

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number
NM 28093

COAL LEASE

This lease is entered into on **March 20, 1980**, by the United States of America, the lessor, through the Bureau of Land Management, and

Western Coal Company
P. O. Box 1026
Albuquerque, New Mexico 87103

MAR 6 11:50 AM
STATE OFFICE
SANTA FE, N.M.

and shall become effective on **April 1, 1980** (effective date).

Sec. 1. STATUTES AND REGULATIONS - This lease is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereafter referred to as the Act. This lease is also subject to all regulations of the Secretary of the Interior (including, but not limited to, 30 CFR Part 211 and 45 CFR Group 3000) which are now or hereafter in force and which are made a part hereof, except that no amendment to the regulations made subsequent to the effective date of this lease shall alter the rental and production royalty requirements in Section 5 and 6 of this lease. (Continued on Page 3)

WITNESSETH:

Sec. 2. RIGHTS OF LESSEE - The lessor, in consideration of the bonus, rents, and royalties and other conditions hereinafter set forth hereby grants and leases to the lessee the exclusive right and privilege to mine and dispose of all coal reserves recoverable by underground mining methods from the Upper Cretaceous Fruitland Formation in the upper and lower underground mineable beds in the following described land situated in the State of New Mexico:

New Mexico Principal Meridian, New Mexico

- T. 30 N., R. 15 W.
- Sec. 13: S $\frac{1}{2}$
- Sec. 14: S $\frac{1}{2}$
- Sec. 23: All
- Sec. 24: All
- Sec. 25: All
- Sec. 26: All
- Sec. 35: Lots 1,2,3,4, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$

containing **3,855.60** acres, more or less, together with the right to construct all works, buildings, structures, equipment, and appliances which may be necessary and convenient for the mining and preparation of the coal for market, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted for a period of 20 years and so long thereafter as the condition of continued operation is met.

Sec. 3. DILIGENCE - The lessee shall engage in the diligent development of the coal resources subject to the lease. After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands. The terms diligent development and continued operation are defined in the regulations.

Sec. 4. BOND - The lessee shall file with the appropriate Bureau of Land Management office a lease bond in the amount of **\$ 10,000.00** for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other terms of this lease, the regulations and the Act. An increase in the amount of the lease bond may be required by the lessor at any

time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL - An annual rental of **\$3.00** for each acre or fraction thereof shall be paid in advance on or before the anniversary date of this lease. The anniversary date is the anniversary of the effective date of this lease.

Sec. 6. PRODUCTION ROYALTY - The lessee shall pay a production royalty of 8 percent of the value of coal produced by underground mining methods.

The value of coal shall be determined as set forth in the regulations.

a previous month. However, production royalties payable after the 30th year of the lease shall not be reduced by advance royalties paid during the first 20 years of the lease. Production royalties shall be payable the first day of the month succeeding the calendar month in which the coal is mined.

Sec. 7. ADVANCE ROYALTY - Upon request by the lessor, the mining supervisor may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and lessor, which shall be made a part of this lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. (Continued on Page 3)

Sec. 8. METHOD OF PAYMENTS - The lessee shall make rental payments to the appropriate Bureau of Land Management office until either production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the mining supervisor. All remittances to Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN - As specified in the regulations, the lessee shall submit an exploration plan to the appropriate Bureau of Land Management office.

San Juan Coal Co. Exhibit No. 2
Before the Oil Conservation Commission
Hearing Dates: October 29-31, 2002

(See Page 4)

Sec. 11. LOGICAL MINING UNITS (LMU) - This lease is automatically considered to be an (LMU) and may be combined with other land, including other Federal leaseholds and non-Federal interests in coal, to form a larger (LMU). The mining plan for the (LMU) must include a production schedule that provides for the mining of all the (LMU) reserves, both Federal and non-Federal, within 40 years from the date of the approval of the plan. The definition of (LMU) and (LMU) reserves and other conditions applicable to them are set forth in the regulations.

Sec. 12. OPERATIONS ON LEASED LANDS - In accordance with the conditions of this lease, the exploration and mining plans, the regulations and the Act, the lessee shall exercise reasonable diligence, skill, and care in all operations on the leased lands. The lessee's obligations shall include, but not be limited to, the following:

- (a) The lessee shall conduct all operations on the leased lands so as to avoid injury to life, health, or property;
- (b) The lessee shall conduct operations in such a manner as may be needed to avoid or, where avoidance is impracticable, to minimize and, where practicable, to repair damage to: (i) any forage and timber growth on Federal or non-Federal lands in the vicinity of the leased lands, (ii) crops, including forage and timber, or improvements of a surface owner; or (iii) improvements, whether owned by the United States or by its permittees, licensees, or lessees. The lessor must approve the steps to be taken and the restoration to be made in the event of the occurrence of damage described in this subsection.
- (c) The lessee shall minimize to the maximum extent possible wasting of the mineral deposits and other resources, including, but not limited to, surface resources which may be found in, upon, or under such lands (See 30 CFR 700 & 800)

