

Thomas L. Sansonetti (Wyo. State Bar # 43354)  
Isaac N. Sutphin, P.C. (Wyo. State Bar # 6-3711)  
Jeffrey S. Pope (Wyo. State Bar # 7-4859)  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
tlsansonetti@hollandhart.com  
insutphin@hollandhart.com  
jspope@hollandhart.com

ATTORNEYS FOR PERMIT APPLICANT  
BROOK MINING COMPANY, LLC

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

IN RE BROOK MINE APPLICATION )  
 ) Civil Action No. 17-4801  
TFN 6 2-025 )

---

**BROOK MINING COMPANY, LLC'S MOTION TO EXCLUDE BIG HORN COAL  
COMPANY**

---

**INTRODUCTION**

Promises should matter. Contracts should matter. But it appears that neither matter to Big Horn Coal Company. At least, promises and contracts made with Brook's predecessor. Big Horn promised that if Brook sought to develop a mine where Brook now seeks to do so, Big Horn would not "oppose any such mine plan before any governmental agency and will take no action, direct or indirect, to induce any federal, state, or local agency to disapprove or otherwise object to such mine plan." (Exhibit A, 1983 Lease Release Agreement, 2.)

Yet Big Horn has broken that promise twice. First, Big Horn refused to consent to Brook's mine plan and opposed Brook before this very Council, wrongfully challenging whether Brook had the right to mine coal by surface mining methods. Now Big Horn objects to Brook's permit application, raising many of the same issues that the Council heard and decided last year.

Big Horn's strategy has become clear—convince state agencies to disapprove of Brook's mine plan and deny, or at least needlessly delay, permit issuance. These efforts fly in the face of Big Horn's contractual duties and are the opposite of what Big Horn promised 34 years ago.

The time has come to enforce Big Horn's promise and end its objections. The Council can and should do that by excluding Big Horn from the upcoming hearing.

### **ARGUMENT**

The Council has the authority to exclude Big Horn before the hearing if it finds that Big Horn engaged in "contemptuous conduct" or has used "dilatory tactics." Wyo. Admin. Code § ENV PP Ch. 1 Sec. 13. Big Horn has done both by ignoring its contractual obligation to Brook.

Contemptuous conduct is conduct that shows a lack of respect for something or someone. Meriam-Webster's Dictionary. As the Council knows from the Order in Lieu of Consent Hearing and discussed on September 28, 2016, Big Horn agreed not to oppose any mine plan before a governmental agency and take no steps to get a state agency to disapprove of the mine plan when it executed the 1983 Lease Release Agreement. (Ex. A, 2.) But that is exactly what Big Horn has done. Big Horn's objection letter states it "feels strongly that the Brook Mine permit application should not be approved or deemed technically complete." (Exhibit B, Big Horn Objection, 10.) It does not require a court to decide that Big Horn has broken its promise to Brook; the Council just needs to review the plain language of the 1983 Agreement. *Claman v. Popp*, 279 P.3d 1003, 1013 (Wyo. 2012) (analyzing a contract begins with its "plain language.") Big Horn's choice to break its promises shows it does not respect Brook or Wyoming law. See *Schlinger v McGhee*, 268 P.3d 264, 268 (Wyo. 2012) (explaining how Wyoming law enforces parties' contracts). That behavior should exclude Big Horn from the hearing.

Big Horn's dilatory tactics also justify the Council excluding Big Horn from the hearing. Big Horn has used the order in lieu of consent process and the public comment process to delay needlessly Brook's mine permit. Big Horn first asked this Council to deny an order in lieu needed for the permit process to proceed. Even though Brook prevailed, Big Horn's stance added months to the process. Big Horn has objected again seeking to delay permit approval. Big Horn has also tried to delay the statutorily required 20-day hearing to some unknown date months later. Simply put, Big Horn has spent more than a year using procedural hurdles to derail and delay Brook's permit application despite promising the opposite. That is the very definition of a dilatory tactic.

Should Big Horn's broken promises not be enough to keep them from the hearing in the Council's mind, the Council should limit what Big Horn can present. Big Horn objected extensively to Brook's mine plan and reclamation plan during the order in lieu of consent process—and lost. Big Horn's current objections repeat many of the same arguments. For example, Big Horn continues to object to an alleged lack of detail in the mine and reclamation plans. But Wyoming law does not allow Big Horn the chance to argue issues already raised and decided between the same parties. *Slavens v. Board of County Com'rs for Unita County*, 854 P.2d 683, 685-86 (Wyo. 1993) (explaining that collateral estoppel applies to administrative proceedings barring relitigation of the same claims.) This means that if the Council allows Big Horn to participate at all, Big Horn should only be permitted to address objections 10, 11, 14, and 15. All other objections either repeat objections raised in the order in lieu process or could have been raised then.

## CONCLUSION

Big Horn has shown that it will not live up to its promises to Brook. Big Horn may attempt to hide behind the statute that gives the public the right to comment. But Big Horn contracted that right away when it agreed not to oppose Brook's mine plan before any governmental agency or induce any state agency to disapprove of Brook's mine plan. All Brook asks is that the Council not allow Big Horn to continue to violate the terms of the 1983 Release Agreement. Therefore, Brook requests the Council disregard Big Horn's written objections and exclude Big Horn from the February 13-14, 2017 hearing.

DATED: February 6, 2017.



Thomas L. Sansonetti (Wyo. State Bar # 43354)  
Isaac N. Sutphin, P.C. (Wyo. State Bar # 6-3711)  
Jeffrey S. Pope (Wyo. State Bar # 7-4859)  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
tlsansonetti@hollandhart.com  
insutphin@hollandhart.com  
jspope@hollandhart.com

ATTORNEYS FOR PETITIONER BROOK  
MINING COMPANY, LLC

## CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I served a true and correct copy of the foregoing by email addressed to the following:

Lynnette J. Boomgaarden  
Crowley Fleck, PLLP  
lboomgaarden@crowleyfleck.com  
jwacker@crowleyfleck.com  
wdrake@crowleyfleck.com  
Attorney for Big Horn Coal

Andrew Kuhlmann  
Assist. Attorney General  
andrew.kuhlmann@wyo.gov

Alan Edwards  
Deputy Director, DEQ  
Alan.edwards@wyo.gov

Brook Collins  
38 Monarch Road  
Ranchester, WY 82839  
bpcharlie@wbaccess.net

Todd Parfitt  
Director, DEQ  
Todd.Parfitt@wyo.gov

Shannon Anderson  
Powder River Basin Resource Council  
sanderson@powderriverbasin.org

Jay Gilbertz  
Attorney for Mary and David Brezik-Fisher  
jgilbertz@yonkeetoner.com



# Exhibit A

RELEASE AGREEMENT

THIS RELEASE, made this 6<sup>th</sup> day of May, 1983, is by and between SHERIDAN-WYOMING COAL COMPANY, INC., a Delaware corporation, whose address for purposes of this Release is c/o Kennedy, Connor and Healy, P.O. Box 607, Sheridan, Wyoming 82801 (hereinafter called the "Lessor"), and BIG HORN COAL COMPANY, a Wyoming corporation, of Sheridan, Wyoming, whose address for purposes hereof is One Thousand Kiewit Plaza, Omaha, Nebraska 68131 (hereinafter called the "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain Coal Mining Lease on June 28, 1954, and Supplemental Coal Mining Lease Agreements dated February 15, 1956, October 1, 1957, and September 9, 1977, and entered into a certain Coal Mining Lease dated June 12, 1979, to lease certain property situate in Sheridan County, Wyoming, and more particularly described in Schedule "A" attached hereto and by this reference incorporated herein; and

WHEREAS, Lessee exercised by letter on September 5, 1968, the option provision in the Coal Mining Lease dated June 28, 1954, to extend the lease term for fifteen years, which subsequently provided for that lease to terminate on June 30, 1984; and

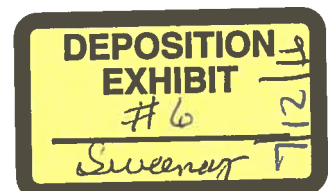
WHEREAS, Lessor and Lessee desire to settle certain claims with respect to the Leases and to mutually terminate certain obligations thereunder;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained, the Lessor and Lessee agree as follows:

1. Lessee agrees to release, relinquish, and surrender unto Lessor all right, title, interest, claim and demand in and to the Leases insofar as they cover certain coal ("Released Coal") situate in Sheridan County, Wyoming, and more particularly described in Schedule "B" attached hereto and by this reference incorporated herein. Lessee will release its interest in the Released Coal to the Lessor by executing and recording this Release, as provided by Section 34-2-130, Wyoming Statutes (1977).

2. Lessee agrees that its obligations under the Leases with respect to property covered by the present Pits 1, 4, and 5 and more particularly described by Schedule "C" attached hereto and by this reference incorporated herein, will continue in force and effect until June 30, 1984.

237



3. Lessee agrees to quit, vacate, and surrender possession of the property covered by the present Pit 5 to Peter Kiewit Sons' Co. on June 30, 1984.

4. Lessor shall be entitled to retake possession of any of the above-described Released Coal which is not currently in Lessor's possession immediately upon execution of this Agreement, and shall be relieved from further duties and obligations under the aforementioned lease with respect to the Released Coal.

5. Lessor expressly consents and agrees to allow Lessee to leave intact any and all permanent structures, stockpiles, or spoil materials (referred to herein collectively as "structures and stockpiles") currently located in Sections 9, 10, 14, 15, 21, and the N $\frac{1}{2}$  of Section 22 of T. 57N., R. 84W., 6th P.M., as more specifically identified in Schedule D attached hereto. Unless Lessor's express written consent is received, any temporary or permanent structures or stockpiles located south of old Wyoming State Highway 338 in the SE $\frac{1}{4}$  of Section 22 or the N $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27 shall be located at Lessee's sole risk and expense, and shall be subject to the following express conditions: The placement of any temporary or permanent structures or stockpiles in that part of Section 22 south of old Wyoming State Highway 338 and in Section 27 shall be subject to the terms and conditions of the Road Relocation Agreement, dated August 7, 1981, between Big Horn Coal Company and Sheridan-Wyoming Coal Company. In addition, Lessee agrees to move any structures and stockpiles, including the relocation of Wyoming State Highway 338, as necessary, at its sole cost and expense, at such time as the Lessor, or its successors in interest, presents to Lessee a mine plan approved by all applicable governmental agencies to mine the coal in either Section 22 or 27. If the Lessor makes application for approval of a plan to mine any of the coal in the pertinent portions of these two sections, its application shall in no way be prejudiced by the existence of any structures or stockpiles or the location of State Highway 338 in these sections. Lessee will not oppose any such mine plan before any governmental agency and will take no action, direct or indirect, to induce any federal, state, or local agency to disapprove or otherwise object to such mine plan. If approval is conditioned upon Lessee's consent to remove or relocate the road or any structures or stockpiles, Lessee shall not withhold such consent. Lessor reserves the right to seek specific performance of this obligation in addition to any and all remedies available to Lessor including all remedies provided under the Road Relocation Agreement. The parties recognize that the payment of monetary damages will not adequately and sufficiently compensate Lessor in the event Lessee breaches its obligation to move the highway and any structures or stockpiles located on Section 27 and south of old Wyoming State Highway 338 in Section 22. Lessee expressly waives, and shall be estopped from asserting any defenses to Lessor's claim for specific performance of these obligations. If Lessee breaches

8/7/81 Road Re-  
location Agrmt.



its obligation, Lessor may, at its option, undertake to relocate the highway and move any structures or stockpiles located on said parts or Sections 22 and 27, and Lessee agrees to reimburse Lessor for any and all costs and expenses resulting from such action.

