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NEW MEXICO STATE LAND OFFICE
A M E N D E D
COAL MINING LEASE

STATE LAND OFFICE
APPLICATION NO. MC-0088

LEASE NO. MC-0088

THIS AGREEMENT, dated this 15TH day of JULY, 1991, made and entered into between the STATE OF NEW MEXICO, acting by and through the undersigned, its COMMISSIONER OF PUBLIC LANDS, hereinafter called the "lessor", and:
SAN JUAN COAL COMPANY
P.O. BOX 561 WATERFLOW, NEW MEXICO 87421,
hereinafter called the "lessee".

WITNESSETH:

WHEREAS, lessee has filed in the State Land Office an application for a coal lease for the purpose of exploring for, mining, developing and producing coal upon the lands hereinafter described, and has tendered THREE THOUSAND TWO HUNDRED FIFTY AND 00/100---DOLLARS (\$3,250.00), for the first annual rental payment, together with one hundred dollars (\$100.00) application fee, and N/A dollars (\$N/A), for a bonus;

NOW THEREFORE, in consideration of the above tender, receipt of which is acknowledged, and the COVENANTS herein, lessor hereby grants, and leases to lessee, exclusively, for the sole and only purpose of exploring for, mining, developing, producing and removing coal in, upon or under the following described lands in SAN JUAN County, New Mexico:

INST	SEC	TWP	RGE	SUBDIVISION	ACRES
C.S.	36	30N 15W		LOTS 1(40.57), 2(41.73), 3(42.87), 4(44.03), N2, N2S2	649.20

together with the right to use so much of the surface as is reasonably necessary to explore for, mine, develop, produce and remove the coal.

8/23/89

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San Juan Coal Co. Exhibit No. 5
Before the Oil Conservation Commission
Hearing Dates: October 29-31, 2002

TO HAVE AND TO HOLD the said lands and privileges granted hereunder for a primary term of five years.

IN CONSIDERATION OF THE PREMISES, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. As royalty, lessee shall pay to lessor twelve and one-half percent of the proceeds received from the sale of all surface-mined coal or, at the option of the lessor, the market value thereof, and eight percent of the proceeds received from the sale of all underground-mined coal or, at the option of the lessor, the market value thereof. The royalty rate may be reduced by the lessor upon a showing by the lessee that the leases for non-state coal in the same logical mining unit provide for a lower rate or that the lands leased hereunder will be bypassed and not mined without a rate reduction. Such royalty is due in full on the last day of the month following the calendar month of sale and shall be reported to the lessor, together with such other information as may be required by the lessor, upon forms prescribed by the lessor. In the event of a dispute as to the amount of royalty due, the lessee shall assume the burden of proof in any court action arising out of such dispute.

2. As rental, lessee shall pay to lessor annually on or before each anniversary date of this lease the sum of five dollars (\$5.00) per acre or fraction thereof, such rental payments to continue so long as this lease shall remain in force.

3. Lessee agrees to pay interest on delinquent royalty and rental payments at the rate of one percent (1%) per month, or fraction thereof, accruing from the date said payment becomes due.

4. If, at the end of the primary term, the lessee has submitted a mine plan, which is not subsequently disapproved by the lessor within three months after submission, and the lessee has either incorporated the land leased hereunder with adjacent land into a logical mining unit or has shown to the satisfaction of the lessor that the adjacent land is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then this lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five years.

5. If, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent of the estimated recoverable reserves from the leased lands or one percent of the estimated recoverable reserves from the logical mining unit, then this lease shall not expire but shall continue as long as the one percent production is maintained. Provided,

that, for purposes of determining if the one percent annual production has been maintained during any year after the end of the second year following the beginning of production, the annual production averaged over the previous three years, shall be used. For purposes of this paragraph, annual rates of production shall be measured from lease anniversary date to lease anniversary date.