Sec. 13. CULTURAL RESOURCES - (a) Before the approval of mining plan, the lessee shall cause a survey of all or part of the leased land to be made to identify any historical, cultural, and archeological resources. The survey shall be conducted by a qualified archeologist, approved by the authorized officer, and a copy of the survey shall be submitted in the mining plan for the approval of the authorized officer. The location of these operations shall be so planned as to avoid the historical, cultural, and archeological resources. The lessee shall take any necessary steps to protect such resources as a result of the survey. The lessee shall also take any necessary steps to protect such resources if they have been found on the leased lands. (b) In the event of features of historical, cultural, or archeological significance discovered during the operations, the lessee shall immediately discontinue operations in the area and shall take such steps as may be necessary to protect such resources. The lessee shall also take such steps as may be necessary to protect such resources if they have been found on the leased lands. (c) The lessee shall take such steps as may be necessary to protect such resources if they have been found on the leased lands.

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS - (a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, leases, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right: (i) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as such surface is not necessary for the use of the lessee in the extraction and removal of the coal therein; or (ii) to dispose of any resource in such lands if such disposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

Sec. 15. EQUAL OPPORTUNITY CLAUSE - During the performance of this lease, lessee agrees to comply with the following:

(a) Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Lessee will cause any contract or subcontract to contain this clause and to be enforceable.

color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the lessor setting forth the provisions of this Equal Opportunity clause.

(b) Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the lessor, advising the labor union or workers' representative of the lessee's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Lessee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the lessee's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this lease may be cancelled, terminated or suspended in whole or in part and the lessee may be declared ineligible for further Government contracts or leases in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Lessee will include the provisions of paragraphs (a) through (g) of this section 15 in every contract, subcontract, or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor, or vendor. Lessor will take such action with respect to any contract, subcontract, or purchase order as the Secretary of the Interior may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the lessee becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or vendor as a result of such direction by the Secretary of the Interior, the lessee may request the United States to enter into such litigation to protect the interests of the United States.

Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES - By entering into this lease, the lessee certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit covenants or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, that lessee will retain such certifications in lessee's files; and that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor or subcontractor has submitted identical certifications for specific time periods): Notice to prospective contractors and subcontractors of requirement for certification of nonsegregated facilities. A Certification of Nonsegregated Facilities, as required by the May 9, 1967 order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. Certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and services of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day, and shall restrict the workday in case of emergency. The lessee shall establish a minimum wage for all employees in any mine which is not

face. If the laws of the State in which the mine is situated prohibit the employment, in a mine below the surface, of persons of an age greater than 16 years, the lessee shall comply with those laws.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 167 and 129) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such regulations shall upon promulgation be binding upon the lessee.

Sec. 19. ASSIGNMENT - This lease may be assigned, upon approval of the authorized officer, in accordance with the provisions of 43 CFR Subpart 3453. An assignment will become effective on the first day of the month following approval by the authorized officer or, if the assignee requests, the first day of the month of the approval.

Sec. 20. RELINQUISHMENT OF LEASE - The lessee may file a request to relinquish all or any legal subdivision of this lease. The request shall be filed in duplicate with the authorized officer. The authorized officer shall approve the relinquishment if he determines that the lessee has complied with the requirements of the lease, the exploration and mining plans, the regulations and the Act. Upon approval, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties and to comply with all other requirements of the lease, the regulations, the exploration and mining plans, the regulations and the Act.

Sec. 21. NONCOMPLIANCE - Any failure to comply with the conditions of this lease, the exploration and mining plans, the regulations, or the Act shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS - The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach, nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS - (a) The lessor may propose the reasonable readjustment of any conditions of this lease, including royalty rates, the first readjustment to be effective on the 20th year after the effective date and subsequent readjustments to be effective at 10-year intervals thereafter. The lessor shall notify the lessee whether he intends to readjust conditions and, if he intends to readjust, the nature of the readjustments. If it is feasible, the lessor shall give such notice 120 days before the effective date of the readjustment.

Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions, files with the lessor an objection thereto or relinquishes the lease, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions with the lessor, and agreement cannot be reached between the lessor and the lessee within a period of 60 days after the filing of the objection, the lease may be terminated by either party upon giving 30 days' notice to the other party. However, the lessor's right to terminate the lease shall be suspended by the lessee's filing of a notice of appeal pursuant to section 29 of this lease, and if the lessee is ultimately successful in his appeal, the lease shall continue without the change in the provisions, the imposition of which, the lessee appealed. If the lessee is unsuccessful in his appeal and within 30 days of the decision on appeal notifies the lessor that he accepts the decision rendered upon such appeal, then the lease shall continue as amended by the decision.

Sec. 1 (Continued) - This lease is also subject to all regulations of the Secretary of Energy promulgated pursuant to section 302 of the Department of Energy Organization Act which are now or hereafter in force and which are made a part hereof, except that no amendment to the regulations made subsequent to the effective date of this lease shall alter the rental and production royalty requirements in Sections 5 and 6 of this lease. The lease is also subject to the Surface Mining Control and Reclamation Act of 1977 and to the regulations promulgated thereunder (30 CFR 700 and 800).

Sec. 7 (Continued) - The advance royalty shall be based on a percent, as specified in this lease, of the value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining and reclamation plan.