6. With respect to the coal in those areas described in Schedule B that is to be released, Lessee agrees that it will, upon execution of this Agreement, continue to perform within eighteen months thereafter all abandonment, reclamation, and related procedures required by any applicable law or regulation subject to Paragraph 7 of this Release Agreement. With respect to the coal in those areas described in Schedule C that is to be released on June 30, 1984, Lessee agrees that it will, "by no later than December 31, 1985, perform all abandonment, reclamation and related procedures required by any applicable law or regulation. It is understood, however, that the final reclamation for the identified portion of Section 15 which involves the Pit 3 extension out-of-pit stockpile area, will not necessarily be completed until June of 1987 and that that portion identified in the N $\frac{1}{2}$  of Section 22, and north of old Wyoming State Highway 338 in the SE $\frac{1}{4}$  of Section 22 will need to be redisturbed in the early 1990's with placement of out-of-pit soil from the Pit 1 southeast extension. Such reclamation and restoration activities shall be conducted diligently and in compliance with all applicable federal, state or local laws and regulations, as the same may exist or be enacted or amended from time to time.

7. Lessee agrees to apply for transfer to Lessor, at the option of the Lessor, of those permits and governmental authorizations identified in Schedule E attached hereto and incorporated by this reference with respect to the Released Coal within thirty (30) days from the date of execution of this Release Agreement. Lessee also agrees to transfer, at the option of the Lessor, to the Lessor any and all permits and governmental authorizations with respect to the property covered by the present Pits 1 and 4 by June 30, 1984.

8. Lessee hereby agrees to and does hereby assume all liability for and indemnify, protect, save, and hold harmless Lessor and Lessor's assigns and successors from and against any and all losses, costs, expenses, attorneys' fees, claims, demands, suit, and actions of any character whatsoever (hereinafter referred to collectively as "Liabilities") imposed upon or incurred by the Lessor on account of or arising directly or indirectly out of or in connection with the operations of Lessee with respect to the Released Coal. In the event that any Liabilities arise or are contributed to by the negligence of the Lessor, Lessee's liability for payment of such Liabilities shall be reduced in proportion to the amount of Lessor's negligence.

240

IN WITNESS WHEREOF, Lessor and Lessee have executed this instrument as of the date first above written.



LESSOR:

SHERIDAN-WYOMING COAL COMPANY, INC., a Delaware corporation

By: Jack M. Daniel  
Title: President

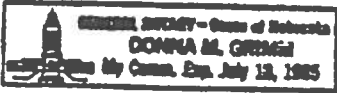
LESSEE:

BIG HORN COAL COMPANY, INC., a Wyoming corporation

By: Dean Skalla  
Title: President

STATE OF NEBRASKA)  
  ) ss.  
COUNTY OF DOUGLAS)

Subscribed to before me this 6th day of May, 1983 by Dean Skalla, President of Big Horn Coal Company.



Donna M. Grevin  
Notary Public  
State of Nebraska

STATE OF CONNECTICUT)  
  ) ss.  
COUNTY OF Fairfield)

Subscribed to before me this 6th day of May, 1983 by Jack McDaniel, President of Sheridan-Wyoming Coal Company, Inc.

Florence D. Verrier  
Notary Public  
State of Connecticut  
FLORENCE D. VERRIER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1987

Schedule A

TO THAT CERTAIN RELEASE AGREEMENT

DATED           May 6          , 1983

BY AND BETWEEN

THE SHERIDAN-WYOMING COAL COMPANY, INC.

AND

BIG HORN COAL COMPANY

ALL COAL

Coal situate in Sheridan County, Wyoming and subject to the provisions of the Coal Mining Lease dated June 28, 1954, and Supplemental Coal Mining Lease Agreements dated February 15, 1956, October 1, 1957, and September 9, 1977, and the Coal Mining Lease dated June 12, 1979, refers to and is identified by any and all coal owned by SHERIDAN-WYOMING COAL COMPANY, INC., in Sheridan County which is subject to an option to lease, and all coal presently leased and outlined on the Property Map attached to this Schedule A and described as follows:

T. 57 N., R. 84 W., 6th P.M.:

Section 9:	E1/2	320 acres
Section 10:	W1/2	320 acres
Section 14:	That portion of SW1/4SW1/4 located south and west of the center of the Tongue River	11 acres
Section 15:	All of the NW1/4	160 acres
	SW1/4	160
	SW1/4NE1/4	40
	W1/2SE1/4	80
	That portion of NE1/4SE1/4 located southwest of the center of the Tongue River	6
	SE1/4SE1/4	40
	A tract of land in the NE1/4NE1/4 described as	

follows: "Beginning at a point on the west line of the NE1/4NE1/4 of Section 15, which point lies 150 ft. north of the southwest corner of the NE1/4NE1/4 of said Section 15; thence northeasterly to a point on the east line of the NE1/4NE1/4 of said Section 15, which point lies 150 ft. south of the northeast corner of the NE1/4NE1/4 of said Section 15, thence south to the southeast corner of the NE1/4NE1/4 of said Section 15, thence west to the southwest corner of the NE1/4NE1/4 of said Section 15; thence north along the west line of the NE1/4NE1/4 of said Section 15 to the point of beginning."

20 acres

But excepting the following described two parcels of land from said Section 15.

The land in the SW1/4 belonging to Carl Weissman and Sons described as follows: "Beginning at a point 50 ft. north 26°54'30" west of a point which is 1,984.5 ft. north 31°23' east from the southwest corner; thence north 69°6' west 100.51 ft.; thence north 26°54'30" west 420.82 ft.; thence north 24°54' east 127.24 ft.; thence south 86°14' east 509.5 ft.; thence south 26°55' east 363.2 ft.; thence south 69°6' west 477.6 ft. to the point of beginning."

(less 6 acres)

Also that tract belonging to Big Horn Coal Company known as the Acme townsite and

more particularly described as follows: "Beginning at a point 20 ft. west of the northwest corner of SE1/4SW1/4 of Section 15; thence north 0°42' west, a distance of 300 ft. along the east boundary of the present County Road; thence due east a distance of 130 ft.; thence south a distance of 300 ft., more or less, to the north boundary of the SE1/4SW1/4 of said Section 15; thence east along said boundary line a distance of 1,223 ft. to the northeast corner of the SE1/4SW1/4 of Section 15; thence south along the east boundary of said quarter section to the center of the present channel of Goose Creek; thence northwesterly along the center of Goose Creek to a point 20 ft. west of the west boundary of the SE1/4SW1/4 of Section 15; thence north to the point of beginning."

(less 25 acres)

Section 20: That portion of NE1/4 south of the county road which was formerly U.S. Highway 87  
 N1/2SE1/4  
 SE1/4SE1/4

122 acres  
 80  
 40

Section 21: That portion of N1/2 located north of BNRR right-of-way, except a tract of land described as follows: "All that part of the SW1/4NW1/4 of said Section 21 lying north of the north boundary line of the C.B.&Q. Railroad Company (BNRR) right-of-way."

151 acres

Section 22: ALL

640 acres

Section 27: NW1/4	160 acres
Section 28: That portion of E1/2 north of Wyoming State Highway 339	254 acres
	<hr/>
Subtotal	2604 acres, more or less
Less Section 15 exceptions	31 acres, more or less
	<hr/>
Total	2573 acres, more or less

Schedule B

TO THAT CERTAIN RELEASE AGREEMENT

DATED May 6, 1983

BY AND BETWEEN

THE SHERIDAN-WYOMING COAL COMPANY, INC.

AND

BIG HORN COAL COMPANY

RELEASED COAL

Coal situate in Sheridan County, Wyoming and described in the foregoing Release Agreement as the "Released Coal" refers to and identifies any and all coal owned by SHERIDAN-WYOMING COAL COMPANY, INC., in Sheridan County which is subject to an option to lease, and the coal which is presently leased and is described by the Property Map attached to Schedule A which is outlined in red and described as follows:

T. 57 N., R. 84 W., 6th P.M.:

Section 9:	S1/2NW1/4SE1/4 S1/2SE1/4	20 acres 80
Section 10:	S1/2S1/2SW1/4	40 acres
Section 15:	Northerly 3/8 (990 ft., more or less) of NW1/4	60 acres
Section 20:	That portion of NE1/4 south of the county road which was formerly U.S. Highway 87 N1/2SE1/4 SE1/4SE1/4	122 acres 80 40

245

Section 21:	That portion of N1/2 located north of BNRR right-of-way, except a tract of land described as follows: "All that part of the SW1/4NW1/4 of said Section 21 lying north of the north boundary line of the C.B.&Q. Railroad Company (BNRR) right-of-way."	151 acres
Section 22:	W1/2 That portion of SE1/4 south of the south boundary of the right of way for the old Wyoming State Highway 338	320 acres 83
Section 27:	NW1/4	160 acres
Section 28:	That portion of E1/2 north of Wyoming State Highway 339	254 acres
		<hr/>
Total		1410 acres, more or less



Schedule C

TO THAT CERTAIN RELEASE AGREEMENT  
DATED May 6, 1983

BY AND BETWEEN  
THE SHERIDAN-WYOMING COAL COMPANY, INC.  
AND  
BIG HORN COAL COMPANY

PITS 1, 4, 5

Coal situate in Sheridan County, Wyoming and described in the foregoing Release Agreement as the coal covered by the present Pits 1, 4, and 5 refers to and identifies the section of the Property Map attached to Schedule A which is outlined in blue and green and described as follows:

Section 9:	NE1/4	160 acres
	NE1/4SE1/4	40
	N1/2NW1/4SE1/4	20
Section 10:	NW1/4	160 acres
	N1/2SW1/4	80
	N1/2S1/2SW1/4	40
Section 14:	That portion of SW1/4SW1/4 located south and west of the center of the Tongue River	11 acres
Section 15:	All of the NW1/4 except the northerly 3/8 (990 ft., more or less) thereof	100 acres
	SW1/4	160
	SW1/4NE1/4	40
	W1/2SE1/4	80
	That portion of NE1/4SE1/4 located southwest of the center of the Tongue River	6
	SE1/4SE1/4	40
	A tract of land in the NE1/4NE1/4 described as	

follows: "Beginning at a point on the west line of the NE1/4 NE1/4 of Section 15, which point lies 150 ft. north of the southwest corner of the NE1/4 NE1/4 of said Section 15; thence north-easterly to a point on the east line of the NE1/4 NE1/4 of said Section 15, which point lies 150 ft. south of the northeast corner of the NE1/4 NE1/4 of said Section 15, thence south to the southeast corner of the NE1/4 NE1/4 of said Section 15, thence west to the southwest corner of the NE1/4 NE1/4 of said Section 15; thence north along the west line of the NE1/4 NE1/4 of said Section 15 to the point of beginning."

20 acres

But excepting the following described two parcels of land from said Section 15.