6. In lieu of actual production at or after the end of the secondary term hereof, lessee may prevent the expiration of this lease by the timely payment of an advance royalty equal to the estimated royalty obligation which would be due if one percent of the recoverable reserves in the lands leased hereunder were produced. Payment of such advance royalty on or before a lease anniversary date will act to prevent the expiration of this lease until the next ensuing lease anniversary date; provided, that this lease shall not be extended for more than ten years by payment of advance royalties. Any credit later taken in any month for advance royalties shall not exceed fifty percent of the actual production royalty due for that month.

7. The lessee, with the written approval of the lessor, may assign or sublet this lease in whole or in part; provided, however, that no assignment of an undivided interest nor any assignment or sublease of less than a legal subdivision shall be recognized or approved by the lessor. Provided further, however, the lessee may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements, or other instruments to be approved by the lessor; but nothing herein contained shall relieve the lessee from complying with any of the terms or provisions hereof.

8. Lessee, including his heirs, assigns, agents, and contractors shall at his own expense fully comply with and conform to accepted operational standards and practices in general use in the industry and all laws, regulations, rules, ordinances, and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to the public health and welfare, including but not limited to conservation, reclamation, sanitation, aesthetics, pollution, cultural properties, fire, and ecology. Such agencies are not to be deemed third party beneficiaries hereunder; however, this clause is enforceable by the lessor in the same manner as other covenants of this lease.

9. The lessor or his authorized representative shall have the right to enter the leased lands for the purpose of measuring the cubical contents of every opening from which coal has been extracted and to otherwise inspect the leased lands to ensure that proper royalties have been paid. The lessor or his representative shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and marketing of coal produced from the leased lands and, at the request of the lessor, the lessee shall furnish contracts, reports, samples, logs, assays or cores within reasonable bounds as the lessor may determine to be necessary to the proper administration of the leased lands and this lease. In addition, lessee shall furnish annually and at such other times as the lessor may require, plats, maps, or tracings, clearly and accurately showing all development work upon the leased lands, and other related information, with a report as to all buildings, structures, or other work placed in or upon the leased lands, and a statement as to the amount and grade of coal produced and sold.

10. The value of any unpaid royalty shall become a prior lien upon the production from the leased lands and the improvements situated thereon.

11. Before commencing excavation operations or development upon the leased lands, the lessee shall execute and file with the lessor a good and sufficient bond or other appropriate surety in an amount to be fixed at that time by the lessor and based upon the approved mine plan to:

A. Guarantee the performance of all covenants and obligations under this lease, including the obligation to pay royalties;

B. Ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act; and

C. Ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the lessee and any surface owner.

A bond filed with the Mining and Minerals division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act will satisfy the requirements of Subsection B of this paragraph unless the lessor, in his discretion, determines that the bond filed with the Mining and Minerals Division is insufficient. Any bond, filed with the lessor pursuant to the provisions of this paragraph, shall be released by the lessor

upon a showing that lessee has complied with the obligations as specified in Subsections A, B and C of this paragraph.

12. Lessor may cancel this lease for nonpayment of rentals, nonpayment of royalties, or violation of any of the terms or covenants thereof; provided, however, that before any such cancellation shall be made, lessor, must mail to lessee, by registered or certified mail addressed to the post office address of the lessee shown by the lease, or by specific written notice of change of address furnished by lessee, a thirty-day notice of intention to cancel this lease, specifying the default for which the lease is subject to cancellation. No proof or receipt of notice shall be necessary and thirty days after such mailing, lessor may enter cancellation unless lessee shall have sooner remedied the default; provided, that if the violation cannot be remedied within the thirty-day period and the lessee shall have commenced operations to substantially remedy the violation within such period, the lease shall not be cancelled as long as lessee diligently pursues actions necessary to remedy the violation.

13. With the consent of the lessor this lease may be relinquished in whole or in part; provided, that the lessor will not approve any relinquishment of an undivided interest nor less than a legal subdivision. When filed and approved, such relinquishment shall be effective from the date of filing. Upon relinquishment of the lease, lessee shall be relieved from further obligations and liabilities hereunder as to the lands surrendered subject, however, to the continued obligations to: make payment of all accrued rentals and royalties; protect or restore the surface and surface resources consistent with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department; and to otherwise perform other obligations accrued under the lease.

