with SFP in efforts to obtain such permission concerning the Lease Lands to gain access to and from the Mineral Lands or the Adjoining Lands and the right and privilege to construct and maintain vehicular roads upon any part of the Ranching Unit in connection with exploitation by SFP, its employees, agents, lessees, licensees, assignees, grantees, contractors and permittees of the mineral estate in the Mineral Lands or the mineral estate in the Adjoining Lands where SFP holds an interest in such mineral estate. Such right and privilege are, however, conditioned to be compatible with Landowners operation of the Ranching Unit as specified in Paragraph 3.

1(c). Notwithstanding any other provision of this Surface Use Agreement, SFP agrees that:

(1) Landowner shall not be deemed to have given any permission or to have consented to any action contrary to the obligations of Landowner under the provisions of its leases of the Lease Lands.

(2) Landowner has given SFP notice of the existence of a Well Field Easement dated February 23, 1979 between Landowner and Plains Electric Generation and Transmission Cooperative, Inc., the provisions of such Easement are not objectionable to SFP, and SFP will not take any actions which would constitute a violation or breach of Landowner's duties or obligations under the Well Field Easement. Landowner represents that the execution of this Surface Use Agreement does not constitute a violation or breach of Landowner's duties or obligations under the Well Field Agreement.

(3) Landowner has given SFP notice of the existence of agreements dated March 20, 1980 between Landowner and Chaco Energy Company for the sale by Landowner, use by Chaco

and subsequent repurchase by Landowner of the right to use the surface of portions of Sections 1 and 3 (plus State lease Section 2) in Township 16 North, Range 10 West in connection with the mining and processing of coal by Chaco in such area, the provisions of such agreements are not objectionable to SFP, and SFP will not take any actions which would constitute a violation or breach of Landowner's duties or obligations under the agreements. Landowner represents that the execution of this Surface Use Agreement does not constitute a violation or breach of Landowner's duties or obligations under the agreements.

(4) Landowner reserves unto itself the exclusive right to grant any other easements, rights, and privileges of any kind in any or all portions of the Ranching Unit and to take any other actions with respect thereto which the fee owner of such property would normally be permitted to take and which do not unreasonably interfere with the rights created in SFP by this Surface Use Agreement. In the event of condemnation or taking by any means of any rights in the surface estate of the Ranching Unit for any public purpose or by any public authority, the entire amount of the award received shall belong to Landowner.

(5) Landowner has not granted SFP any rights under this Surface Use Agreement, to purchase all or any portion of the Fee Lands for any purpose or at any price, and Landowner has not conveyed to SFP any interest in the mineral estate which may be owned by Landowner in the Fee Lands which are not included in the Mineral Lands.

(6) Landowner has not granted SFP any rights in, ownership of or control over any archeological or paleontological items or artifacts which may be found or identified at

any place or from place to place within the Ranching Unit and all such items or artifacts are reserved to Landowner. In its activities on the Ranching Unit, SFP shall comply with all Federal and State laws, rules and regulations applicable to the Ranching Unit concerning the identification and protection of any archeological or paleontological sites. SFP agrees to use its best efforts and due diligence to avoid or to mitigate damage to any such sites, however SFP shall not be liable for damage to such sites so long as it exercises ordinary and reasonable care.

2(a) At any time after the date of this Surface Use Agreement in the event SFP or any entity acting for SFP, with consent of SFP, or as an assignee or successor to SFP recovers or transfers for value any material or substance from the mineral estate in the Mineral Lands, SFP shall pay production royalties to Landowner in the specified percentages concerning different materials and substances as to the Mineral Lands as set forth in Exhibit E, attached to this Surface Use Agreement.

For the purpose of this Surface Use Agreement the following definitions should apply:

(1) "pound" shall include sixteen (16) ounces by weight;

(2) "ton" shall include two thousand (2000) pounds;

(3) "weighted average price" shall mean the total consideration received for certain sales divided by the total number of units which were transferred in such sales.

2(b). For the purpose of computing the production royalty to be paid for uranium-bearing ores, the production

royalty percentage shall be applied to the Mine Value of the uranium-bearing ore. Mine Value shall be determined according to the following:

(1) The Mine Value of uranium-bearing ores sold in an "arm's length" transaction to an unrelated party by SFP in raw, crude form shall be the actual net proceeds received for the uranium-bearing ores by SFP after deducting the cost to SFP, if any, of transporting the uranium-bearing ore from the mine to the point of sale.

(2) The Mine Value of all uranium-bearing ores which are not sold in an "arm's length" transaction to an unrelated party in their raw, crude form and the Mine Value of all uranium-bearing ores which are processed in a mill owned or controlled wholly or partly by SFP or which are processed in a custom mill for SFP shall be determined from the Ore Value shown on the following price schedule with the applicable adjustments provided hereunder:

Grade of Ore (U ₃ O ₈ Assay)	Ore Value Per Dry Ton
0.10% U ₃ O ₈	\$ 3.00
0.15	7.50
0.20	14.00
0.30	21.00
0.40	28.00
0.50	35.00
0.60	42.00
0.70	49.00
0.80	56.00
0.90	63.00
1.00	70.00
Over 1.00	\$70.00 plus \$7.00 for each 0.10% U ₃ O ₈ in excess of 1.00%

(The Ore Value for uranium-bearing ores assayed at less than 0.10% U₃O₈ shall be \$1.50 per pound of U₃O₈ actually recovered by SFP)

(In addition to the amounts provided above, the Ore Value shall be increased by a grade premium of \$.75 per pound for each pound of

U₃O₈ in excess of four (4) pounds per ton of ore and an additional grade premium of \$.25 per pound for each pound of U₃O₈ in excess of ten (10) pounds U₃O₈ per ton.

Uranium-bearing ores of grades intermediate to those specified above will be valued on a pro rata basis.

With respect to uranium recovered from mine waters or other solutions, both natural and artificially introduced, that are processed by SFP for recovery of uranium, the Ore Value shall be \$3.50 per pound of U₃O₈ concentrate actually recovered.

With regard to sales of uranium-bearing ore in an "arm's length" transaction to an unrelated party and in the event the price received by SFP for such U₃O₈ sales from the mill is either more or less than \$8.00 per pound for the weighted average of all such sales made during the calendar month in which uranium-bearing ores and mine waters or solutions are processed (or for the last previous month in which U₃O₈ sales were made if no such sales were made in the particular month), then the Ore Value plus any applicable grade premium bonus shall be multiplied by a factor which is such weighted average U₃O₈ sales price divided by \$8.00 per pound. With regard to any sale of uranium-bearing ore which is NOT an "arm's length" transaction to an unrelated party or in the event that no sales of U₃O₈ produced in the mill by or for SFP are made for a period of one year prior to the month in which the uranium-bearing ores are processed, then in either event the Ore Value plus any applicable grade premium bonus shall be adjusted in the same manner as provided above, except that the weighted average U₃O₈ sales price for any such sale shall be the published or fair market price of U₃O₈ concentrate

"current sales for current delivery" in the area of the Mineral Lands. The adjusted Ore Value plus applicable grade premium bonus determined by such multiplication shall be converted to Mine Value by deducting therefrom, the actual direct cost of transporting such ore from the mine to the mill.

2(c) For purposes of computing the production royalty to be paid under this Surface Use Agreement for all minerals and substances other than uranium-bearing ores which make up the mineral estate in the Mineral Lands, the production royalty percentage set forth in Exhibit E shall be applied to the Transfer Value of such minerals or substances. Transfer Value shall mean the gross proceeds to SFP upon sale or other disposition in an "arm's length" transaction to an unrelated party of the material or substance less

(1) the costs to SFP of preparing or processing the material or substance for sale or other disposition including, but not limited to, the cost of transportation to the place of preparation or processing;

(2) the cost of transportation of the material or substance in the form in which it is sold or disposed to the point of sale or other disposition; and

(3) applicable severance taxes.

If any such materials or substances are not sold or disposed of by SFP in an "arm's length" transaction to an unrelated party, then the published or fair market price of such materials or substances ("current sales for current delivery") in the area of the Mineral Lands shall be used in the computation instead of "gross proceeds to SFP" in the formula above.

2.(d) SFP shall pay Landowner any production royalty due within 30 days after the calendar month within which materials and substances are sold or processed. SFP shall keep accurate and complete records of all its activities performed under this Surface Use Agreement which are reasonably required for the computation of all amounts due to be paid by SFP to Landowner hereunder. SFP shall provide Landowner with information from such records which was utilized in calculating the amounts due from SFP to Landowner and Landowner shall be entitled, at reasonable times, to inspect and copy such records for the purpose of verifying the amounts due to be paid by SFP to Landowner hereunder. It is specifically agreed however that all of such information maintained by SFP is confidential and none of such information shall be divulged or disclosed by Landowner to any person or for any purpose except as may reasonably be required by Landowner in order to verify the amount due to be paid by SFP to Landowner under the terms of this Surface Use Agreement.