The land in the SW1/4 belonging to Carl Weissman and Sons described as follows: "Beginning at a point 50 ft. north 26°54'30" west of a point which is 1,984.5 ft. north 31°23' east from the southwest corner; thence north 69°6' west 100.51 ft.; thence north 26°54'30" west 420.82 ft.; thence north 24°54' east 127.24 ft.; thence south 86°14' east 509.5 ft.; thence south 26°55' east 363.2 ft.; thence south 69°6' west 477.6 ft. to the point of beginning."

(less 6 acres)

Also that tract belonging to Big Horn Coal Company known as the Acme townsite and more particularly described as follows: "Beginning at a point 20 ft. west of the northwest corner of SE1/4SW1/4 of Section 15; thence north 0°42' west, a distance of 300 ft. along the east boundary of the present County Road; thence due east a distance of 130 ft.; thence south a distance of 300 ft., more or less, to the north boundary of the SE1/4SW1/4 of said Section 15; thence east along said boundary line a distance of 1,223 ft. to the northeast corner of the SE1/4SW1/4 of Section 15; thence south along the east boundary of said quarter section to the center of the present channel of Goose Creek; thence northwesterly along the center of Goose Creek to a point 20 ft. west of the west boundary of the SE1/4SW1/4 of Section 15; thence north to the point of beginning."

(less 25 acres)

Section 22: NE1/4

That portion of SE1/4 located north of the south boundary of the right of way for the old Wyoming State Highway 338

160 acres

77

Subtotal

1194 acres, more or less

Less Section 15 exceptions

31 acres, more or less

Total

1163 acres, more or less

Schedule D

TO THAT CERTAIN RELEASE AGREEMENT

DATED May 6, 1983

BY AND BETWEEN

THE SHERIDAN-WYOMING COAL COMPANY, INC.

AND

BIG HORN COAL COMPANY

ENCUMBERED SURFACE

Property situate in Sheridan County, Wyoming and described in the foregoing Release Agreement, refers to and identifies that property upon which Big Horn Coal Company has placed or will place permanent structures or stockpiles and is described as follows:

T57N, R84W, 6th P.M.

- Section 9: NE1/4 (160 acres)
- Section 10: S1/2SW1/4 (80 acres)
- Section 14: That portion of the SW1/4SW1/4 located south and west of the center of the Tongue River (11 acres)
- Section 15: W1/2SE1/4 (80 acres)  
That portion of the NE1/4SE1/4 located southwest of the center of the Tongue River (6 acres)  
SE1/4SE1/4 (40 acres)  
N1/2NE1/4 (80 acres)  
SW1/4NE1/4 (40 acres)  
NW1/4 (160 acres)
- Section 21: The portion of the N1/2 located north of BNRR right-of-way, except a tract of land described as follows:  
"All that part of the SW1/4NW1/4 of said Section 21 lying north of the north boundary line of the C.B. & Q. Railroad Company (BNRR) right-of-way." (151 acres)
- Section 22: N1/2 (320 acres)

Schedule E

TO THAT CERTAIN RELEASE AGREEMENT

DATED May 6, 1983

BY AND BETWEEN

THE SHERIDAN-WYOMING COAL COMPANY, INC.

AND

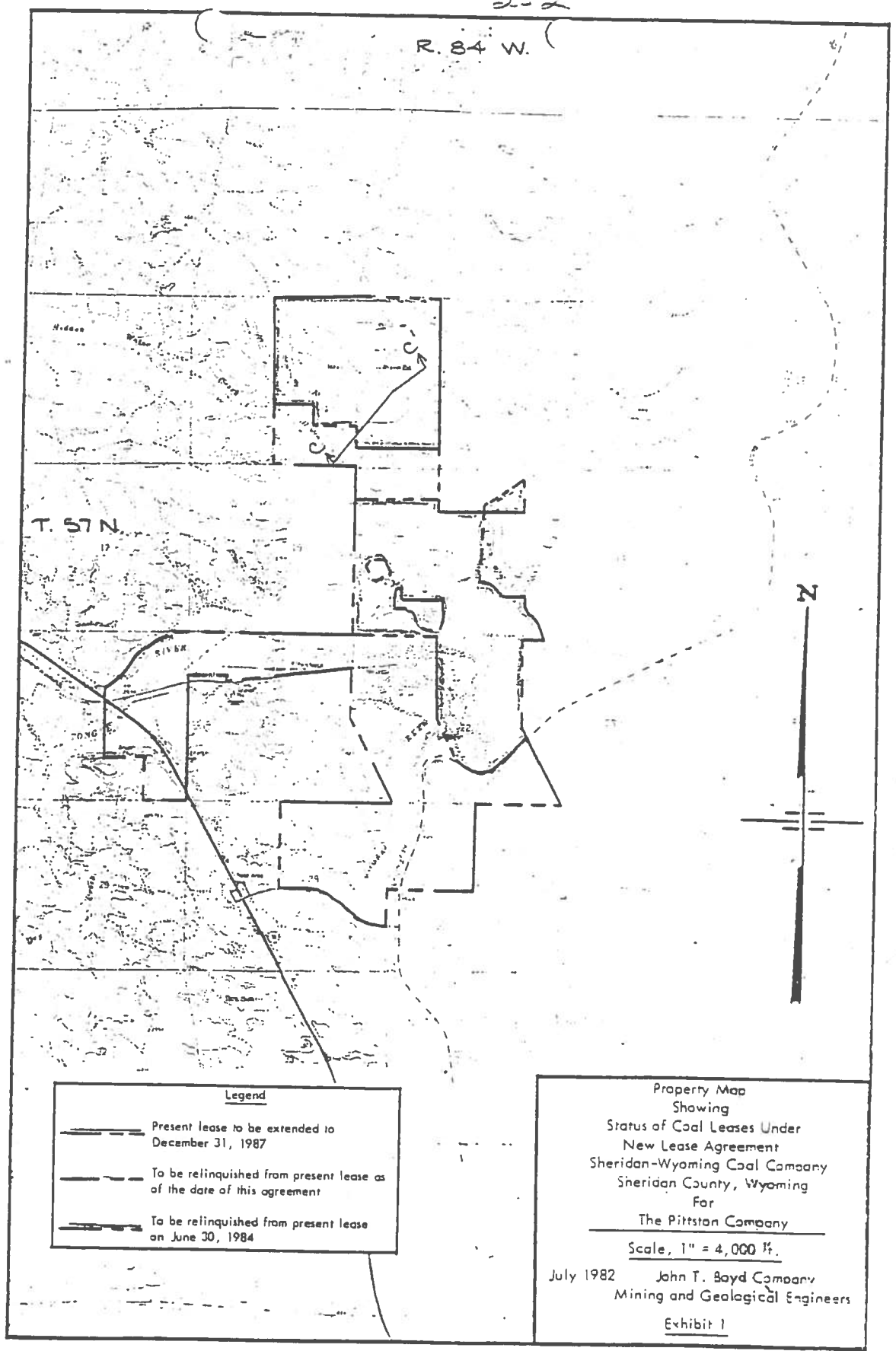
BIG HORN COAL COMPANY

LIST OF PERMITS

The following list of permits represent those permits that shall be transferred by the Lessee to the Lessor, upon Lessor's request, in order for Lessor to continue coal mining operations on the Released Coal:

Permit to Mine  
Air Quality Permit  
Wastewater Discharge Permit  
Solid Waste Management and Disposal Permit  
NPDES Discharge Permit  
Construction Permit  
Blasting/Explosives Permit  
Sanitation Permit  
MSHA  
FCC

All transferrable local permits covering land use, air quality, water quality, etc.



R. 84 W.

T. 57 N.

SILVER RIVER

Legend

Present lease to be extended to December 31, 1987  
 To be relinquished from present lease as of the date of this agreement  
 To be relinquished from present lease on June 30, 1984

Property Map  
 Showing  
 Status of Coal Leases Under  
 New Lease Agreement  
 Sheridan-Wyoming Coal Company  
 Sheridan County, Wyoming  
 For  
 The Pittston Company

Scale, 1" = 4,000 ft.  
 July 1982 John T. Boyd Company  
 Mining and Geological Engineers  
 Exhibit 1

COAL MINING LEASE

THIS LEASE, made this 6<sup>th</sup> day of May, 1983 (hereinafter referred to as "the Date of this Lease"), is by and between SHERIDAN-WYOMING COAL COMPANY, INC., a Delaware corporation duly qualified to do business in the State of Wyoming, whose address for purposes of this Lease is c/o Kennedy, Connor and Healy, P.O. Box 607, Sheridan, Wyoming 82801 (hereinafter referred to as "LESSOR"), and PETER KIEWIT SONS' CO., a Nebraska corporation duly qualified to do business in the State of Wyoming, and whose address for purposes hereof is One Thousand Kiewit Plaza, Omaha, Nebraska 68131 (hereinafter referred to as "LESSEE").

WITNESSETH:

WHEREAS, LESSOR is the owner of certain mineral rights situate in Sheridan County, Wyoming, more particularly bounded and described in Schedule "A" attached hereto and by this reference incorporated herein, together with all easements, licenses, rights-of-way, ditches, flumes, water, water rights, if any, and all other rights and privileges appurtenant thereto to which LESSOR may be entitled, hereinafter referred to collectively as the "Leased Premises"; and

WHEREAS, LESSOR, and Big Horn Coal Company, an affiliated company of LESSEE, entered into a certain Coal Mining Lease on June 28, 1954, and various Supplemental Coal Mining Lease Agreements on February 15, 1956, October 1, 1957, and September 9, 1977, and entered into a certain Coal Mining Lease dated June 12, 1979, to lease the Leased Premises and other properties; and

WHEREAS, Big Horn Coal Company exercised the option contained in the Coal Mining Lease dated June 28, 1954, by letter dated September 5, 1968, to extend the term of that Coal Mining Lease to June 30, 1984, and will continue to mine the Leased Premises and other properties until that date; and

WHEREAS, LESSOR and Big Horn Coal Company have entered into a Release Agreement dated May 6, 1983, whereby the parties are released from certain obligations incurred under the Coal Mining Leases with regard to all coal subject to the Leases or subject to option except for coal covered by the present Pits 1, 4 and the Leased Premises; and

WHEREAS, Big Horn Coal Company will continue to lease the Leased Premises until June 30, 1984, and thereafter LESSEE desires to lease the Leased Premises;

NOW THEREFORE, it is agreed by and between the parties as follows:

Section 1. Grant. For and in consideration of the covenants and agreements hereinafter contained, LESSOR does hereby grant, lease, let, and demise effective July 1, 1984, the Leased Premises exclusively unto LESSEE, its successors and assigns, as hereinafter provided for the purpose of conducting "Surface Coal Mining Operations" as that term is defined in Section 2 of this Lease.

RESERVING, HOWEVER, unto LESSOR the entire ownership and control of the Leased Premises and all minerals and products therein and thereon, other than coal, for all purposes other than which this Lease is made. Exercise of the ownership, control, and rights so reserved shall be subordinate to the rights granted LESSEE hereunder and LESSOR shall not unreasonably interfere with the requirements,

Lessor shall  
not interfere  
w/ MINING



convenience, and safety of the Surface Coal Mining Operations of LESSEE.

Section 2. Surface Coal Mining Operations. Whenever used in this Lease, the term "Surface Coal Mining Operations" shall be defined as and mean all operations and activities necessary or useful in the process of investigating, surveying for, exploring for, prospecting for, developing, sampling, testing, drilling, mining (by conventional surface methods only), extracting, removing, shipping, treating, processing, storing, consuming, and marketing all grades and types of coal.