(c) If the lessee files objections to the proposed readjusted conditions, the existing conditions, except those concerning royalties, shall remain in effect until there has been an agreement between the lessor and the lessee on the new conditions to be incorporated in the lease, or until the lessee has exhausted his rights of appeal under section 29 of this lease, or until the lease is terminated. However, the readjusted royalty provisions shall be effective until there is either agreement between the lessor and the lessee or until the lease is terminated. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES - Upon termination of this lease for any reason, or relinquishment of a part of this lease, the lessee shall deliver to the lessor in good order and condition all or the appropriate part of leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations for the completion of operations and abandonment.

Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trace secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2, and other applicable regulations.

Sec. 26. LESSEE'S LIABILITY TO LESSOR - (a) The lessee shall be liable to the United States for any damage suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damage is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

Sec. 27. INSPECTIONS AND INVESTIGATIONS - (a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked, upon request,

at the place where they are customarily maintained.

(b) The lessee shall permit any duly authorized officer or representative of the lessee at any reasonable time (1) to inspect or investigate the leased lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) copy and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST - No member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.46(3), shall hold any share or part in this lease or derive any benefit therefrom. The provisions of Section 1741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 16 U.S.C. Sections 431-433 relating to contracts, enter into and form a part of this lease insofar as they may be applicable.

Sec. 29. APPEALS - The lessee shall have the right to appeal (a) under 43 CFR 3000-4 from an action or decision of any official of the Bureau of Land Management (b) under 30 CFR Part 280 from an action, order, or decision of an official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, 700 and 600, the lessee shall submit a mining plan not more than three years after the effective date of this lease. Until the mining plan has been approved, the lessee shall not conduct any operations on the leased lands except casual use or exploration if an exploration plan has been approved. Thereafter, the lessee shall conduct all operations in accordance with the approved mining plan.

Sec. 30. SPECIAL STATUTES. This lease is also subject to the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 1557).

Sec. 31. SPECIAL STIPULATIONS.

The upper bed (where mineable) must be mined in advance of the lower bed. "Where mineable" will be determined by the Regional Mining Supervisor in accordance with the Regulation 30 CFR 211.32 and in the approved mining plan by the regulatory authority.

See additional stipulations attached and made a part hereof.

THE UNITED STATES OF AMERICA

By *Thomas R. [Signature]*
(Signing Officer)

Acting Chief, Mining Section
(Title)

March 20, 1980

(Date)

WITNESS TO SIGNATURE OF LESSEE

(Signature of Lessee)

WESTERN COAL CO.

[Signature]
(Signature of Lessee)

[Signature]
SECRETARY

SPECIAL STIPULATIONS

1. An intensive inventory of items or features of historical, cultural or archaeological value on those portions of the leased land subject to any surface disturbing activities or with an overburden thickness of less than 300 feet shall be conducted prior to approval of an exploration or mining plan by a holder of a valid Federal Antiquities permit and a report of the inventory shall be submitted to the Authorized Officer. If any significant items or features of historical, cultural, or archaeological value are discovered during the inventory, the exploration or mining plan shall state that any such items or features endangered by exploration, construction, mining or subsidence shall be mitigated prior to disturbance by a holder of a valid Federal Antiquities permit, and shall be approved by the Authorized Officer. The cost of the inventory and any mitigation measures shall be borne by the lessee and all items and features of historic, cultural or archaeological value shall remain under the jurisdiction of the United States.

If any items or features of cultural, historical, or archaeological value are discovered during lease operations, the lessee shall immediately notify the Mining Supervisor and shall not disturb such items or features until the Mining Supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of cultural, historical, or archaeological value discovered during lease operations the cost of the measures will be borne by the lessor and such items or features shall remain under the jurisdiction of the government.

2. Before approval of an exploration or mining plan, the lessee shall conduct an intensive paleontological inventory on all portion of the leased land subject to surface disturbance or with an overburden thickness of less than 300 feet. The inventory shall be conducted by a qualified paleontologist approved by the Authorized Officer. A report on the findings of the inventory shall be submitted to the Authorized Officer. If paleontological resources are found during the inventory and if such resources are determined to be significant by the Authorized Officer, the lessee shall either modify the application to protect these resources or develop a salvage plan which shall be made a part of the approved exploration or mining plan.

If any items or features of paleontological value are discovered during lease operations, the lessee shall immediately notify the Mining Supervisor and shall not disturb such items or features until the Mining Supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of paleontological value discovered during lease operations the cost of the measures will be borne by the lessor and such items or features shall remain under the jurisdiction of the government.

3. To meet Visual Resource Management Class IV requirements, surface structures must be painted to blend with the dominant color of the landscape in the immediate area, except where specific colors are recommended to meet safety requirements.
4. It shall be the responsibility of the lessee to design exploration, mining, and reclamation operations on the leased land in such a way that the functions and uses of any rights-of-way on the leased land will be protected. If damages or disruptions to the functions and uses of any of the rights-of-way occur as the result of activities related to coal exploration, mining, or reclamation the lessee shall assume all liability for such damages or disruptions.