2(e) SFP shall pay all production royalties and other payments due Landowner under this Surface Use Agreement by placing its check payable to "Albers Brothers" for the amount due in the United States mail, addressed to Albers Brothers, c/o R.M. Albers at 5220 Catskills, Wichita Falls, Texas 76310. SFP shall continue to send all amounts due to Landowner to the foregoing address until SFP receives written instructions from Landowner by United States mail, return receipt requested, which direct SFP to send the amounts due to a different person or persons, in a different manner, or to a different address.

3(a) In the event SFP's exercise of its rights under this Surface Use Agreement results in damage or destruction of

any fixtures or personal property of Landowner which are located within the Ranching Unit, SFP shall promptly repair such damage or destruction or else SFP shall pay to Landowner the cost of repairing or replacing the fixtures or personal property which cost of repair or replacement shall be determined as of the date on which the damage or destruction is repaired or replaced.

3(b) It is recognized by SFP that the Landowner is conducting a livestock operation upon the lands within the Ranching Unit. In its use of portions of the surface of the Ranching Unit, SFP agrees to use its best efforts and due diligence to avoid any damage or deterioration of the Ranching Unit. The granting of rights of access on the Ranching Unit to SFP shall be limited exclusively to SFP, its employees, agents, lessees, licensees, assignees, grantees, contractors and permittees. SFP shall cooperate with and assist Landowner in its efforts to exclude the public from the Ranching Unit. All gates in interior and exterior fences must be kept closed and padlocked. If new locks are required, SFP shall furnish the same at its expense and deliver duplicate keys to the Landowner's foreman of the Ranching Unit. No new gates shall be installed in any fence without obtaining Landowner's prior written consent. In the exercise of its rights under this Surface Use Agreement, SFP shall provide Landowner with written notice before entry of any persons on the Ranching Unit for any project. Such written notice shall identify the persons or entities who will enter, and the anticipated location, duration and type of activity to be expected and shall be sent to Landowner at least ten days prior to entry except in cases of emergency or reasonable necessity when SFP shall be required only to send written notice to Landowner as soon as reasonably possible. SFP shall also have

a copy of such written notice delivered to Landowner's foreman on the Ranching Unit at the time of first entry of the first person on a project.

To as great an extent as possible, all vehicles shall use existing roads on the Ranching Unit and no new roads shall be made by SFP without obtaining Landowner's prior written consent, which consent shall not be unreasonably withheld. It shall be reasonable for Landowner to condition its consent for the construction of new roads upon the construction of reasonable and appropriate drainage structures and crossing facilities to accommodate the Landowner's livestock operation. Vehicles shall be limited or prohibited from use of the roads on the Ranching Unit at all times when they would create ruts more than three inches in depth except in emergency situations. SFP agrees to maintain, to the greatest extent practicable, the roads it utilizes within the Ranching Unit, and if it causes any damage to the roads, it will promptly repair such damage and restore the roads to the condition existing prior thereto.

3(c) In its use of any portion of the surface of the Ranching Unit, SFP agrees and covenants with Landowner that SFP will observe and comply with all Federal, State and County laws, rules and regulations, including but not limited to those concerning environmental matters, mining methods and reclamation. SFP agrees to plug all drill holes in accordance with State of New Mexico laws and regulations and to reclaim drill sites and drill roads to the maximum extent practicable. SFP agrees to protect, defend and hold harmless Landowner from any claims or demands that may be asserted against Landowner as a result of SFP's operations.

4(a) SFP shall make a total of ten annual advance royalty payments to Landowner in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500.00) each. The first advance royalty payment shall be due on the date of execution of this Surface Use Agreement, the remaining nine advance royalty payments shall be due at one year intervals on the anniversary dates of execution of this Surface Use Agreement. If any production royalties shall be due under Paragraph 2 of this Surface Use Agreement during the time that such advance royalties are required, then to the extent that the production royalties exceed the advance royalties, SFP shall be entitled to take credit against any excess of production royalties over the advance royalties for one-half of the total amount of advance royalties previously paid and which have not previously been used for credits against production royalties. The requirement to pay advance royalties shall cease with the tenth advance royalty payment on the ninth anniversary of the date of execution of this Surface Use Agreement and the right to credit one-half of the advance royalties against production royalties shall cease at the end of the tenth year after the date of execution of this Surface Use Agreement notwithstanding that the covenants of this Surface Use Agreement shall run with the Fee Lands and the Mineral Lands in perpetuity and the covenants of Landowner concerning permission to enter the Lease Lands shall be contractually binding upon Landowner so long as it shall lease the Lease Lands.

4(b) In the event SFP determines that it is essential for SFP to have title to a portion of the surface estate of the Mineral Lands, then SFP shall notify Landowner and state the legal description of the portion of the surface estate of the

Mineral Lands in which it desires to acquire the title. Landowner agrees to negotiate with SFP to attempt to reach a fair price and reasonable terms for the sale of any such portion of the surface estate of the Mineral Lands. It is specifically agreed, however, that the agreement of Landowner to negotiate with SFP does not insure that any agreement will be reached and the provisions of paragraph 1(c)(5) of this Surface Use Agreement shall continue to prevail and control. It is absolutely understood and agreed that Landowner shall reserve unto itself the exclusive right to use any portion of the Fee Lands for a town, village or other residential area and for retail commercial sales.

5(a) Landowner accepts the production royalties provided in Paragraph 2, the payments specified in Paragraph 4, and the agreement of SFP to perform all of its duties and obligations hereunder as full compensation for the injury to, or loss of use of, any portion of the surface estate in the Ranching Unit which SFP may cause in the exercise of its rights under this Surface Use Agreement as full compensation for SFP's use of portions of the surface estate within the Ranching Unit. Landowner acknowledges that SFP's use may involve operations such as surface mining which will permanently alter the surface estate of the Mineral Lands. Landowner acknowledges that under laws affecting the exploitation of the mineral estate in the Mineral Lands and the Ranching Unit, or the acquisition of interests in the mineral estate underlying the Ranching Unit which is not currently owned by SFP, the consent or approval of Landowner may be required and that this Agreement shall constitute Landowner's consent or approval as may be required. In the event any additional evidence or instrument showing Land-

owner's consent or approval becomes necessary, Landowner shall provide the necessary evidence or instrument to SFP upon request at no cost.

5(b) Landowner acknowledges that as of the date of this Surface Use Agreement certain portions of the mineral estate in the Mineral Lands are the subject of outstanding leases and contracts between SFP and third parties. From and after the date of this Surface Use Agreement, Landowner agrees that all activities and operations on the Mineral Lands and within the Ranching Unit by SFP, its grantees, lessees, licensees, permittees, contractors and assignees, shall be governed solely by the terms of this Surface Use Agreement. SFP and Landowner expressly intend that after the date of execution of this Surface Use Agreement, the provisions of this Surface Use Agreement shall supersede and replace all subsequently accruing obligations or liabilities arising under all such prior contracts, agreements or other arrangements as to the Ranching Unit between Landowner and other parties in connection with the exploitation of the mineral estate in the Mineral Lands. It is agreed, however, that all obligations accruing to the benefit of Landowner prior to the date of this Agreement shall be unaffected.

5(c) Landowner previously entered into a Road Agreement with Gulf Oil Corporation ("Gulf") dated February 13, 1979, concerning construction, operation and maintenance of an ore haulage road on a portion of the Ranching Unit. A Memorandum of the Road Agreement was recorded in the office of the County Clerk of McKinley County on August 1, 1979 in Book 50 of Leases at pages 563 to 564. SFP has acquired the interest of Gulf under the Road Agreement and has assumed and agreed to perform the duties of Gulf thereunder. In consideration of the full

and complete performance by SFP of its duties and obligations under this Surface Use Agreement, Landowner does hereby waive, release and relinquish all of its rights arising under the Road Agreement and Landowner and SFP agree that after the date of execution of this Surface Use Agreement, the Road Agreement shall be null and void and of no further force and effect provided that SFP may construct a road over the route set forth in the Road Agreement without further consent of, or consideration to, Landowner. SFP and Landowner agree to execute and deliver to each other a recordable document evidencing the complete termination of the Road Agreement. If SFP does construct a road for ore haulage such as the road which was covered by the Road Agreement, then the construction will be consistent with good land management practices and consistent with reasonable safety and design principles. The construction will include complete fencing of the right-of-way with 5-strand barbed wire fence, will incorporate at least four (4) cattle underpass structures, all of which will be located on the Fee Lands. Each structure will be approximately 12 feet wide, constructed of steel reinforced concrete, with a flat bottom; located in order to be compatible with the crossing and access structures under the railroad right-of-way described in Exhibit F. Cattle guards will be installed at the south boundary of Section 2, Township 14 North, Range 10 West and at the west boundary of Section 23, Township 15 North, Range 10 West, where the road right-of-way leaves the Landowner's property. Cattle guards will also be installed at the common boundary, if any, of the Landowner's property where the road crosses Indian land in Section 26, Township 15 North, Range 10 West. Lockable metal gates will be installed across the road right-of-way at the south