In conducting Surface Coal Mining Operations, LESSEE'S rights and privileges shall include, but shall not be limited to, the following: the exclusive right and privilege to enter upon and use so much of the surface of the Leased Premises as is necessary, useful, and convenient for the full enjoyment of the mining and other rights herein granted, including the right to divert streams in accordance with applicable state and federal laws and the right to consume the surface of the Leased Premises, or any part thereof; the right to gather environmental and other data necessary or useful in obtaining any governmental permit or approval in order to exercise the rights granted hereunder; the right to construct, use, maintain, repair, replace, and relocate works, buildings, roads, plants and structures as may be necessary or convenient in the conduct of Surface Coal Mining Operations, including, but not limited to, such works, buildings, plants and structures as may be necessary, useful or convenient for the mining and preparation of coal for market or consumption or both; the right to free and uninterrupted use of easements and all rights-of-way for ingress and egress to and from the Leased Premises to which LESSOR may be entitled; the right to use and construct on the Leased Premises a rail siding and rail line for rail transportation; and the right to deposit (in accordance with

applicable state and federal laws) earth, rocks, waste, tailing or other by-product of development or operation, and similar material (hereinafter generally referred to as "spoil material") on any part of the Leased Premises as may be produced in connection with Surface Coal Mining Operations by LESSEE hereunder. Additionally, because the mining of coal from Pit 5 will require the operator to place a permanent deposit of spoil material outside of Pit 5, it is understood that Lessee may also make a permanent deposit of such spoil material on those certain lands more particularly identified in Schedule A-1 attached hereto and by this reference incorporated herein, providing such deposits are made in accordance with applicable state and federal laws.

LESSEE shall have full discretion, in the exploration, development, and operation of the Leased Premises.

Section 3. Term and Extension. This Lease is granted for the term of 5½ years from July 1, 1984, to December 31, 1989, unless sooner terminated as herein provided.

Section 4. Governmental Authorizations. LESSEE may make efforts to obtain rights, permits, rezoning, and other authorizations of every kind and nature whatsoever from governmental or private entities as may be necessary to conduct Surface Coal Mining Operations hereunder. LESSEE shall be solely responsible for these efforts, but LESSOR agrees to assist and cooperate fully with LESSEE in any and all such efforts upon request.

Section 5. Advance Royalty. LESSEE shall pay LESSOR the sum of ONE MILLION TWO HUNDRED SIXTY THOUSAND SEVEN HUNDRED DOLLARS (\$1,260,700) as the advance royalty payment, payable in twenty-two (22) quarterly installments commencing June 30, 1984. The LESSEE

shall pay LESSOR the advance royalty according to the following Schedule 1:

SCHEDULE 1

<u>Date Payable</u>	<u>Advance Royalty Installment</u>
June 30, 1984	\$63,750
October 1, 1984	63,750
January 1, 1985	56,660
April 1, 1985	56,660
July 1, 1985	56,660
October 1, 1985	56,660
January 1, 1986	56,660
April 1, 1986	56,660
July 1, 1986	56,660
October 1, 1986	56,660
January 1, 1987	56,660
April 1, 1987	56,660
July 1, 1987	56,660
October 1, 1987	56,660
January 1, 1988	56,660
April 1, 1988	56,660
July 1, 1988	56,660
October 1, 1988	56,660
January 1, 1989	56,660
April 1, 1989	56,660
July 1, 1989	56,660
October 1, 1989	56,660

The LESSEE's obligation for this advanced royalty payment shall continue independent of any production royalty due and payable to the LESSOR pursuant to Section 6.a. Advance royalties payable under

Section 5 of this Lease are intended to provide LESSOR with a set and definite minimum cash compensation irrespective of the amount of coal mined and removed from the Monarch, Dietz 2B, and Dietz 3 Seams by LESSEE and regardless of whether the LESSEE obtains the necessary permits or authorizations pursuant to Section 4, or whether this Lease is terminated prior to December 31, 1989. LESSEE shall, however, have the right to recoup such advance royalties from production royalties payable on coal mined or removed from the Carney and Masters Seams. All production royalties paid to LESSOR by LESSEE pursuant to Section 6.b shall be applied toward, credited against, and fully deductible from all amounts of advance royalties payable to LESSOR hereunder.

Section 6. Production Royalties. LESSEE shall pay to LESSOR as royalty for the surface coal mining rights and other privileges hereby leased a sum of money to be determined in accordance with the provisions of this Section 6, in proportion to LESSOR's ownership of the coal leased.

a. For coal in or under the Leased Premises which is mined or removed by surface mining methods after June 30, 1984, from the seams designated as the Monarch and Dietz 2B and Dietz 3 Seams by LESSEE, the production royalty payable to LESSOR shall be Fifty Cents (\$.50) per net ton of coal mined subject to quarterly adjustment as provided by Section 6.c.

b. For coal in or under the Leased Premises which is mined or removed by surface mining methods after June 30, 1984, from the seams designated as the Carney and Masters Seams by LESSEE, the production royalty payable to LESSOR shall be Twenty-Five Cents (\$.25) per net ton of

coal mined subject to quarterly adjustment as provided by Section 6c.

c. Production royalties provided for in Sections 6.a and 6.b shall be adjusted and escalated on a quarterly basis by an amount which is calculated by multiplying the production royalty by a fraction whose numerator is the average of the Consumer Price Index for the most recent three (3) month period ending with the end of the second month preceding the month of payment and whose denominator shall be the average Consumer Price Index for the three-month period ending with the end of the second month immediately prior to July 1, 1982 (which shall be and remain the denominator of the fraction utilized for each quarterly adjustment). As used herein, the term "Consumer Price Index" shall mean the following Price Index, or its successor index, published by the United States Bureau of Labor Statistics: "Consumer Price Index - U.S. City Average: All Items." For the purposes of this Lease, it is agreed that the 3-month average Consumer Price Index prior to July 1, 1982 was 284.83.

Section 7. Accounting and Payment of Royalties. All production royalties shall be accounted for and paid monthly on or before the 30th day of each calendar month, for all coal mined and removed from the Leased Premises during the preceding calendar month. LESSEE agrees to use, where available, the weights reported by the railroad transporting the coal to determine accurately the weight of all coal mined and removed from the Leased Premises. LESSEE also agrees to accurately sample such coal, and to accurately weigh or enter the weight or weights thereof if provided by the railroad, in due form in books to be kept and preserved for such purposes. LESSEE agrees to allow LESSOR, or its representatives, to

examine and inspect such records at all reasonable times, as well as any coal production reports furnished by LESSEE to the United States Government.

At the time of the monthly payments which may be due LESSOR for the mining operations hereunder LESSEE will furnish LESSOR a written statement showing the quantity of all coal mined and removed from the Leased Premises, and this statement shall be deemed to have been given if attached to or made a part of the royalty payment hereunder. LESSEE shall also furnish LESSOR with annual financial reports verifying the accuracy of any royalties paid under the terms of this Lease, and with annual tonnage reports of all coal mined and removed from the Leased Premises.

Section 8. Manner and Place of Payment. All payments required by this Lease to be made to the LESSOR shall be paid to LESSOR at the address as indicated hereinafter for the purpose of giving notices or at such other place as LESSOR may from time to time direct by notice given as herein provided.

Section 9. Water Rights. LESSEE agrees that any underground water or well rights acquired by LESSEE shall be acquired in the name of LESSOR and shall be owned by LESSOR subject to LESSEE's use during the term of this Agreement.

Section 10. Compliance With Law. LESSEE shall, to the best of its ability, obey and comply with all applicable laws of the United States of America and of the State of Wyoming, and with all rules, regulations, orders, and ordinances of any political subdivision, bureau, or department thereof relating to the use and occupancy of said Leased Premises or the conditions thereof and the coal exploration, development, and mining operations, and any and all conditions, activities, or operations related thereto, including all

such laws, ordinances, rules, orders, and regulations now in effect or made, enacted, or issued during the term hereof.

Section 11. Obligations of the LESSEE. Subject to the provisions of Section 22, LESSEE shall:

a. At all times maintain Workmen's Compensation Insurance coverage as required under the laws of the State of Wyoming for every workman or employee who performs work for LESSEE on the Leased Premises. In addition, LESSEE shall comply with all applicable statutes with respect to labor employed upon the Leased Premises, including laws relating to wages and hours and withholding of payroll taxes and contributions.

b. At its sole expense, purchase insurance protection covering all parties hereto, in connection with all activities conducted pursuant to this Lease, comparable to that provided under standard form insurance policies for (i) General Public Liability Insurance with bodily injury or death limit of not less than \$500,000 for injuries or death of any one person, not less than \$1,000,000 for injuries to or death of more than one person resulting from any one accident, and for property damage with a limit of not less than \$1,000,000 for damage to property for each accident; (ii) Automobile Public Liability and Property Damage Insurance with bodily injury or death limit of not less than \$100,000 for injuries to or death of any one person, not less than \$300,000 for injuries to or death of more than one person resulting from any one accident and property damage limit of not less than \$50,000 for damage to property for each accident; and (iii) adequate and reasonable insurance against the risk of fire and other

risks ordinarily insured against in similar operations. LESSEE shall insure that any independent contractor working in connection with the Leased Premises has adequate insurance in full force and effect.

c. Furnish to LESSOR evidence of such insurance coverage in the form of the insuring company's Certificates of Insurance, together with evidence that the insurance carrier has assumed the liability of LESSEE hereunder and waives any of the terms, conditions or exclusions contained in the insurance contract which might affect or detract from the coverage for assumed liability of the named insured either by furnishing to LESSOR a properly executed "Assumption of Contractual Liability" endorsement or by Certificate of Contractual Liability Insurance coverage endorsed to provide that the insurance carrier shall provide full coverage for liability assumed by the named insured under its described contract with LESSOR and to any obligation for which the insured or his insurance company may be held liable under any Workmen's Compensation, Unemployment Compensation or Disability benefits laws, or under any similar law. All Certificates of Insurance shall stipulate that LESSOR will be given ten days' written notice prior to any change, substitution or cancellation prior to the normal expiration date. Nothing contained herein shall preclude any party hereto from obtaining, at its sole expense and benefit, additional insurance covering risks not protected against by the coverage herein required. Any party obtaining such additional insurance shall promptly notify the other parties in order that there shall not be conflicts between coverage or overlapping coverages and shall ensure that any such coverage includes waiver of subrogation against any other parties.



d. Post or permit LESSOR to post upon the Leased Premises the usual nonliability notices provided by Wyoming law;

e. Promptly pay when due any and all bills in connection with items of machinery, supplies, and equipment as may be used in its operations hereunder and keep the Leased Premises, and all improvements thereon, free from all mechanics' and laborers' liens by virtue of its own acts;

f. Save, protect, defend, and hold harmless the LESSOR against any and all claims, demands, or judgments whatsoever for loss or damage to personal property and death or injury to persons arising out of LESSEE's activities or operations on the Leased Premises, excepting only such liability claims as may arise from the negligence of the LESSOR, its successors, assigns, employees, agents, or representatives. LESSEE's responsibility under this subsection "f." shall survive termination or expiration of this Lease; and

g. Conduct all its mining and other operations on the Leased Premises in a proper and workmanlike manner.