14. Coalbed methane gas is specifically excluded and reserved from this lease, except for small incidental quantities which may have to be vented or flared to achieve access to coal. Although lessee may engage in insitu coal gasification in order to remove coal, such gasification shall not disturb or diminish commercial quantities of coalbed methane gas.

15. Lessee may make or place such improvements and equipment upon the leased land as may be reasonably necessary to explore for, mine and remove coal, and upon termination of this lease for any reason, lessee may remove such improvements and equipment as can be removed without material injury to the premises; provided, however, that all rentals and royalties have been paid and that such removal is accomplished within 180 days of the termination date. All improvements and equipment remaining upon the premises after the removal date, as set forth

in accordance with this paragraph, shall be forfeited to lessor without compensation.

16. Lessee shall not mortgage any improvements placed upon the land.

17. The State has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the coal that will be produced from the lands covered by this lease.

18. All the obligations, covenants, agreements, rights and privileges of this lease shall extend to and be binding and inure to the benefit of the lawful and recognized assigns or successors in interest of the parties hereto.

19. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands leased and the right to continue existing uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder or the approval of easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

20. Lessee shall be liable and agree to pay for all damage to livestock, growing crops, water or other tangible improvements on the leased lands as may be suffered by reason of development, use and occupation of the lands by lessee.

21. Any and all water rights developed on the leased lands by lessee shall be developed in the name of lessor. Lessee, at its own expense, shall comply with all regulations of, and obtain all necessary permits from, the office of the State Engineer. Lessee shall have the full and free use of such water rights for lease operations during the term of the lease. Upon expiration or termination of the lease, such water rights shall be retained by lessor. During the term of the lease, lessee shall preserve, protect and defend such water rights.

22. Lessee shall save and hold harmless, indemnify and defend the State of New Mexico, the Commissioner of Public Lands, and his agents in their official and individual capacities, of and from any and all liability claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of lessee hereunder, off or on the leased lands, or the presence on said lands of any agent, contractor or subcontractor of lessee. All terms and provisions of this instrument shall be binding upon the contractors and subcontractors of lessee in like manner as the same are binding

upon lessee, and all acts and doings of said contractors and subcontractors shall be deemed and treated as the same and held responsible by lessee.

23. Lessee shall exercise reasonable diligence, care and skill in the operating of the leased lands in accordance with standard and approved mining methods and practices. Lessee shall conduct all exploration, development and mining operations in a good workmanlike manner having due regard to the health and safety of employees, the prevention of waste and the preservation of the property for further productive operations. All mining and related productive operations are to be subject to inspection by lessor or his duly authorized agent.

24. See attached stipulations, if any, hereby made part of this lease.

IN WITNESS WHEREOF, the State of New Mexico has hereunto signed and caused its name to be signed by its Commissioner of Public Lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement to be effective the day and year above written.

STATE OF NEW MEXICO

BY: Jim Baca
COMMISSIONER OF PUBLIC LANDS

James R. Rothwell
LESSEE

STATE OF NEW MEXICO (PERSONAL ACKNOWLEDGMENT)
COUNTY OF SAN JUAN

The foregoing instrument was acknowledged before me on this 24th day of SEPTEMBER, 1991, by JAMES R. ROTHWELL.

My Commission Expires:

Nov. 16, 1991

[Signature]
NOTARY PUBLIC



OFFICIAL SEAL
D. J. LAZENBY
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires Nov. 16, 1991

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF NEW MEXICO)
) ss.
COUNTY OF SAN JUAN)

The foregoing instrument was acknowledged before me on this 2nd day of December, 1991, by James R. Rothwell, Vice President & General Manager, of San Juan Coal Company, a Delaware corporation, on behalf of said corporation.

My Commission Expires:

5-9-92

Beverley S. Morris
NOTARY PUBLIC