boundary of the State section and at the west boundary of Section 23. In addition to the cattle underpass structures, other drainage structures will be constructed under the road right-of-way to maintain the natural drainage of the land. Additional lockable metal gates will be required in the right-of-way fencing at reasonable points, to be selected by Landowners. The road will be surfaced with gravel and all grades will be kept to a minimum to facilitate ore haulage. SFP will, at its sole cost and expense, provide all necessary maintenance to maintain the road as a satisfactory haulage road. SFP will repair any erosion, damage caused by erosion, or any other damage which may be caused by the construction and maintenance of the road. SFP will use reasonable efforts to prevent use of the road by any persons other than SFP, its employees, agents, lessees, licensees, assignees, grantees, contractors and permittees; and SFP will give notice to Landowners immediately of any other persons making use of the road. SFP will post the road with appropriate and clearly legible signs at each cattle guard, notifying users of the road that the use is so restricted. SFP agrees to assist Landowners and cooperate with Landowners in monitoring any uses made of the road by other persons or entities.

6. Landowner shall have the right to sell, lease, assign or convey its rights under this Surface Use Agreement and its ownership of the surface estate. Such rights and ownership may be sold, leased, assigned or conveyed together, or separately, and Landowner may sell some rights or some of the surface and retain other rights or other surface of the Ranching Unit. In the event of any such transaction, Landowner shall give prompt notice to SFP and Landowner shall provide a copy of

this Surface Use Agreement to its purchaser, lessee or assignee. In the event Landowner transfers a fee interest in the surface estate in any part of the Ranching Unit, unless the instrument of transfer provides to the contrary, SFP's obligations to pay production royalties (but not advance royalties) under this Surface Use Agreement shall be apportioned between the transferred part and the retained part and shall be performed for the benefit of the transferee and Landowner and all payments of production royalties on minerals extracted from the transferred part shall be payable to the transferee. SFP shall not be obligated to provide performance of any obligations under this Surface Use Agreement for the benefit of any transferee until SFP has been furnished by certified United States Mail, return receipt requested, with a copy of the instrument of transfer and the mailing address of the transferee. In the event Landowner owns less than the whole fee in any portion of the surface estate of the Fee Lands; then the payments and production royalties payable with regard to minerals extracted from such portion of the surface estate by SFP to Landowner under this Surface Use Agreement shall be reduced and shall be paid to Landowner only in the proportion which Landowner's interest in such portion of the surface estate bears to the entire undivided fee in such portion of the surface estate of the Fee Lands. In the event that any claims are made by any entity contesting the ownership by Landowner of any portion of the surface estate of the Fee Lands and if any such claimant shall prevail, then this Surface Use Agreement shall cease to be effective as to such portion of the surface estate of the Fee Lands in which the fee simple title of the Landowner shall

have failed but shall continue as to all other portions of the surface estate of the Fee Lands.

7. This Surface Use Agreement shall constitute a covenant running with the mineral estate of the Mineral Lands and with the surface estate of the Fee Lands for the benefit of the owner of the mineral estate in the Mineral Lands and for the benefit of the owner of the surface estate in the Fee Lands. It shall constitute an encumbrance upon the title to the mineral estate of the Mineral Lands and upon the title of the surface estate in the Fee Lands. As a covenant and encumbrance, the provisions of this Surface Use Agreement shall be binding upon, and inure to the benefit of SFP and Landowner and all persons claiming any interest whatsoever in the Mineral Lands or the Fee Lands by, through, or under SFP or Landowner. Any grantee, licensee, permittee, lessee or other transferee from SFP of an interest in the mineral estate in the Mineral Lands may exercise the rights of SFP under this Surface Use Agreement as those rights relate to the transferred interest in the mineral estate in the Mineral Lands and both SFP and its grantee, licensee, permittee, lessee or other transferee shall be responsible for full and complete performance of all obligations due to Landowner under this Surface Use Agreement concerning such transferred interest in the mineral estate, provided that SFP shall not be liable for any obligation with respect to any portion of the Ranching Unit in which SFP has ceased to hold any real property interest. SFP shall have the right to assign its rights of access across the Ranching Unit under this Surface Use Agreement to any company affiliated with SFP for exploitation of the mineral estate in which SFP holds an interest in any portion of the Adjoining Lands provided that the assignee shall perform

the obligations of SFP under this Surface Use Agreement related to the exercise of the rights of access.

8. In accordance with the agreement between SFP and R.E. Albers, Vera A. Albers, William B. Albers, and Betty B. Albers dated November 12, 1957, Landowner acknowledges that SFP is the fee owner of the entire mineral estate in the Mineral Lands and Landowner agrees not to raise any claims, bring any action, or participate in any claim or action which is adverse to SFP's fee title to the mineral estate in the Mineral Lands. SFP formerly owned fee simple title of the surface estate in the Mineral Lands and by various deeds SFP conveyed fee ownership of the surface estate of the Mineral Lands to Landowner's predecessors. SFP included reservations of various rights and privileges in all of such deeds in addition to reservations of the mineral estate in the Mineral Lands. SFP does hereby agree not to raise any claims, bring any action, or participate in any claim or action against Landowner or which is adverse to Landowner's interest in the Fee Lands, except to the extent that the claim or action seeks to enforce or confirm rights or privileges which are granted or confirmed in this Surface Use Agreement.

Both Landowner and SFP agree that this Surface Use Agreement shall be noncancellable and nonforfeitable and that each party shall be limited to the remedy of specific performance of the contractual duties and obligations of the other party plus each party shall be entitled to seek damages for any injury or loss sustained as the result of actions by the other party. Both Landowner and SFP agree that the incident of non-cancellability and nonforfeitability of this Surface Use Agreement is conditioned upon the agreement by each party that any

judgment entered in litigation between the parties by a court of competent jurisdiction shall be (a) paid, (b) complied with, or (c) superseded by the filing of an appropriate and adequate corporate bond with such payment, compliance or bonding to be done within thirty days of the date of entry of any such judgment, except however if a judgment requires performance of an act (other than the payment of money) which cannot reasonably be completed within such period of time, then performance of the act shall be commenced within such thirty day period and shall be prosecuted with due diligence to completion. If either Landowner or SFP shall fail to meet such conditions of noncancellability and nonforfeitability, then the other party shall be entitled to any remedy afforded at law or in equity.

In any litigation between Landowner and SFP arising under this Surface Use Agreement, the prevailing party shall be entitled to recover its costs and a reasonable attorneys fee.

9. This Surface Use Agreement shall not obligate SFP to conduct any exploitation of the mineral estate in the Mineral Lands nor shall it convey to Landowner any interest in the mineral estate in the Mineral Lands except the right to receive the production royalties set forth in Paragraph 2. This Surface Use Agreement shall not convey to SFP any interest in the mineral estate which may be owned by Landowner in the Fee Lands which are not included in the Mineral Lands.

10. If SFP requests the right to use water from Landowner's sources and supplies and if Landowner determines, in its absolute discretion to permit SFP to use water from Landowner's sources, then SFP may use such amounts of water from Landowner's sources and supplies within the Ranching Unit which Landowner has permitted. SFP shall pay for any such water used

at the reasonable fair market rate for water on the day of taking; provided that SFP shall not pay for any water which SFP locates and develops in connection with its exploitation of the mineral estates in the Mineral Lands. SFP shall not knowingly take any action in connection with the exercise of its rights under this Surface Use Agreement which would jeopardize or degrade the quality or quantity of water available to Landowner from Landowner's sources. In the event that SFP takes any action in connection with the exercise of its rights under this Surface Use Agreement which results in any material degradation of the quality or quantity of water available to Landowner, then SFP shall replace or restore Landowner's water in quality, quantity and point of delivery at the sole cost of SFP.

11. In the event that any portion of this Surface Use Agreement shall be found to be invalid or void for any reason, then and in such event, such invalid or void portion shall be deleted from operation and effect within this Agreement, however, the balance of this Surface Use Agreement shall not be affected and shall continue in full force and effect.

12. SFP and Landowner agree that a breach of the duties and obligations of either party under this Surface Use Agreement will or could cause substantial damages to the other party which might be difficult or impossible to evaluate with certainty. Accordingly either party to this Surface Use Agreement shall be entitled to the remedy of specific performance in addition to the right to seek redress of a breach of this Surface Use Agreement through the payment of damages.

13. Within one year after the date of this Surface Use Agreement, Landowner shall, upon request of SFP, enter into the contract attached as Exhibit F to this Surface Use Agreement

with the Star Lake Railroad Company and shall execute the deed attached as Exhibit G to this Surface Use Agreement to the Star Lake Railroad Company.