Section 12. Taxes. So long as this Lease continues in force, LESSEE shall be obligated to pay, and will pay in accordance with law, all property taxes and assessments which may be levied or assessed upon the Leased Premises; and LESSEE shall pay all taxes and assessments which may be levied or assessed upon improvements and personal property used, installed, or placed upon the Leased Premises by LESSEE, or upon the mining, transportation, sale, and use of coal and other materials by LESSEE, including any severance or excise

taxes payable thereon. Notwithstanding the foregoing, LESSEE, after giving notice to LESSOR of its intention to do so, shall have the right to contest the validity, amount, or basis of any assessment, fees, or levy required to be paid by it hereunder, in like manner as LESSOR could, by judicial proceedings, appeal, or otherwise, as LESSEE, in its sole discretion, may determine, before LESSEE shall be required by the LESSOR to pay the same.

Section 13. Inspection of Premises. LESSEE shall permit LESSOR, or its authorized representatives, to enter upon the Leased Premises, during normal business hours and at such times and upon such notice as shall not unreasonably hinder or interrupt operations or activities of LESSEE, to make surveys or otherwise to inspect the same for the purpose of determining whether the provisions of this Lease are being observed by the LESSEE. LESSOR shall enter upon the Leased Premises at its own expense.

Section 14. Surrender and Termination. LESSEE may surrender this Lease and terminate all rights and obligations (other than the obligation to pay advance royalties) hereunder at any time upon thirty (30) days written notice to LESSOR. Upon such event, or termination pursuant to any other provision of this Lease, any money paid by LESSEE hereunder as consideration or otherwise shall be retained by LESSOR and the LESSOR and its successors and assigns shall have no cause of action, except for any liability or obligation which has accrued prior to termination or is specifically provided elsewhere to survive such termination including, but not limited to, the provisions of Section 5. Upon termination pursuant to this Section 14 or any other provision of this Lease, LESSEE will release its interest in the Leased Premises to the LESSOR by executing and recording a surrender of this Lease, in good and sufficient form, as provided by Section 34-2-130, Wyoming Statutes (1977), as from time to time amended. It is expressly agreed and understood that none of

the equipment, machinery, structures, buildings, appliances, and other property of any nature which LESSEE may bring, place, or erect upon the Leased Premises during the term of this Lease shall become or be deemed part of the real or personal property of the LESSOR. In the event of any termination or expiration of this Lease, LESSEE shall furnish to LESSOR, within 60 days after such termination or expiration, copies of all factual exploration data developed by LESSEE as a result of its operations and activities on the Leased Premises pursuant to this Lease and not earlier furnished LESSOR by LESSEE, including but not limited to drill logs, surveys, maps, and results of analyses and other tests.

Section 15. Abandonment and Reclamation Procedure.

LESSEE agrees that it will, upon any termination or expiration of this Lease, perform within eighteen (18) months thereafter all abandonment, reclamation, and related procedures required by any applicable law or regulation. LESSOR agrees to allow LESSEE free and uninterrupted access to and use of the Leased Premises during such periods of time that LESSEE is conducting reclamation or other work pursuant to this Section, and no royalties, except advance royalties due under Section 5, or other payments shall be due LESSOR during the period following expiration or termination of this Lease in which such operations are conducted.

LESSEE also agrees to assume any and all abandonment, reclamation, and related procedural obligations of Big Horn Coal Company which arose pursuant to the Coal Mining Lease and Supplemental Coal Mining Lease Agreements by and between Big Horn Coal Company and LESSOR copies of which are herein attached as Schedule B attached hereto and by this reference made a part hereof.

Section 16. Notices. Any notice required or permitted to be given to LESSOR or to LESSEE hereunder shall be deemed properly

given and received upon delivering the same to the party to be notified, or upon depositing the notice in the United States mails, postage prepaid, registered or certified mail, return receipt requested, and addressed to such party at its address designated hereinbelow. Either LESSOR or LESSEE may from time to time change its address for future notices by giving notice as herein provided. Until otherwise specified by notice in writing, the addresses for such notice shall be:

If to LESSOR: c/o John T. Boyd Company  
Suite 1028  
1860 Lincoln Street  
Denver, Colorado 80295

If to LESSEE: One Thousand Kiewit Plaza  
Omaha, Nebraska 68131

Section 17. Assignment. LESSEE shall not have the right to assign or sublease any of its rights under this Lease, in whole or in part, without the prior written consent of LESSOR, except as follows: (1) to an entity which by merger, consolidation or other reorganization or transfer by operation of law or by purchase of the business of substantially all of the assets of LESSEE shall succeed to the rights and obligations of LESSEE; or (2) to a subsidiary or parent, or parent or subsidiary of a parent company. A subsidiary shall be any company in which at least 51% of the voting stock is held by the parent. LESSEE shall notify LESSOR of any contemplated assignment or sublease at least sixty (60) days prior to such transfer of rights becoming effective. The provisions of this Lease shall be binding upon any and all successors, assigns, or transferees of LESSEE, and any such assignment shall not relieve LESSEE or its successors or assigns of any obligation hereunder except as agreed to in writing by the LESSOR.

The rights of LESSOR hereunder may be assigned in whole or in part, provided that no change in or division of ownership of the Leased Premises or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of LESSEE. LESSEE shall never be required to make payments or render notices or reports to more than one party. No change or division in the ownership of the Leased Premises or royalties shall be binding upon LESSEE for any purpose until any person or entity acquiring an interest furnishes LESSEE with the instrument or instruments, or certified copy thereof, constituting claim of title from the original LESSOR.

Section 18. Events and Consequences of Default. Each of the following events shall constitute a default on the part of LESSEE with respect to its obligations hereunder and a breach of this Lease:

a. The failure to pay the advance royalty herein due or any part thereof.

b. The failure to pay the production royalty herein reserved or any part thereof within 30 days after the same shall become due.

c. Subject to the provisions of Section 20 of this Lease concerning force majeure, the failure to observe or perform any of the other covenants, agreements, and obligations herein contained on the part of the LESSEE to be observed and performed, and the continuance of such failure for a period of 60 days after written notice thereof has been given by LESSOR to LESSEE.

d. Subject to the provisions of Section 20 of this Lease concerning force majeure, the adjudication of

LESSEE as a bankrupt or insolvent; or the appointment of a receiver for all or substantially all of LESSEE's business or assets on the ground of LESSEE's solvency; or the appointment of a trustee for LESSEE after a petition has been filed for LESSEE's reorganization under the Bankruptcy Act of the United States; or an assignment by LESSEE for the benefit of its creditors.

In the event any default described in paragraph (c) above for which notice has been given as aforesaid, because of its nature, cannot be cured completely or is not cured completely within the period of grace heretofore allowed, such default shall be deemed to have been remedied for the purpose of this Section 18 if the correction thereof shall have been commenced within said grace period or periods and shall when commenced be diligently prosecuted to completion.

If LESSEE shall at any time fail to make any payment (other than the payment of production or advance royalties) or perform any other act or agreement on its part to be made or performed as in this Lease provided, then upon the expiration of the grace period set forth above, LESSOR, without waiving or releasing LESSEE from any obligations of LESSEE in this Lease contained may, at its option, make any such payment or perform any other act or agreement on the part of LESSEE to be made and performed as in this Lease provided, in such manner and to such extent as LESSOR may deem desirable. All sums so paid by LESSOR and all necessary and incidental expenses and costs (including reasonable attorneys' fees) in connection with the performance of any such act or agreement by LESSOR shall be deemed additional royalty hereunder and shall be payable to LESSOR on demand. LESSOR shall have, in addition, any other right or remedy for arrears of royalties or for damages sustained by reason of the aforesaid default.

Upon the occurrence of any such default and the expiration of the grace period set forth above, LESSOR may, at its option, terminate this Lease by giving written notice thereof to LESSEE. Upon such termination, LESSEE shall surrender its interest in the Leased Premises as provided in Section 14 hereof, and LESSOR may then or at any time thereafter bring an action for possession of the Leased Premises, or any part thereof, as provided by law. From and after such termination LESSEE shall be under no further obligation or liability hereunder to LESSOR, except for the performance of obligations and the satisfaction of liabilities accrued hereunder prior to the date of such termination, including the obligation to perform any reclamation work under the provisions of Section 15 of this Lease and the payment of the total advance royalty.

Section 19. Confidentiality. Notwithstanding any other provision of this Lease, LESSEE shall not be obligated to furnish or allow LESSOR access to any interpretative data dealing with or related to geologic concepts or other internal proprietary data, information or analysis. Each party agrees to treat all information acquired hereunder as confidential and neither party shall, during the life of this Lease and for a period of three (3) years following expiration or termination hereof, use the name of the other party or disclose information acquired hereunder in any document or release of information to any third party or the public without first obtaining the written approval of the other party, which approval shall not be unnecessarily withheld.

Section 20. Force Majeure. Except as to the obligations hereunder to secure governmental authorization to commence mining, to pay production royalties, and to make advance royalty payments as set forth in Sections 4, 5, and 6, LESSEE shall not be liable or in default under any provision of this Lease for failure to perform any of its obligations hereunder and this Lease shall not be deemed to

have terminated, if such performance is suspended or prevented by any cause defined herein as a "force majeure." For purposes of this Lease, the term "force majeure" shall include, without limitation, law, ordinance, governmental regulations, restraint, or court order; inability to obtain permits, licenses or any necessary governmental authorization; scarcity or inability to obtain fuel; strikes and lockouts or other industrial disturbances; failure of carriers to transport or furnish facilities for transportation; fire, storm, flood, washout, explosion, war, blockade, insurrection, and riots; and acts of God or acts of the public enemy.

The duration of this Lease and of the time for completion of performance by LESSEE of any of its rights, obligations, and options under this Lease, shall be extended for a period equal to the period of the disability, provided that in no event shall such extension of time exceed two calendar years following the event of force majeure. All periods of force majeure shall be deemed to begin at the time LESSEE stops performance hereunder by reason of force majeure. LESSEE agrees to use reasonable diligence to remove any such force majeure as may occur; provided that LESSEE shall have the right to determine and settle any strikes, lockouts or industrial disturbances in its sole discretion and nothing in this Section 20 shall require LESSEE to accede to any demand or position of any other party involved in such strikes, lockout or industrial disturbance.

LESSEE shall continue to pay advance royalties on a quarterly basis, and production royalties on a monthly basis as provided in Sections 5 and 7, throughout the period of disability caused by force majeure and thereafter.

Section 21. Title. LESSOR warrants and agrees to defend title to the Leased Premises against any and all persons that may claim by, through, or under LESSOR, and will make available to LESSEE



such title information as LESSOR now has in its possession concerning said Leased Premises. LESSEE may obtain continuations of such title information and perform title curative work in its own discretion and at its own expense. There shall be no obligation on the part of LESSOR to do any curative work in connection with title to the Leased Premises, except to the extent title is warranted in this paragraph.