14. In the event that SFP now owns or subsequently acquires ownership of all or any portion of the mineral estate in any portion of the Fee Lands in addition to the Mineral Lands as shown on Exhibit C, then the provisions of this Surface Use Agreement shall apply to all such portions of the Fee Lands and the production royalty percentage in all such cases shall be the same as provided in Part II of Exhibit E, Production Royalties.

15. This Surface Use Agreement may be executed in multiple copies and each of such copies which is signed by the parties shall constitute an original document, admissible in evidence to establish the form of agreement between the parties.

16. Neither SFP nor Landowner shall record this Surface Use Agreement in the public records, however SFP and Landowner shall execute a Memorandum of this Surface Use Agreement in the form attached hereto as Exhibit "H", which Memorandum may be recorded by either SFP or Landowner to give public notice of the existence of this Surface Use Agreement.

17. This Surface Use Agreement shall not be amended or modified except by a written instrument signed by both Landowners and SFP.

18. SFP shall pay any additional taxes or assessments which may be levied or assessed against the Landowner as a direct result of the construction and use of any improvements by SFP on the Fee Lands.

19. SFP covenants and agrees to protect, defend, hold harmless and indemnify Landowner from any loss, cost, claim, expense, liability, fine, penalty or demand arising out of the

actions by SFP, its employees, agents, lessees, licensees, assignees, grantees, contractors and permittees on the Ranching Unit.

20. A waiver by either party to this Agreement of full compliance with any term, covenant, or condition contained herein shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or of any other term, covenant or condition contained herein.

21. This Surface Use Agreement is executed in the State of New Mexico and shall be governed and interpreted by the laws of the State of New Mexico.

22. All notices required to be given under this Surface Use Agreement shall be written and sent by U. S. Mail, postage prepaid, or personally delivered as follows:

LANDOWNER: Albers Brothers
c/o R. M. Albers
5220 Catskills
Wichita Falls, Texas 76310

SFP: Santa Fe Pacific Railroad Company
4775 Indian School Road, N.E., Suite 100
Albuquerque, New Mexico 87190

Such addresses may be changed from time to time by giving the other party fifteen days prior written notice thereof.

IN WITNESS WHEREOF, SFP and Landowner have executed this Surface Use Agreement on this 3rd day of JUNE, 1980.

SFP

SANTA FE PACIFIC RAILROAD COMPANY

By *W. J. Stahl*
Its *VICE PRESIDENT*

LANDOWNER

RM Albers
R.M. Albers

Imogene Albers
Imogene Albers

Mrs. W. B. (Betty) Albers
Mrs. W. B. (Betty) Albers

STATE OF NEW Mexico)
COUNTY OF Bernalillo) SS.

The foregoing instrument was acknowledged before me this 3rd day of June, 1980, by D. J. Walsh, Vice President of SANTA FE PACIFIC RAILROAD COMPANY, a corporation organized and existing under and by virtue of an Act of Congress approved March 3, 1897, on behalf of said corporation.

My Commission Expires:

STATE OF TEXAS)
COUNTY OF Wichita) SS.



Signature Jane M. Taylor
JANE M. TAYLOR
NOTARY PUBLIC - NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires: 12-3-82

The foregoing instrument was acknowledged before me this 18th day of April, 1980, by R.M. ALBERS and IMOGENE ALBERS.

Suzanne Buntyn
NOTARY PUBLIC

My Commission Expires:

6-30-80

STATE OF New Mexico)
COUNTY OF Bernalillo) SS.

The foregoing instrument was acknowledged before me this 15th day of April, 1980, by W. B. (Betty) Albers, individually and as trustee for Sharon Albers Robinson (formerly Sharon Albers Fuller), Rebecca Claire Albers and William Albers.

[Signature]
NOTARY PUBLIC

My Commission Expires:

9/29/80

EXHIBIT "A"
FEE LANDS OF ALBERS

T14N, R10W

Sec. 3: All
Sec. 10: NW/4

T15N, R10W

Sec. 1: All
Sec. 2: S/2
Sec. 3: All
Sec. 9: S/2
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: NE/4, SW/4
Sec. 15: All
Sec. 23: All
Sec. 24: All
Sec. 25: All
Sec. 26: NE/4, S/2
Sec. 27: All
Sec. 29: All
Sec. 33: All
Sec. 34: All
Sec. 35: All

T16N, R10W

Sec. 1: All
Sec. 3: All
Sec. 4: All
Sec. 9: All
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: W/2
Sec. 15: All
Sec. 21: All
Sec. 22: All
Sec. 23: All
Sec. 25: All
Sec. 26: S/2 NE/4, N/2 SE/4, SW/4
Sec. 27: All
Sec. 28: S/2
Sec. 29: Lying South and East of Hospah-Prewitt Road
Sec. 31: NW/4
Sec. 33: All
Sec. 34: NE/4; S/2
Sec. 35: All

E X H I B I T "B"

LEASE LANDS OF ALBERS

STATE OF NEW MEXICO

T14N, R10W

Sec. 2: All

T15N, R10W

Sec. 2: N/2

Sec. 16: All

Sec. 36: All

T16N, R10W

Sec. 2: All

Sec. 16: All

Sec. 32: All

Sec. 36: All

U. S. BUREAU OF LAND MANAGEMENT

T14N, R10W

Sec. 10: NE/4, S/2

T15N, R10W

Sec. 28: All

T16N, R10W

Sec. 14: SE/4

Sec. 26: NW/4, N2/ NE/4, S/2 SE/4

Sec. 28: N/2

Sec. 34: NW/4

EXHIBIT "C"

MINERAL LANDS

T14N, R10W

Sec. 3: All

T15N, R10W

Sec. 1: All
Sec. 3: All
Sec. 9: S/2
Sec. 11: All
Sec. 13: All
Sec. 15: All
Sec. 23: All
Sec. 25: All
Sec. 27: All
Sec. 29: All
Sec. 33: All
Sec. 35: All

T16N, R10W

Sec. 3: All
Sec. 9: All
Sec. 11: All
Sec. 13: All
Sec. 15: All
Sec. 21: All
Sec. 23: All
Sec. 25: All
Sec. 27: All
Sec. 29: Lying South and East of Hospah-Prewitt Road
Sec. 31: NW/4
Sec. 33: All
Sec. 35: All

EXHIBIT "D"ADJOINING LANDS

Includes all lands in the following townships which are not included within the Ranching Unit.

T14N, R9,10,11W
T15N, R9,10,11W
T16N, R9,10,11W
T17N, R9,10,11W

McKinley County New Mexico

STATE OF NEW MEXICO #210,891
COUNTY OF MCKINLEY

Filed for record in the Clerk's Office

on 13th day of June

A. D. 1983 at 2:00 p.m.

at the office of the Clerk

of the County of McKinley

New Mexico

My Comm. No. 825-891

Mona Buck-Dep.

E X H I B I T "E"

Production Royalties

- I. T14N, R10W, Section 3
T15N, R10W, Sections 25, 27, 29, 33, and 35.
Containing 3,840.88 acres more or less.

Two and One-Half percent (2 1/2%) of the Mine Value of uranium-bearing ores calculated according to provision 2(b) of this Surface Use Agreement, and

Two and One-Half percent (2 1/2%) of the Transfer Value of hydrocarbon substances, coal and any other materials or substances recovered according to provision 2(c) of this Surface Use Agreement.

- II. T15N, R10W, Sections 1; 3; S/2 9; 11; 13; 15 and 23
T16N, R10W, Sections 3; 9; 11; 13; 15; 21; 23; 25; 27; 29
lying south and east of the Hospah-Prewitt Road; NW/4
31; 33; and 35.

Two percent (2%) of the Mine Value of uranium-bearing ores calculated according to provision 2(b) of this Surface Use Agreement, and

Two percent (2%) of the Transfer Value of hydrocarbon substances, any coal and other materials or substances removed according to provision 2(c) of this Surface Use Agreement.