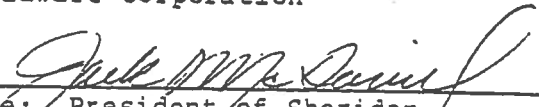
Section 22. Arbitration. All disputes between LESSOR and LESSEE regarding the interpretation of this Lease or the performance of any of its provisions shall be settled by arbitration. The arbitrator shall be chosen according to the rules of the American Arbitration Association, and the hearing shall be held, unless otherwise mutually agreed, in Denver, Colorado. The determination of such arbitrator shall be final. The laws of Wyoming shall apply to this paragraph and to the hearing, and the expenses of arbitration shall be borne by the unsuccessful party thereto. No disagreement, controversy, or arbitration proceeding shall interrupt the operations contemplated by this Lease. Such operations may be continued and settlements and payments may be made hereunder pursuant to the provisions of Sections 5 and 7 until the matters in dispute shall be finally determined by arbitration, as aforesaid, and thereupon payments or restitution shall be made in accordance with the decision of the arbitrator.

Section 23. Miscellaneous. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns who become such in accordance with the provisions hereof. This Lease shall be governed by the laws of the State of Wyoming. The parties hereto may, by mutual written agreement, from time to time amend this Lease and any of the terms hereof. The parties hereto agree to execute all such further documents and do all such further acts as may be necessary to give full effect to this Lease, including the execution and recording of a

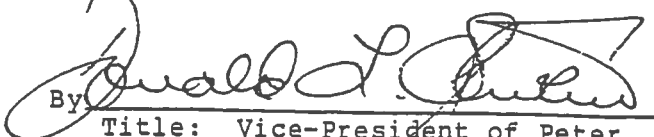
memorandum counterpart hereof. This is the entire agreement between the parties hereto and no modification shall be effective unless in writing and executed by the parties hereto. Titles to the respective Sections hereof shall not be deemed a part of this Lease, but shall be regarded as having been used for convenience only. The term "LESSOR" as used in this Lease applies individually and collectively to all owners of the Leased Premises executing this Lease or counterparts hereof. All payments by LESSEE to LESSOR hereunder shall be paid as provided in Sections 7 and 8 hereof, and shall be divided among said owners, as their several interests may appear.

IN WITNESS WHEREOF, the parties hereunto have caused this Lease to be executed as of the date first above written.

LESSOR:  
SHERIDAN-WYOMING COAL COMPANY, INC.,  
a Delaware corporation

By   
Title: President of Sheridan-  
Wyoming Coal Company, Inc.

LESSEE:  
PETER KIEWIT SONS' CO., a Nebraska  
corporation

By   
Title: Vice-President of Peter  
Kiewit Sons' Co.

STATE OF Connecticut )  
COUNTY OF Fairfield ) SS.

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of May, 1983, by Jack D. McDaniel, as President of Sheridan-Wyoming Coal Company, Inc., a Delaware corporation.

WITNESS my hand and official seal.

My commission expires 3/31/87.

Florence D. Verrier  
Notary Public

[SEAL]

STATE OF Nebraska )  
COUNTY OF Douglas ) SS.

The foregoing instrument was acknowledged before me this 10 day of June, 1983, by Ronald L. Stum, as \_\_\_\_\_ Vice-President of Peter Kiewit Sons' Co., a Nebraska corporation.

WITNESS my hand and official seal.

My commission expires 9/2/83.

J. S. Teplitsky  
Notary Public

[SEAL]



# Exhibit B



**BIG HORN COAL COMPANY  
10980 SOUTH JORDAN GATEWAY  
SOUTH JORDAN, UT 84095**

January 25, 2017

Wyoming Department of Environmental Quality  
Land Quality Division  
200 W. 17<sup>th</sup> Street  
Cheyenne, WY 82002

ATTN: Mr. Alan Edwards, Assistant Administrator

**RE: Objections to Proposed Brook Mine Permit Application, Sheridan County,  
Wyoming**

Dear Mr. Wendtland,

Big Horn Coal Company (BHCC) writes to provide objections to the Brook Mine permit application.

During the course of our review, we discovered that the information was inconsistent among the locations noted in the public notice. We advised Brook Mine's legal counsel of the inconsistency on December 20, 2016. We are not aware if the information was updated to correct the inconsistency between the locations.

Our objections are based upon what BHCC believes to be the most accurate, up-to-date information and relate primarily to the permit application's lack of adequately addressing hydrologic issues that could significantly affect existing and future water rights, the quantity and quality of surface water and groundwater within and adjacent to BHCC, the potential for coal seam fires to erupt in both the open pit and subsurface openings and the potential for miner safety and environmental harm proposed in the permit Mine Plan. The objections are referenced to text section headings, exhibits and addenda of the permit application Mine and Reclamation Plan.

**Objection No. 1 – Mine Plan & Rec Plan Review**

Big Horn Coal has reviewed the proposed mine and reclamation plan and is concerned with the general lack of detail contained in the proposed plan. It appears that no sampling, testing or analytical work of any sort has been performed to support the surface and highwall mine designs and plans. It is Big Horn Coal's opinion that excavating in the area, surrounding the Big Horn Mine will create a large safety concern and environmental

liability as the TR-1 trench cut could become inundated with water from the historic backfill of the BHCC spoils of Pit 1 and Pit 2.

BHCC would like to put on record that it is providing written notice of its concerns so Brook Mine and other affected parties have notice and are aware of these issues and that Big Horn Coal is not responsible for any personal, property or environmental damage or other loss due to the disturbance activities associated with the Brook Mine, its affiliated companies or successors in interest.

BHCC has not consented to overlapping permit boundaries nor has it been indemnified of any disturbance related to Brook Mine's proposed activities as it relates to the reclamation obligations and BHCC's reclamation liabilities.

**Objection No. 2 – Section MP.4; Exhibit MP.4-1; Section MP.5; Section MP.13; Addendum MP-6**

Section MP.4 and Exhibit MP.4-1 provide plans for the development of a highwall mining trench through and the development of highwall mining panels beneath reclaimed backfill of BHCC Pits 1 and 2 adjacent to Goose Creek and the Tongue River in the southeastern portion of the Brook Mine permit area. The trench would penetrate through the bottom of the backfill allowing mining of Carney coal found about 70 feet beneath the backfill. The backfill of the proposed trench area averages about 90 feet thick. The northeast corner of the highwall panel area appears on Exhibit MP.4-1 to be equivalent to the Brook Mine permit boundary, and would be less than 100 feet from the bank of the Tongue River. On Figure MP-6.1-1 of Addendum MP-6, the highwall mining panels are shown even closer to the Tongue River channel, and the reason for the disparity between the figure and Exhibit MP.4-1 is unexplained. BHCC is very concerned over and objects to the permit's disturbance, affected and permit boundaries all being equivalent to the mining panel boundary in this most environmentally sensitive area adjacent to the bank of the Tongue River. The affected area boundary shown on Exhibit MP.4-1 around the other proposed mining panels typically extends well beyond the disturbance boundary for reasons unexplained in the Mine Plan.

Mine Plan Section MP.4, together with all Mine Plan text inclusive of Section MP.13 and Addendum MP-6, are silent on the subject of the special textural and hydrologic characteristics of the proposed southeastern highwall mining area in Sections 15 and 22, T57N, R84W. The area is unique in that the strata overlying the coal to be mined includes a thick layer of unconsolidated, saturated backfill exhibiting shallow groundwater elevations of 20 feet or less below ground surface where existing ground elevations are 3600 feet and lower. The water surface in BHCC's postmining Reservoir 14 in the SESE Sec. 15 is an expression of the groundwater table. The groundwater throughout Pits 1 and 2 is directly connected to and recharged by Goose Creek and the Tongue River, as documented in the Big Horn Mine's Reclamation History, Groundwater Restoration Demonstration (GRD) approved by the WDEQ/LQD as Change No. 9 to Permit 213-T5 in August 2002. The GRD verifies that the Pits 1 and 2 backfill resaturated very rapidly, indicative of unconsolidated, porous material connected to perennial stream recharge sources nearby. Mine Plan Section MP.4 is silent on the subject of managing massive sloughing that may occur in the saturated and nonsaturated backfill of the southeastern highwall mining area as the highwall mining trenches are excavated through the backfill to the base of Carney coal. Section MP-5 of the Mine Plan also fails to present an

alternative water management and treatment plan to be followed should groundwater inflow volumes exceed infrastructure design capacities.

BHCC finds the assessment of potential land subsidence and the remediation plan presented for land subsidence in Addendum MP-6 to be inadequate relative to protecting the value and function of its lands, particularly for protecting the stability of the Tongue River and the quality of shallow groundwater connected to the river. Addendum MP-6 does not absolutely discount the possibility of land subsidence above the highwall miner holes, nor does it provide a plan for the discontinuation of any southeastern area highwall mining should subsidence occur in the lowlands contiguous to Tongue River or Goose Creek. The environmental implications of subsidence developing adjacent to Tongue River and Goose Creek are so severe as to warrant, at a minimum, a permit commitment to temporarily or permanently cease all mining throughout all of the southeastern highway mining area should any subsidence develop in any of the area at any time. The permit's plan for "backfilling will commence within 12 months of a subsidence location being identified if self-healing is not providing sufficient remediation" (Section MP-6.4, Addendum MP-6) is environmentally unacceptable for the southeastern highwall mining area because: 1) the stability and alignment of Goose Creek and Tongue River could be jeopardized should subsidence occur, and; 2) any groundwater quality impacts associated with underground coal fires developing in mine openings would have direct and essentially immediate access to Goose Creek and Tongue River via the shallow groundwater table.

The subsidence control plan presented in Addendum MP-6 is inadequate. It appears that no analytical work of any sort (sampling, material testing, etc.) has been performed in support of the highwall mining design presented in the mine plan. Additionally, it also appears that no geotechnical work of any sort has been performed. Addendum MP-6 discusses general assumptions for highwall mining penetration depths, entry widths, cutting heights and support pillars. This information is presented somewhat anecdotally and in the case of the support pillars, it states that "Support pillars will be designed to have a width equal to or exceeding the maximum extraction thickness anticipated in a highwall mining hole based on the mine's geologic model. This width-to-height ratio of at least 1:1 results in pillar stability factors that exceed recommended values suggested by National Institute for Occupational Safety and Health's (NIOSH) ARMPS-HWM stability program for the overburden thicknesses expected. Pillar dimension will also be in accordance with Brook Mine's Ground Control Plan approved by MSHA."

No material strength data (coal strength, overburden strength, interburden strength, etc.) is provided in the mine plan document. BHCC suspects that no material strength information has been gathered or determined. Can the NIOSH stability factors actually be achieved? This is unknown at this point as no definitive geotechnical and material strength data has been presented in the mine plan. The coals present in this area are of a younger age. Younger age coals have much weaker strengths than older age, deeper coals and it is quite possible that the safety and stability factors needed to safely and effectively execute the highwall mining approach presented in the mine plan cannot be achieved. BHCC insists that further analysis be performed to definitively prove that the web and barrier pillars dimensions are appropriate and that they will meet NIOSH's minimum stability factor of 1.3.

Very little highwall mining has been performed in Wyoming. Highwall mining has been performed relatively recently at the Bridger Mine, which is located in Southwest Wyoming.



While the exact details are unknown, BHCC is aware of at least one “cascading pillar failure” at that operation and fortunately, there were no injuries. It is suspected that this failure was caused by improper pillar layout and design. BHCC is concerned that the anecdotal mine design presented in this document is inadequate and must be performed with proper analytical data.

**Objection No. 3 – Section MP.5.9; Section MP.6.2; Addendum MP-3; Section MP.8**

The groundwater model of Addendum MP-3 was improperly constructed and executed because the model does not recognize the unique textural and hydraulic characteristics of saturated backfill in BHCC’s Pits 1 and 2, but instead simulates the backfill in the same fashion as native overburden strata (see Section 4.0 of Addendum MP-3). Section 2.5.1 of Addendum MP-3 states “no site-specific hydraulic conductivity information is available for the over/interburden (model) layers”. In fact, hydraulic conductivity data are available for the backfill from former monitor wells in the Pit 1 and Pit 2 area and for the Plachek Pit backfill. That data are provided in the GRD referenced under Objection No. 1 above. Hydraulic conductivity values assigned to the spoils together with all other “overburden” strata in the model are very small (less than one tenth) relative to those shown for backfill in the GRD. The groundwater model ignores determination of the spatial extent of drawdown in the water table of Pit 1 and Pit 2 backfill that is connected to the water table in Tongue River and Goose Creek alluvium, which in turn is supplied by flows in both streams. The text of Section MP.6.2.3 states “Drawdowns of the overburden were not modeled and only isolated sands where encountered are expected to be affected”.

Section 4.9 and Figure 4.9-11 of Addendum MP-3 shows where the groundwater model was used to predict water table drawdown in Tongue River valley alluvium at “alluvial target” points distributed over nearly a six-mile reach of the valley floor. Section 4.9 states that “the maximum impact to the Tongue River alluvium is conservatively estimated to reach 2.5 feet of drawdown near the river”. Addendum MP-3 and Section MP.6.2 provide no description or drawing of the spatial distribution of drawdown during mining in BHCC’s saturated backfill or in the alluvium of Tongue River and Goose Creek that is hydraulically connected to the backfill. Neither does the groundwater model explore potential permanent groundwater elevation changes associated with the highwall mining panels acting as drains to the backfill and alluvial water table via the highwall trench pits. Water table drawdown approaching 2.5 feet in the alluvium of Tongue River valley over a valley distance of nearly six miles would in fact represent a very large volume water loss that would likely cause stream flow losses.

The groundwater model of Addendum MP-3 fails to report groundwater inflow rates to any of the proposed mine excavations. Section MP.8 of the Mine Plan states “It is estimated that the total water use will be approximately 400 million gallons per year.” This is equivalent to an average daily use rate of 760 gallons per minute, about 3.36 acre-feet per day, or about 1,226 acre-feet per year. The Mine Plan does not identify the specific source(s) of the water beyond mentioning that “Industrial water will be obtained from groundwater wells or from water collected in sediment and flood control reservoirs”. The groundwater model of Addendum MP-3 does not include the effects of withdrawing any groundwater from wells for industrial or other uses, nor does it include the effects of dewatering wells mentioned in Section MP.5.9. In short, the Mine Plan is devoid of a hydrologic budget identifying specific groundwater sources, the quantity of industrial

water projected to be available from flood control reservoirs and sediment ponds, and the determination of what would remain of groundwater and surface water supplies while supplying the industrial water needs. BHCC is concerned that the value of its surface estate and future options for developing its surface estate could be marginalized by such a large water use demand, especially considering that water demands at Wyoming coal mines are primarily consumptive.

#### **Objection No. 4 – Section MP.11; Addendum MP-5**

The fire control plan referenced in Section MP.11 and presented in Addendum MP-5 describes measures to be taken to prevent and control fires in the mine pits, fires in the mine's processing and shop facilities, equipment fires and rangeland fires. BHCC objects, however to the Mine Plan and Addendum MP-5 not providing plans to control and extinguish new subsurface coal fires that may develop or existing subsurface coal fires that may become rekindled or enlarged as a result of the highwall mining panels that will be opened outboard of the highwall trench openings.

Attachment 1 provided with this Objection No. 4 is a drawing showing the approximate extent of underground coal mine fires in the area of proposed highwall mining in Sections 10 and 15, T57N, R84W, as reported by the U.S. Geological Survey in 1980. The fires in this particular area originated with mining of the Monarch coal. This and other nearby historic underground mines have long been known to exhibit numerous subsidence features and underground coal mine fires, and in the late 1980s BHCC received approval from the WDEQ/LQD to permanently place nearly 10 million bank cubic yards of overburden over the area shown on Attachment 1 in an attempt to reclaim the subsidence and control the fire. That unique reclamation feature is known as the Pit 3 Subsidence Dump in Big Horn Mine's reclamation history. The proposed highwall mining will develop mine openings in the Carney and Masters coal seams beneath the Monarch seam in areas that are known to still exhibit evidence of underground coal fires. Plumes of steam and smoke have been observed again over the general area of Sections 10 and 15 this winter of 2016-2017. These observations indicate that, in places, the perimeter of the historic subsurface coal seam fires has expanded notable distances from the referenced 1980 boundary delineation.

The subsidence control plan of Addendum MP-6 does little to guarantee the long-term protection of BHCC's surface estate especially where highwall mining panels will be driven beneath underground coal mine fires having a long history of activity. Section MP-6.2 of Addendum MP-6 provides numerical calculations for subsidence chimney heights, but there is no investigation of the potential that the historic mine fires may have compromised the structural integrity of strata underlying the fires and overlying the coals targeted for highwall panel mining (the interburden), leaving the interburden more prone to subside than normal. BHCC is particularly concerned and objects to highwall mining beneath or adjacent to pre-existing underground mine fires because of the potential for oxygen and water to be transmitted from the highwall mining openings to "hotspots" in the seams already burning via highwall trenches or via fractured or subsided interburden above the panel openings. BHCC strongly disagrees with the legitimacy of the plan stated in Section MP-6.4 of Addendum MP-6 which states "Backfilling will also be performed if it is determined that the introduction of water and oxygen could contribute to spontaneous ignition of the remaining coal not extracted from the highwall mining operations". BHCC

contends it to be common knowledge in the mining industry that oxygen and water are key catalysts in causing spontaneous combustion in coal, whether the coal be in mine openings or in stockpiles. BHCC also believes that the introduction of additional water and air to a coal seam already on fire is especially problematic.

Section MP-6.3 of Addendum MP-6 commits to maintaining highwall mining mapping and subsidence documentation in a subsidence report that will be available for inspection. BHCC objects to the Mine Plan not committing to freely submitting the highwall mining mapping and subsidence documentation report to all owners of surface estate within the Brook Mine permit area. BHCC also objects to the fact that the Subsidence Monitoring and Assessment reporting of Section MP-6.3 does not include mapping, photographing and describing all evidence of surface or underground coal fires occurring within the Brook Mine permit area whenever such evidence becomes available throughout the life of the mining and post-mining periods.

**Objection No. 5 – Section MP.1.3; Exhibit MP.1-1**

The mine plan on Page MP-5, identifies the “disturbance boundary includes all lands that will be physically and directly disturbed during mining.” Exhibit MP.1-1 shows the disturbance boundary as a dashed orange symbol that outlines an entire pink hatched polygon, identified as “DISTURBANCE FOR YEAR 2016,” located in Sections 15, 21, 22 and 27 of Township 57 North, Range 84 West.

Within the pink hatched polygon, there are existing assets to Big Horn Coal Company. These assets include a rail spur, water tank, pump house, access roads, fences and land owned by BHCC. Also within the pink hatch polygon is the mainline of the Burlington Northern Railroad and associated lands owned by Burlington Northern.

Based on the definition of Disturbance Boundary as indicated on page MP-5, does Brook Mine indeed have the rights to physically and directly disturb these lands within the pink hatched polygon? From the public record, BHCC has not been able to determine whether Brook Mine has secured surface owner consent from all surface owners, including the railroad, for these activities

**Objection No. 6 – Section MP.1.5**

The mine plan states on Pages MP-5 and continue onto page MP-6 that “Coal will either be temporarily stored in the pit or directly hauled off site.”

There is no mention in the permit as to where the coal will be hauled off site. Additionally there is no known agreement with the County of Sheridan, indicating approval to haul mineral across county roads.

**Objection No. 7 – Section MP.1.9**

The mine plan states on Pages MP-7 that “The Brook Mine will operate in conjunction with Taylor Quarry (Permit No. SP-757)... The Mine will work with Taylor Quarry to minimize impacts on Taylor Quarry’s operation.”

The following paragraph states “The Brook Mine will not obstruct Big Horn Coal’s (Permit 231-T8) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal’s 2015 Annual Report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1.

To remain consistent with the statements made in regards to the Taylor Quarry, Big Horn Coal requests that the paragraph referencing Big Horn to be replaced and restated as follows:

“The Brook Mine will operate in conjunction with the Big Horn Mine and that the Brook Mine will work with Big Horn Coal to minimize impacts to Big Horn Coal operations. Specifically, Brook Mine will not obstruct Big Horn Coal’s (Permit 213-T8) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal’s 2015 Annual Report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1.”

Big Horn Coal requests that the text be updated in the previous paragraph to reference the correct permit number for Big Horn Coal Company as (Permit 213-T8).

**Objection No. 8 – Section MP.3.1, Section MP.3.1.3 – Roads; Exhibit MP.3-1**

As stated in the mine plan on Page MP-11, “Primary roads are any road used for transporting mineral or spoil, or frequently used for access or other purposes for a period in excess of six months, or roads to be retained for postmining use.”

WDQ/LQD Rules and Regulations (R&R) Chapter 4, Section 2(j)(vii):

Primary roads.

(A) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Administrator by a registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road.

Mine plan Exhibit MP.3-1, titled Transportation Network identifies proposed primary haulroads as a solid black line, for the use of transporting mineral or spoil. Yet, there are no haulroads identified in the SE quarter of Section 15, Sections 21, 22 or 27. If the Brook Mine plans to haul mineral or spoil materials from the proposed Trench Cut (TR-1), there should there be indication of a primary haul road leaving TR-1, accompanied by a certification of the road design. Unless there are no plans of transporting mineral or spoil from the TR-1 area.

**Objection No. 9 – Section MP.4.2.3 – Stockpiles; Exhibit MP.4-3**

The mine plan states on Page MP-16, “Stockpiles will not be constructed on unsuitable backfill.”

Mine plan Exhibit MP.4-3, Stockpile Locations identifies Topsoil Stockpile TS-1B proposed location within an area known as the Placheck Pit. This area was mined by Big Horn Coal from 1956 through 1963. It is Big Horn Coal's understanding that the proposed area beneath TS-1B is indeed unsuitable material and that topsoil should not be placed in the area as proposed on Exhibit MP.4-3. Additionally, Big Horn Coal is not aware of a surface owner consent document between Brook Mining Company and the Burlington Northern Railroad that would allow the crossing of the mainline with loaded haul trucks.

**Objection No. 10 – Section MP.6.1; Exhibit MP.7-1**

Exhibit MP.7-1 represents the operational Surface Water and Groundwater Monitoring Program. There are only two downstream surface water monitoring sites, identified as Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir. The text on page MP-41 of the Mine Plan states "However, the Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir will be disturbed by facilities disturbance."

Big Horn Coal believes there is inadequate downstream monitoring in the proposed plan. Upon disturbing of Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir, there will be no sites downstream of the Brook Mine to collect adequate surface and groundwater data to prove that there are no off site environmental impacts from the proposed operation.