E X H I B I T "F"

CONTRACT FOR CONVEYANCE

The Star Lake Railroad Company, a Delaware corporation, ("Star Lake") for itself, its assigns and successors in interest, hereby covenants and agrees with R.M. Albers, Imogene Albers and Mrs. W.B. (Betty) Albers, individually and as Trustee for Sharon Albers Robinson (formerly Sharon Albers Fuller), Rebecca Claire Albers and William Alan Albers, ("Albers") operating as "Albers Brothers Ranch", a Partnership, their heirs, personal representatives and assigns, as consideration for the conveyance of the railroad Right of Way in McKinley County, New Mexico, more particularly described in Annex I attached to this Contract for Conveyance that:

1. The Right of Way shall be fenced and such fences shall be maintained by Star Lake at its expense to exclude Albers' livestock from the Right of Way.
2. Grade crossings with lockable gates in the Right of Way fences shall be constructed and maintained by Star Lake at its expense at those locations described on Annex II and shown on Annex IV in addition to not more than two other locations selected or designated by Landowner prior to commencement of construction of the railroad with the two other locations for such construction to be located where the construction can be accomplished without unreasonable expense.
3. Grade separation crossing facilities adequate to provide convenient access from one side of the Right of Way to the other side for Landowner's livestock, ranch vehicles or any other ranching purpose shall be constructed and maintained by Star Lake at its expense. Such grade separation crossing

EXHIBIT "G"

WARRANTY DEED

R.M. ALBERS and IMOGENE ALBERS, his wife, and Mrs. W.B. (BETTY) ALBERS, individually and as trustee for SHARON ALBERS ROBINSON (formerly Sharon Albers Fuller), REBECCA CLAIRE ALBERS and WILLIAM ALAN ALBERS, operating as "ALBERS BROTHERS", a Partnership, grant to STAR LAKE RAILROAD COMPANY, a Delaware corporation, whose address is _____

_____ that real estate located in McKinley County, New Mexico, described on Annex I

Excepting from such conveyance and reserving unto the Grantors herein however all rights of Grantors as "Landowner" according to the terms of a Surface Use Agreement dated _____, 1980, between the Grantors and Santa Fe Pacific Railroad Company, including the rights to receive payment of production royalties from the mineral estate in such lands which rights are hereby severed from the above-described property and reserved to the Grantors and their heirs, successors and assigns.

SUBJECT to easements, restrictions and reservations of record.

SUBJECT to taxes for the year 1980 and subsequent years with warranty covenants.

The property conveyed hereunder is to be used exclusively for operation of a railroad. In the event that a railroad is not constructed and made ready for use on the property within fifteen (15) years of the date of this Deed or in the event that the railroad shall be constructed, put into use and thereafter if it shall cease to be used actively as a railroad for a period

individually and as trustee for Sharon Albers Robinson (formerly Sharon Albers Fuller), Rebecca Claire Albers and William Albers.

NOTARY PUBLIC

My Commission Expires:

OFFICE OF THE
COUNTY CLERK

NOV 18 12 16 PM '88
McKINLEY COUNTY

EXHIBIT "H"
CORRECTED
MEMORANDUM
OF
SURFACE USE AGREEMENT

JUN 13 2 35 PM '88
McKINLEY COUNTY
Corrected

On JUNE 3, 1980 SANTA FE PACIFIC RAILROAD COM-

PANY ("SFP") and R.M. ALBERS and IMOGENE ALBERS, his wife, and Mrs. W.B. (BETTY) ALBERS, individually and as trustee for SHARON ALBERS ROBINSON (formerly Sharon Albers Fuller), REBECCA CLAIRE ALBERS and WILLIAM ALAN ALBERS, operating as "ALBERS BROTHERS", a Partnership ("Landowner") have entered into a Surface Use Agreement concerning rights of access and use of the surface estate in certain lands known and identified in such Surface Use Agreement as the Fee Lands (described in Exhibit A), certain Leased Lands (described in Exhibit B), and the ownership and exploitation of the mineral estate in certain property known as the Mineral Lands (described in Exhibit C). Such Agreement provides for entry upon and use of portions of the surface of the Fee Lands and Leased Lands by SFP for the purpose of extracting and exploiting the mineral estate in the Mineral Lands. Such Surface Use Agreement also provides for payment by SFP to Landowner of production royalties upon the value of any minerals extracted from the Mineral Lands. The Surface Use Agreement constitutes a covenant running with the mineral estate of the Mineral Lands and the surface estate of the Fee Lands for the benefit of the owner of the surface estate in the Fee Lands and for the benefit of the owner of the mineral estate in the Mineral Lands respectively. It establishes an encumbrance upon the title to the mineral estate of the Mineral Lands and upon the title of the surface estate in the Fee Lands and as a covenant and encumbrance the provisions of the Surface Use Agreement are

binding upon, and inure to the benefit of SFP and Landowner and all persons claiming any interest whatsoever in the Mineral Lands or Fee Lands by, through, or under SFP or Landowner. BOOK 82 PAGE 886

A copy of the Surface Use Agreement is in the possession of both SFP and Landowner.

SFP and Landowner have executed this Memorandum of Surface Use Agreement and have caused the same to be recorded in the public records to give notice of the general provisions and effect of the Surface Use Agreement.

IN WITNESS WHEREOF, SFP and Landowner have executed this Memorandum of Surface Use Agreement on this 3rd day of JUNE, 1980.

SFP

SANTA FE PACIFIC RAILROAD COMPANY

By D. J. Walsh
Its VICE PRESIDENT DT

LANDOWNER

R.M. Albers
R.M. Albers

Imogene Albers
Imogene Albers

Mrs. W. B. (Betty) Albers
Mrs. W. B. (Betty) Albers

STATE OF New Mexico
COUNTY OF Bernalillo) ss.

The foregoing instrument was acknowledged before me this 3rd day of June, 1980, by D. J. Walsh, Vice President of SANTA FE PACIFIC RAILROAD COMPANY, a corporation organized and existing under and by virtue of an Act of Congress approved March 3, 1897, on behalf of said corporation.

My Commission Expires: _____

NOTARY PUBLIC



OFFICIAL SEAL
Signature E. M. Taylor
E. M. TAYLOR
NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires: 12-3-82

BOOK 78 PAGE 254

STATE OF TEXAS)
COUNTY OF Wichita) SS.

The foregoing instrument was acknowledged before me
this 18th day of April, 1980, by R.M. ALBERS and IMOGENE
ALBERS.

Sybil Buntyn
NOTARY PUBLIC

My Commission Expires:
6-30-80

STATE OF New Mexico)
COUNTY OF Bernalillo) SS.

The foregoing instrument was acknowledged before me
this 15th day of April, 1980, by W. B. (Betty) Albers,
individually and as trustee for Sharon Albers Robinson (formerly
Sharon Albers Fuller), Rebecca Claire Albers and William Albers.

John D. [Signature]
NOTARY PUBLIC

My Commission Expires:
9/29/80

#198347
STATE OF TEXAS) SS.
COUNTY OF McKENLEY)
Filed for record in the Clerk's office
on 18th day of November
A. D. 1980 at 12:00 P. M.
and recorded in Book 78
252-253
[Signature]

EXHIBIT "A"
FEE LANDS OF ALBERS

T14N, R10W

Sec. 3: All
Sec. 10: NW/4

T15N, R10W

Sec. 1: All
Sec. 2: S/2
Sec. 3: All
Sec. 9: S/2
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: NE/4, SW/4
Sec. 15: All
Sec. 23: All
Sec. 24: All
Sec. 25: All
Sec. 26: NE/4, S/2
Sec. 27: All
Sec. 29: All
Sec. 33: All
Sec. 34: All
Sec. 35: All

T16N, R10W

Sec. 1: All
Sec. 3: All
Sec. 4: All
Sec. 9: All
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: W/2
Sec. 15: All
Sec. 21: All
Sec. 22: All
Sec. 23: All
Sec. 25: All
Sec. 26: S/2 NE/4, N/2 SE/4, SW/4
Sec. 27: All
Sec. 28: S/2
Sec. 29: Lying South and East of Hospah-Prewitt Road
Sec. 31: NW/4
Sec. 33: All
Sec. 34: NE/4; S/2
Sec. 35: All

EXHIBIT "B"
LEASE LANDS OF ALBERS

STATE OF NEW MEXICO

T14N, R10W

Sec. 2: All

T15N, R10W

Sec. 2: N/2
Sec. 16: All
Sec. 36: All

T16N, R10W

Sec. 2: All
Sec. 16: All
Sec. 32: All
Sec. 36: All

U. S. BUREAU OF LAND MANAGEMENT

T14N, R10W

Sec. 10: NE/4, S/2

T15N, R10W

Sec. 28: All

T16N, R10W

Sec. 14: SE/4
Sec. 26: NW/4, N2/ NE/4, S/2 SE/4
Sec. 28: N/2
Sec. 34: NW/4

EXHIBIT "C"

MINERAL LANDS

T14N, R10W

Sec. 3: All

T15N, R10W

Sec. 1: All
Sec. 3: All
Sec. 9: S/2
Sec. 11: All
Sec. 13: All
Sec. 15: All
Sec. 23: All
Sec. 25: All
Sec. 27: All
Sec. 29: All
Sec. 33: All
Sec. 35: All

T16N, R10W

Sec. 3: All
Sec. 9: All
Sec. 11: All
Sec. 13: All
Sec. 15: All
Sec. 21: All
Sec. 23: All
Sec. 25: All
Sec. 27: All
Sec. 29: Lying South and East of Hospah-Prewitt Road
Sec. 31: NW/4
Sec. 33: All
Sec. 35: All

EXHIBIT "D"

ADJOINING LANDS

Includes all lands in the following townships which are not included within the Ranching Unit.

- T14N, R9, 10, 11W
- T15N, R9, 10, 11W
- T16N, R9, 10, 11W
- T17N, R9, 10, 11W

McKinley County New Mexico

STATE OF NEW MEXICO #210,891
 COUNTY OF MCKINLEY
 Filed for record by the County Clerk
 13th day of June
 1983 at 2:05 PM
 82-207
 885-891
 J. Ronald Steinkamp
 Clerk
 Maria Buck-Step

Attachment 6

State	MSHA ID	Mine Site	Permittee	Permit Number	Issuing Agency	NOV Number	Issue Date	Description of Violation Parts	Violation Status	Date of Termination/Abatement	Type of Administrative or Judicial Proceeding	Date of Proceeding	Location of Proceeding	Fine or Penalty
Indiana		Francisco	Peabody Midwest Mining, LLC	U-0023	Indiana Department of Natural Resources	N80124-U-023	1/24/2018	Failure to mine according to plan as outlined in the permit finding General Permit Requirement #4 and #5. Failed to install monitoring piezometer in adjacent old works prior to advance of mining unit.	Terminated	1/24/2018	None			
Indiana		Somerville	Peabody Midwest Mining, LLC	S-00335	Indiana Department of Natural Resources	N80914-S-335	9/14/2018	Failure to monitor surface water stream point 15W-10 according to the approved compliance water monitoring plan.	Terminated	9/14/2018	None			
Indiana		Somerville	Peabody Midwest Mining, LLC	S-00335	Indiana Department of Natural Resources	N1022-S-335	10/22/2018	Failure to conduct blasting operations so that the maximum air blast limit of 133dB is not exceeded at a dwelling, public building, school, church or community or institutional building.	Terminated	10/22/2018	None			\$ 750.00
Wyoming		NARM	Peabody Powder River Mining, LLC	569	Wyoming Department of Environmental Quality- Land Quality Division	5881-18	10/31/2018	On October 1, 2018 NARM initiated a cast blast that resulted in a citizen's complaint to the Administrator of the Wyoming DEQ LQD. The citizen's complaint stems from blasting emissions observed in the vicinity of the Town of Wright, WY. As a result of citizen complaints, the Wyoming DEQ LQD issued a violation.	Terminated	3/7/2019	None			
Indiana		Bear Run	Peabody Midwest Mining, LLC	S-00256	Indiana Department of Natural Resources	N90213-S-256	2/13/2019	Failure to prevent discharge from all NPDES discharge locations in excess of 70mg/liter for the parameter of total suspended solids (TSS).	Terminated	2/18/2019	None			\$ 2,200.00
Wyoming		NARM	Peabody Powder River Mining, LLC	569	Wyoming Department of Environmental Quality- Land Quality Division	5909-19	3/13/2019	On February 12, 2019 during a mine inspection, coal flyrock was discovered by LQD personnel on unstripped native topsoil. The impacted area was surveyed and encompassed an area of unstripped topsoil 1,600 feet in length and 125 feet in width. LQD reviewed shot records for six coal shots in the immediate area. The investigation was inconclusive as to the specific cause of coal flyrock onto native topsoil. The investigation did conclude that the coal flyrock was deposited by a coal shot or shots and not by any other means.	Terminated	2/4/2020	None			
Indiana		Somerville	Peabody Midwest Mining, LLC	S-00335	Indiana Department of Natural Resources	N90625-S-335	6/25/2019	Failure to submit as-built certifications for the designed impoundment SB072	Terminated	7/23/2019	None			
Wyoming		Rawhide Mine	Peabody Powder River Mining, LLC		Wyoming Department of Environmental Quality- Land Quality Division	5960-19	8/1/2019	On May 3, 2019, Rawhide Mine detonated a cast shot (Shot CT519). LQD received two vibration complaints after the shot. This cast was designed to have a maximum of 6,049 pounds of explosives firing in any 8ms delay period. Legally Rawhide Mine could have had 7,741 pounds firing in any 8 ms delay period. The LQD seismograph located adjacent to the complainant's homes had a peak particle velocity of 0.54 inches per second and was approximately 11,000 ft from the shot. Using the expected vibration equation and the scaled distance equation, the scaled distance factor calculated at 34.8 and a maximum pounds of explosives of 100,000 pounds per 8 ms delay. This is 12.9 times greater than the legally allowed maximum of explosives. The mine provided a video of the shot and LQD corroborated findings noted above. The video confirms the cast shot sympathetically detonated.	Terminated	12/10/2019	None			
Arizona		Kayenta	Peabody Western Coal Company	AZ-0001F	US Office of Surface Mining	N19-020-532-001	8/22/2019	A shot occurred on 8/6/2019 which exceeded the allowable charge eight of explosives detonated in one 8-millisecond period based on the appropriate scale distance equation for the blast. Applies to J21 pit ramp 38 area.	Abated	8/21/2019	None			
Wyoming		Rawhide Mine	Peabody Powder River Mining, LLC	WY5600815P	US Environmental Protection Agency	8WD-50A	2/26/2020	Failure to correct identified drinking water deficiencies.	Terminated	3/4/2020	None			
Indiana		West 61	United Mineral Company, LLC	S-00361	Indiana Department of Natural Resources	N00332-S-361	3/12/2020	Failure to stabilize and protect exposed topsoil from wind and water erosion	Terminated	4/13/2020	None			
Indiana		High Point	United Mineral Company, LLC	S-00374	Indiana Department of Natural Resources	N00327-S-374	3/30/2020	Failure to conduct active surface coal mining and those activities necessary to facilitate mining only on those lands specifically permitted and/or bonded.	Terminated	4/17/2020	None			
Indiana		Somerville	Peabody Midwest Mining, LLC	S-00335	Indiana Department of Natural Resources	N00402-S-335	4/2/2020	Failure to remove topsoil before any drilling, blasting, mining or other disturbance	Terminated	5/4/2020	None			
Indiana		Somerville	Peabody Midwest Mining, LLC	S-00335	Indiana Department of Natural Resources	N00730-S-335	7/31/2020	Failure to pass surface drainage from the disturbed area through an approved siltation structure before leaving the permit area.	Terminated	8/21/2020	None			
Indiana		Wild Boar	Peabody Midwest Mining, LLC	S-00360	Indiana Department of Natural Resources	N01201-S-360	12/2/2020	Exceeding maximum air overpressure limit of 133dB on a Division of Reclamation seismograph for a 2Hz microphone on 11/17/2020.	Terminated	12/2/2020	None			
Indiana		Wild Boar	Peabody Midwest Mining, LLC	S-360	Indiana Department of Natural Resources	N10413-S-360	4/13/2021	Failure to pass all surface drainage from the disturbed area through a siltation structure before leaving the bonded area.	Terminated	4/16/2021	None			
Indiana		Bear Run	Peabody Midwest Mining, LLC	S-256	Indiana Department of Natural Resources	N10803-S-256	8/3/2021	Part 1 Failure to pass surface drainage from the disturbed area through an approved siltation structure before leaving the permit area	Terminated	8/19/2021	None			
Indiana		Bear Run	Peabody Midwest Mining, LLC	S-256	Indiana Department of Natural Resources	N10803-S-256	8/3/2021	Part 2 Failure to maintain diversion ditch so that it minimizes the adverse impact to the hydrologic balance within the permit and adjacent area.	Terminated	10/12/2021	None			
Indiana		Francisco	Peabody Midwest Mining, LLC	U-023	Indiana Department of Natural Resources	N11013-U-023	10/21/2021	Failure to notify in writing the six-month notification before mining takes place on all owners and occupants of surface property and structures above the underground workings, including operators of a pipeline.	Terminated	11/19/2021	None			
Alabama		Shoal Creek	Peabody Southeast Mining, LLC	P-3666	Alabama Surface Mining Commission	22MLF001	1/13/2022	Failure to recertify basin 005	Terminated	1/19/2022	None			\$ 660.00
Indiana		Seven Hills	United Mineral Company, LLC	S-357	Indiana Department of Natural Resources	N20413-S-357	4/18/2022	Failure to conduct blasting operations so that the maximum air blast limit of 133dB is not exceeded at a dwelling, public building, school, church or community or institutional building	Terminated	4/28/2022	None			
Indiana		Bear Run	Peabody Midwest Mining, LLC	S-256	Indiana Department of Natural Resources	N-21024-S-256	10/25/2022	Failure to conduct active surface coal mining and those activities necessary to facilitate mining only on those lands specifically permitted and/or bonded.	Terminated	11/30/2022	None			