**Objection No. 11 - Addendum MP-2, Exhibit MP-2**

The proposed Sediment Pond SP-8 is located within the current postmine approved Reservoir 14 constructed by BHCC. The bottom elevation of Reservoir 14 is currently at 3575 with a peak elevation at 3589. Sediment Pond SP-8 bottom elevation is proposed at 3585 with a high water elevation proposed at 3590. It is noted below the area capacity table on Exhibit 13, "1. Pond is entirely incised. No Spillway hydraulics are provided."

These elevations lead BHCC to believe the plan for construction of SP-8 will require Reservoir 14 to be completely backfilled prior to construction of SP-8. BHCC requests that the reconstruction and the water quality within Reservoir 14 be restored to pre-mining conditions before final bond release is allowed.

**Objection No. 12 – Exhibit MP.4-1; Exhibit MP.4-2; Exhibit MP.4-5; Exhibit RP.5-1**

The proposed mine plan indicates that topsoil and overburden removal will occur upon the BHCC Property and within the TR-1 area in years 1 and 2 of operation. Exhibit MP.4-1 shows coal removal to occur over the same first two years of operation. Exhibit MP.4-5 shows the overburden backfill sequence within TR-1 will occur in year 2. Exhibit RP.5-1 shows the topsoil replacement sequence within the BHCC Property occurring in years 12-16.

BHCC objects to this timeline of topsoil replacement upon its property. The BHCC property is the first to be disturbed and the last to be reclaimed. BHCC asks the question as to why every other proposed disturbance area is backfilled and topsoiled within a 2 to 3 year time frame except around the BHCC facilities area. The topsoil replacement timeframe is unacceptable and not contemporaneous in accordance with the Surface Mining Control and Reclamation Act, (SMCRA) and it is requested that the final

reclamation around the BHCC Property be within the 2 to 3 year time frame, similar to all other areas around the mine.

**Objection No. 13 – Section MP.1.2.1; Figure MP.1-2.**

Section MP.1.2.1 discusses the work that will be done to “prepare for highwall mining” and describes how the “trenches” will be constructed to “create working areas for highwall mining equipment”. This section of the mine plan states that “The highwalls will have a 65-degree bench slope to provide a stable trench environment. Where the trench intersects the burnt Monarch coal seam, a 35-foot wide safety bench will be added. Where the Carney and Masters coal seams come close to convergence, a vertical wall will be used to maintain the desired pit width.” Earlier, under Objection No. 2, BHCC discussed the presence of saturated backfill where trench TR-1 is planned to be excavated. Section MP.1.2.1 does not address in any fashion the fact that trench TR-1 will be constructed in an area containing a significant amount of saturated backfill material. In our opinion, utilizing a 65-degree bench slope in this material will be impossible as the saturated backfill will not safely at this angle. Furthermore, no geotechnical information (sampling, testing or analysis) supporting slope stability assumptions for the surface mining or highwall mining operations have been provided in the mine plan. BHCC finds the information regarding highwall bench slope angles presented in MP.1.2.1 to be inadequate given the variability of non-coal material that will be encountered during excavation of trenches in support of the highwall mining operation.

**Objection No. 13 – Section MP.1.2.1; Figure MP.1-2.**

Section MP.1.2.1 discusses the work that will be done to “prepare for highwall mining” and describes how the “trenches” will be constructed to “create working areas for highwall mining equipment”. This section of the mine plan states that “The highwalls will have a 65-degree bench slope to provide a stable trench environment. Where the trench intersects the burnt Monarch coal seam, a 35-foot wide safety bench will be added. Where the Carney and Masters coal seams come close to convergence, a vertical wall will be used to maintain the desired pit width.” Earlier, under Objection No. 2, BHCC discussed the presence of saturated backfill where trench TR-1 is planned to be excavated. Section MP.1.2.1 does not address in any fashion the fact that trench TR-1 will be constructed in an area containing a significant amount of saturated backfill material. In our opinion, utilizing a 65-degree bench slope in this material will be impossible as the saturated backfill will not safely stand at this angle. Furthermore, no geotechnical information (sampling, testing or analysis) supporting slope stability assumptions for the surface mining or highwall mining operations have been provided in the mine plan. BHCC finds the information regarding highwall bench slope angles presented in MP.1.2.1 to be inadequate given the variability of non-coal material that will be encountered during excavation of trenches in support of the highwall mining operation.

**Objection No. 14 – Section MP.4.4.1**

It is a well-known fact within the mining industry that the term “Reserves” connotes that the mineral being extracted can be done so economically. BHCC opines that the mining approach presented in the mine plan cannot be done economically. Based on our internal

knowledge; the operating cost for a contractor to perform highwall mining is in the \$8/Ton to \$12/Ton range, which is very close to the domestic spot price for this type of coal. By the time the other costs for the surface mining to develop the highwall mining, transportation, G&A, etc. are taken into consideration, this operation appears to be completely uneconomical.

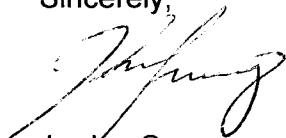
The market for this coal is unclear. The two closest coal mines, Decker and Spring Creek, serve the domestic and international market. Port capacity to the international market is constrained and it is unlikely that Brook Mine will secure access. Domestic demand has been in decline and is significantly oversupplied. Without a definitive market, the Brook Mine is at risk of commencing operations, producing product it cannot sell economically, and reclamation obligations that it cannot fund.

**Objection No. 15 – Section MP.15**

Objection No. 4 above introduces the fact that the underground mine fires in this area are still burning and have expanded. Section MP.15 does not, in any way, address that the burned areas have expanded. A surface mine excavation that comes in contact with a historic mine fire could be catastrophic in many ways, including: impacting the safety of mine workers, damage to equipment, wildfire initiation, etc. BHCC believes this mine plan has not adequately addressed surface mining activities that will occur near underground mines and insists that the Brook Mine operators must perform the necessary testing and analysis to prove that the proposed mine plan will not be impacted by historic mine fires. Specifically, attachment 1 provided with Objection No. 3 above shows that trench TR-2 is planned very near an area that was burning and is likely still burning. Given that the burned area has likely expanded, this area should not be disturbed at all.

In conclusion, Big Horn Coal Company feels strongly that the Brook Mine permit application should not be approved or deemed technically complete. The mine and reclamation plan lack a significant amount of detail that is required for a technical completeness determination, as stated in the above mentioned objections.

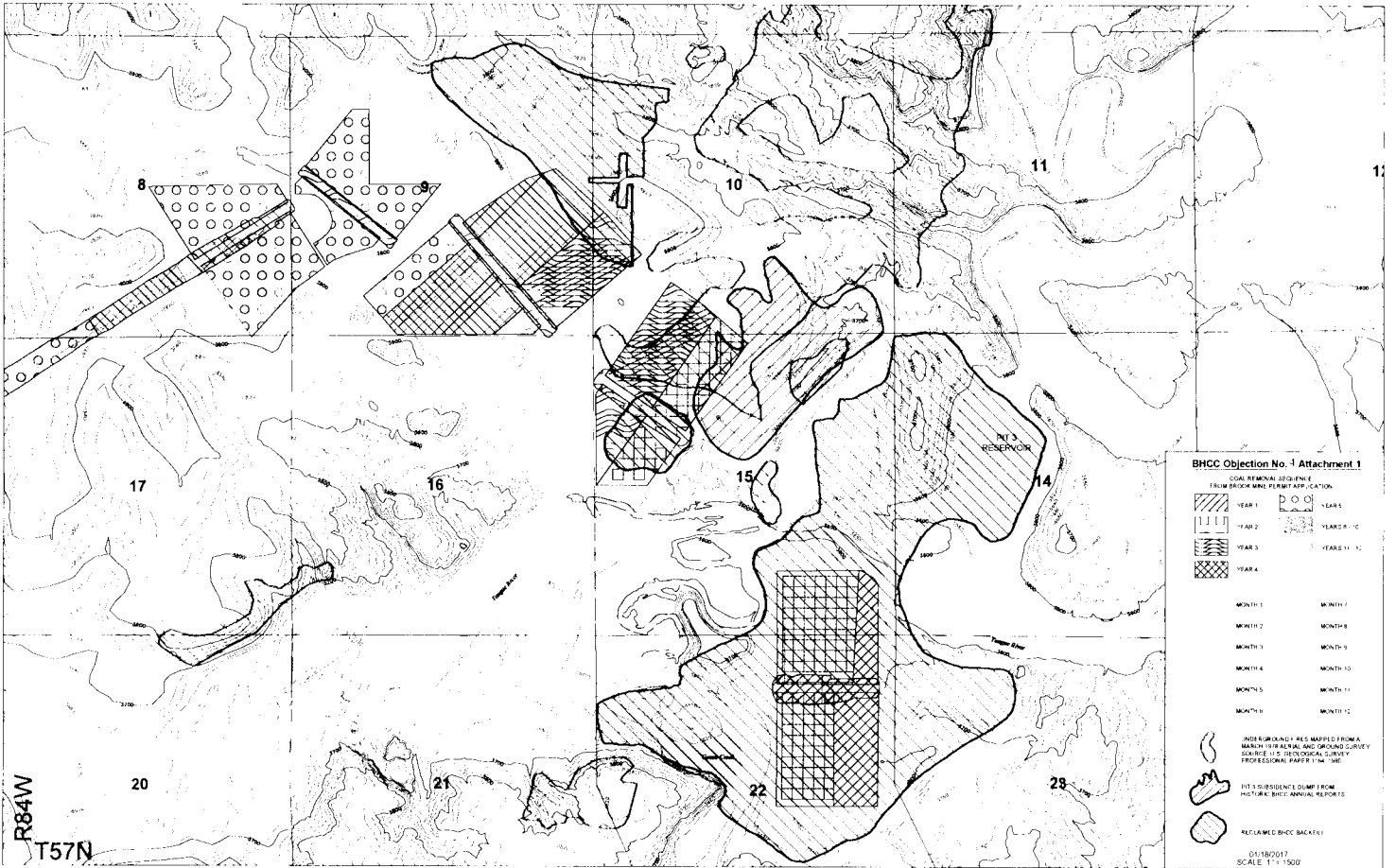
Sincerely,



Jordan Sweeney

General Manager  
Big Horn Coal Company

Attachment: BHCC Objection No.4 Attachment 1



**BHCC Objection No. 4 Attachment 1**

COAL REMOVAL RECLAMATION  
 FILL FROM MINE PERMIT APPLICATION

	YEAR 1		YEAR 5
	YEAR 2		YEAR 6 - 10
	YEAR 3		YEAR 11 - 12
	YEAR 4		

	MONTH 1		MONTH 7
	MONTH 2		MONTH 8
	MONTH 3		MONTH 9
	MONTH 4		MONTH 10
	MONTH 5		MONTH 11
	MONTH 6		MONTH 12

IRREGULAR BOUNDARIES MAPPED FROM A  
 MARCH 1974 AERIAL AND GROUND SURVEY  
 SCALED 1/8" = HORIZONTAL SURVEY  
 PROFESSIONAL PAPER 174M - 106

INT. 3 RESERVOIR CLUMP FROM  
 HISTORIC BHCC ANNUAL REPORTS

RECLAIMED BHCC BACKFILL

01/18/2017  
 SCALE 1" = 1500'

R84W  
 T57N