Attachment 7

EL SEGUNDO COAL COMPANY, LLC

Secretary's Certificate

January 25, 2023

The undersigned, being the duly elected, acting and qualified Secretary of **El Segundo Coal Company, LLC**, a Delaware limited liability company (the "LLC" or "Company"), does hereby certify that:

- (i) The following are officers the LLC as of January 25, 2023:

<u>Name</u>	<u>Title</u>
Seth A. Puls	President
Robert F. Bruer	Vice President
Bryce G. West	Vice President
Brian Cropper	Vice President and Treasurer
Joseph F. Lutkewitte	Assistant Treasurer
Eric R. Waller	Secretary
Caitlin Reardon-Ashley	Assistant Secretary

- (ii) Pursuant to the LLC's Amended and Restated Limited Liability Company Agreement and the laws of its jurisdiction or organization, the following is a true and accurate provision ("Section 6.2") passed by the Sole Member of the LLC on April 3, 2017, and such Section 6.2 has not been rescinded and remains in full force and effect, as of the date hereof:

6.2 Appointment of Officers, Delegation of Authority

The Member may, from time to time, appoint one or more officers of the LLC (each, an "Officer"). Each Officer will hold such title as may be designated by the Member, and shall possess such power and authority to act with respect to and on behalf of the LLC as may be delegated by the Member. Each Officer shall be an agent of the LLC, such that an act of an Officer performed in accordance with the authority delegated to such Officer by the Member shall constitute an act of the LLC and shall bind the LLC the same as would such act undertaken by the Member.

Each Officer shall be exempt from any fiduciary duty to the LLC, including any duty of loyalty and any duty of care, except as otherwise required by applicable law.

The term of each Officer shall continue from appointment by the Member until such time as the Officer is removed by the Member, and shall not require annual reappointment, except that such term shall earlier terminate upon the Officer's death, disability substantially impairing the Officer's ability to perform the Officer's duties, or resignation. An Officer appointed by the Member may be removed by the Member at any time, with or without cause, and such removal shall be without prejudice to the contract rights, if any, of the person so removed.

In addition to any power and authority otherwise granted by the Member to an Officer who is given the title of President or Vice President (including all ranks thereof, such as First Vice President, Assistant Vice President, Senior Vice President, or Executive Vice President), if any such Officer be appointed, each Officer having such title is hereby delegated and shall possess on a nonexclusive basis all the authority, right, power, privilege, and discretion to make decisions and take actions on behalf of, and affecting, the LLC as are possessed by the Member, including the authority to execute and acknowledge any deeds, leases, bonds, notes, mortgages, evidences of indebtedness, certificates, contracts, agreements, or other instruments in the name of and on behalf of the LLC, except that such Officers' powers and authority shall not extend to those powers and that authority that is possessed by the Member exclusively, as set forth herein (see Sec. 6.1). The power and authority of any President and Vice President shall specifically include the power and authority to exercise all of the rights and privileges of the LLC in respect of any entity owned in whole or in part by the LLC, including as applicable, the right to vote in any ballot based on the LLC's interests in such wholly or partly owned entity, and the right to direct and authorize any act performed by or on behalf of any wholly owned subsidiary.

- (iii) Further pursuant to the provisions of the LLC's organizational documents and the laws of its jurisdiction or organization, the following is the true and accurate resolution passed by the Sole Member of the LLC on January 4, 2016, and such resolution has not been rescinded and remains in full force and effect, as of the date hereof:

Authority to Execute

FURTHER RESOLVED, that each of the officers of the Company (each such person, an "Authorized Officer") be, and each of them hereby is, authorized and empowered to execute and deliver the Restructuring Agreement and any and all other contracts, agreements, deeds, notes, assignments, assumptions, elections, mortgages, hypothecations, certificates and other instruments or documents of assignment, transfer conveyance and assumption as shall be necessary or advisable to effect the deliveries and other transactions contemplated by the Restructuring Agreement, each in the name and on behalf of the Company with such additions, deletions or changes therein as the Authorized Officer executing the same shall approve (the execution and delivery thereof by any such Authorized Officer to be conclusive evidence of his or her approval of any such additions, deletions or changes); and be it

FURTHER RESOLVED, that the Company be, and it hereby is, authorized and empowered to perform all of its obligations under the Restructuring Agreement and to take such actions as may be necessary or advisable to effect or evidence the assignments, transfers and conveyances, assumptions of liabilities, conversions, elections and other transactions contemplated therein, including but not limited to, obtaining any and all consents and approvals of all applicable governmental entities and third parties and making all filings with and submitting all applications to all applicable governmental entities; and be it

FURTHER RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further agreements, certificates, instruments and documents, in the name and on behalf of the Company; to pay or cause to be paid all expenses; to take all such other actions as they or any one of them shall deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions; and be it

FURTHER RESOLVED, that in connection with the transactions contemplated in the preceding resolutions, the Secretary or the Assistant Secretary of the Company be, and hereby is, authorized in the name and on behalf of the Company, to certify any more formal or detailed resolutions as such officer may deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions; and that thereupon, such resolutions shall be deemed adopted as and for the resolutions of the Sole Member as if set forth at length herein; and be it


FURTHER RESOLVED, that the Sole Member hereby ratifies, confirms and approves all actions heretofore taken by the Company, its subsidiaries and affiliates, and the officers and representatives thereof in connection with the transactions contemplated by the Restructuring Agreement; and be it

FURTHER RESOLVED, that the omission from these resolutions of any agreement or other arrangement contemplated by any of the agreements or instruments described in the foregoing resolutions or any action to be taken in accordance with any requirements of any of the agreements or instruments described in the foregoing resolutions shall in no manner derogate from the authority of the Authorized Officers to take all actions necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by, and the intent and purposes of, the foregoing resolutions.

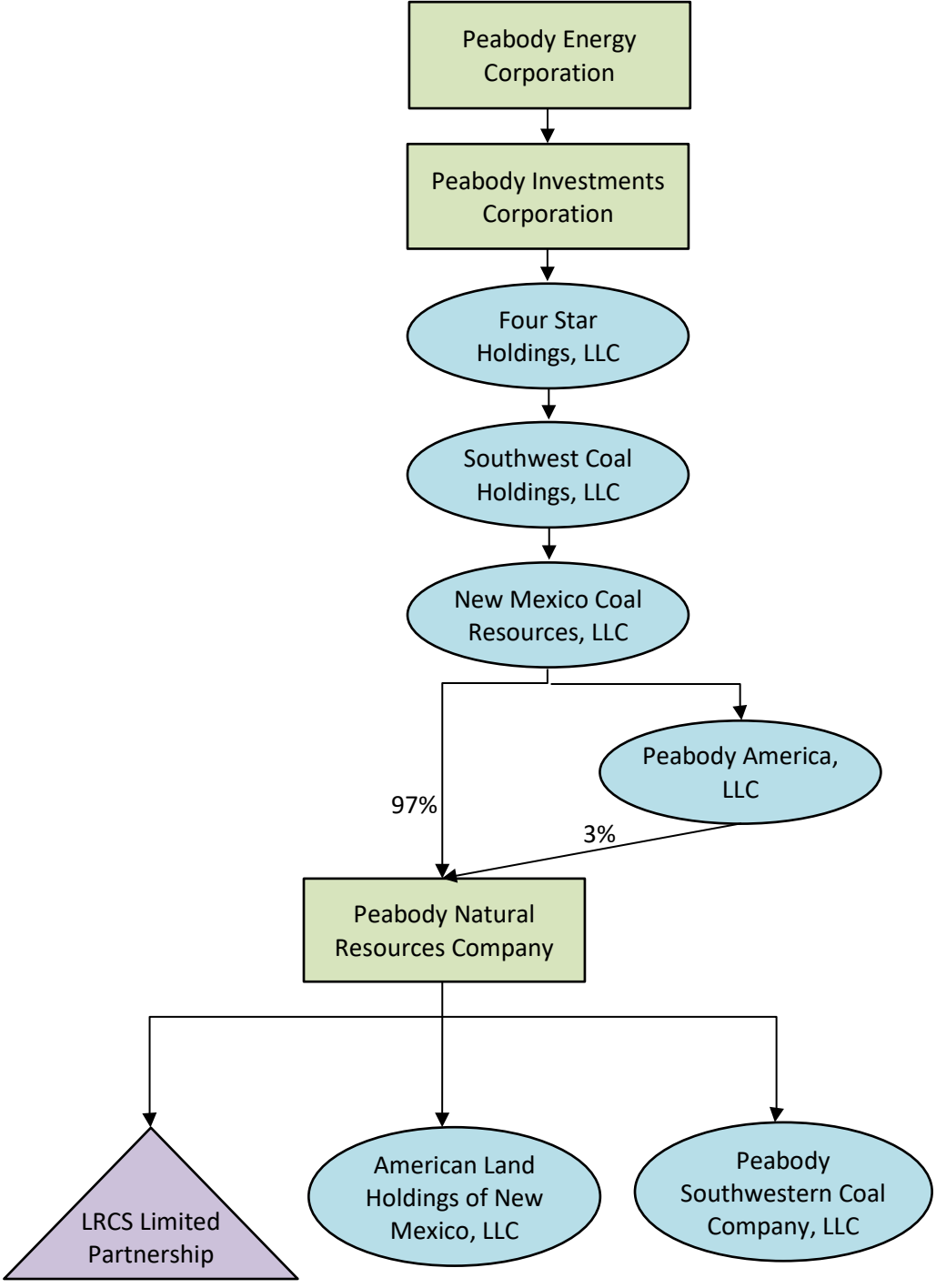
RESOLVED FURTHER, that any person dealing with the LLC may rely on a certificate of incumbency executed by the Secretary or the Assistant Secretary of the LLC certifying that such person occupies the office indicated on such certificate as of the date of such certificate, and accordingly possesses authority to execute the papers on behalf of the LLC as described in this resolution.

IN WITNESS WHEREOF, the undersigned has executed this Secretary's Certificate as of the 25th day of January 2023.

EL SEGUNDO COAL COMPANY, LLC

By: 
Name: Eric R. Waller
Title: Secretary

Attachment 8

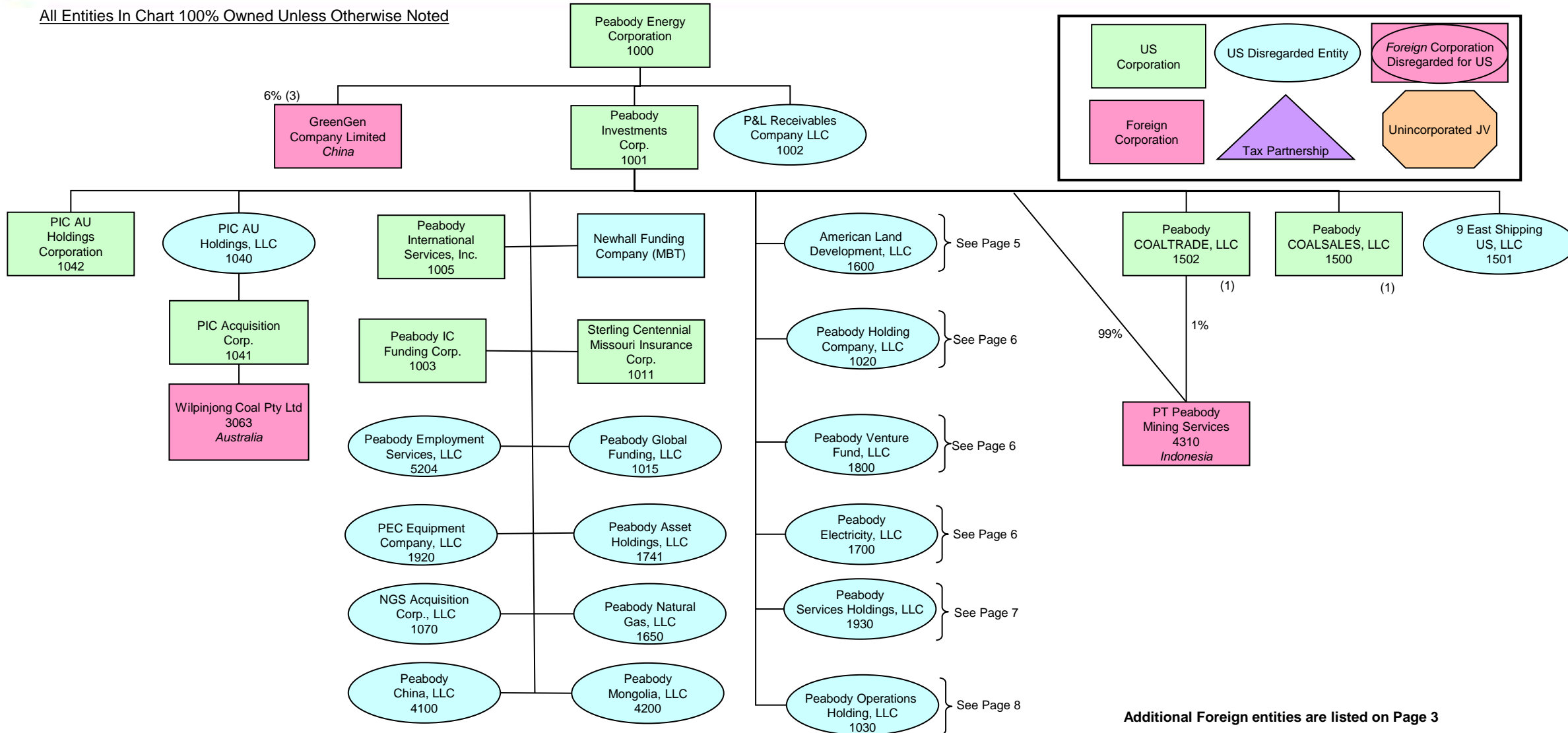


Attachment 9

Peabody Energy Corporation Organizational Chart – September 30, 2022



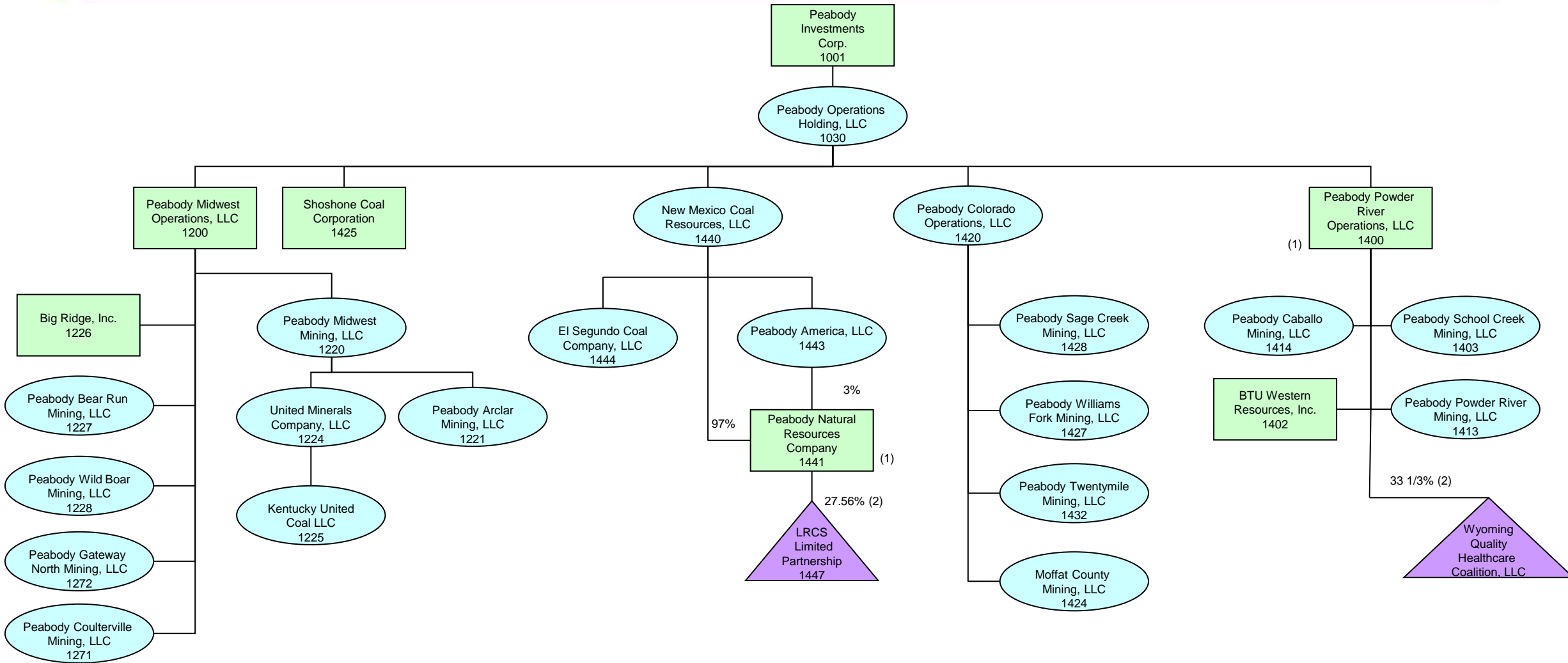
All Entities In Chart 100% Owned Unless Otherwise Noted



(1) These entities have "checked the box" to be treated as a corporation for income tax purposes.
 (3) Remaining interests in this entity owned by independent third party.

Additional Foreign entities are listed on Page 3

Peabody Operations Holding, LLC Organizational Chart – September 30, 2022



(1) These entities have “checked the box” to be treated as a corporation for income tax purposes.

(2) Remaining interests in this entity owned by independent third party.