

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

IN RE EAGLE BUTTE MINE,  
ALPHA WEST TFN 6-1/152

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) Docket # 15-4801  
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**LETTER IN SUPPORT OF NOTICE OF BANKRUPTCY STAY**

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The Wyoming Department of Environmental Quality (DEQ), through its undersigned counsel, hereby provides the attached letter in support of the DEQ's *Notice of Bankruptcy*, which was filed with the Council on November 13, 2015. The attached letter ("Attachment 1") is addressed to the Council from Robert Gaffey, an attorney with the Jones Day law firm, which serves as the bankruptcy counsel representing Alpha Natural Resources, Inc., and Alpha Coal West, Inc., in their bankruptcy case, *In re Alpha Natural Resources, Inc., et al.* (Case No. 15-33896) (KRH) (U.S. Bankruptcy Court, E.D. Virginia). Also attached are Exhibits A, B, and C to that letter.

The DEQ is providing a copy of this letter to the Council through this pleading both because it whole-heartedly supports the statements in the letter from Alpha's experienced bankruptcy counsel, and because Alpha was informed that it was unable to directly file this letter for the Council's consideration because it was not currently a party to this Council matter. The DEQ concurs that any concerns with the substance or continued existence of the bankruptcy court's order should be brought before that court, not this Council.

The DEQ requests that the Council consider Attachment 1 as further support for the DEQ's previously-filed *Notice of Bankruptcy Stay*, and that the Council cancel all

scheduled proceedings in this matter in accordance with the bankruptcy court's standing order that stays these proceedings.

DATED this 17<sup>th</sup> day of November, 2015.

STATE OF WYOMING



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## CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of November, 2015, a true copy of the foregoing document was electronically filed with the Environmental Quality Council and was e-mailed and mailed, postage prepaid to the following:

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Office of the Wyoming Attorney General

# **ATTACHMENT 1**

# JONES DAY

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November 16, 2015

Wyoming Environmental Quality Council  
122 W. 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
Attention: David Bagley (Chairman)

Re: *In re Alpha Natural Resources, Inc., et al.*  
(Case No. 15-33896) (KRH) (U.S. Bankruptcy Court, E.D. Va.)

Dear Mr. Bagley:

We represent Alpha Natural Resources, Inc. (“ANR”) and certain of its direct and indirect subsidiaries (collectively, “Debtors”), including Alpha Coal West, Inc. (“ACW”), in the above-captioned bankruptcy cases commenced on August 3, 2015 (the “Petition Date”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), pending in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”).

It has come to our attention that a petition (the “Petition”) has been filed before the Wyoming Environmental Quality Council (“EQC”) by the Powder River Basin Resource Council (“PRBRC”), under EQC docket number 15-4801 (the “EQC proceedings”). We write, respectfully, to inform EQC and the parties to whom this letter is addressed that the EQC proceedings, if continued, would, as described further below, (a) violate the automatic stay imposed under section 362 of the Bankruptcy Code, (b) violate certain orders of the Bankruptcy Court and (c) involve matters within the exclusive jurisdiction of the Bankruptcy Court and therefore cannot be the subject of collateral proceedings. We write to reserve Debtors’ rights in this regard. By sending this letter, the Debtors do not intend to enter an appearance, intervene or otherwise participate in the EQC proceedings.

As you may be aware, upon the commencement of the Debtors' chapter 11 cases, certain actions were automatically stayed by operation of section 362(a) of the Bankruptcy Code, including: "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" (11 U.S.C. § 362(a)(4));<sup>1</sup> and "the commencement or continuation ... of a[n] administrative[] or other action ... against the debtor ... to recover a claim against the debtor that arose before the commencement of the case" (11 U.S.C. § 362(a)(1)).<sup>2</sup> By an order entered on August 5, 2015 (Docket No. 106) (the "Stay Order"), enclosed herewith as Exhibit A, the Bankruptcy Court confirmed the applicability of these protections to the Debtors. See Stay Order, at ¶ 2(a) and (d). The relief sought by the PRBRC in the EQC Proceeding violates both sections 362(a)(1) and 362(a)(4) and the Stay Order.

In addition, the relief PBRBC seeks in the EQC proceedings is expressly prohibited by the terms of a certain Stipulation and Order, so ordered by the Bankruptcy Court on October 8, 2015 (the "Order"). The Order is (1) binding on DEQ and the State of Wyoming (2) has the full force of a federal court order and (3) prohibits, among other things, the "informal review process" PRBRC appears to be demanding. For your convenience, a copy of the Order is attached as Exhibit B. Pursuant to paragraph 16 of the Order, the Bankruptcy Court retained jurisdiction with respect to any disputes arising from, or other actions to interpret, administer or enforce the terms and provisions of the Order. Given the nature of the relief sought by the PRBRC in the EQC proceeding there can be no doubt that such relief implicates the exclusive jurisdiction of the Bankruptcy Court.

Furthermore, based on our review of the Petition, we believe it is necessary to address certain legal and factual misstatements therein. In the Petition, PRBRC purports to recite the history of the Order, which it characterizes as a mere "agreement" but which, in fact, was approved and so-ordered by the Bankruptcy Court on October 8, 2015. On that date, the Bankruptcy Court so ordered the terms of a stipulation between ANR, ACW, the State of Wyoming and the Wyoming Department of Environmental Quality ("DEQ") concerning the Debtors' bonding requirements for the operation of certain coal mines in Wyoming, including the Eagle Butte mine covered by ACW's permit number 428. PRBRC contends that this "agreement" [*sic*] was "negotiated behind closed doors and was not subject to public notice and comment" and that PBRBC "had no ability to object to the agreement [*sic*] prior to its application in this permit proceeding." (PRBRC Petition, n. 3 at p. 2; *see also id.* ¶ 17 ("The agreement [*sic*] was negotiated behind closed doors and was not subject to public notice and comment.")).

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<sup>1</sup> The term "property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case". 11 U.S.C. § 541(a)(1). This provision "is broad" and extends to all kinds of property, tangible and intangible. *United States v. Whiting Pools*, 462 U.S. 198, 205, 205 n.9 (1983).

<sup>2</sup> The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws. *Midlantic Nat'l Bank v. N.J. Dep't of Environmental Protection*, 474 U.S. 494, 503 (1986) (quotations omitted). Actions violating the automatic stay are void and without effect. *See McCall v. Telerent Leasing Corp. (In re BICC Ltd. P'ship)*, 392 B.R. 209, 215 (Bankr. E.D. Va. 2008)(Plaintiff's filing of derivative action was "a violation of § 362(a)(3) [a]ccordingly, the filing was a void act, and the complaint must be dismissed").

As a matter of public record, this contention is not true. The ANR bankruptcy has been widely publicized, in Wyoming and elsewhere, and the stipulation was publicly presented to the Bankruptcy Court for its consideration, with a request that it be entered as an order. It was filed on the public, and publicly-available, docket on September 8, 2015. When it was filed, it was fully supported with an accompanying detailed motion and supporting declaration outlining the history and terms of, and the need for, the Order. *See Motion of the Debtors, Pursuant to Bankruptcy Rule 9019, For Entry of Stipulation and Order Concerning Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming*, In re Alpha Natural Resources, et al., Case No. 15-33896-KRH, Docket No. 379, dated September 8, 2015.<sup>3</sup> A full month passed, giving any interested party a plentiful opportunity to “comment” or object, before the Bankruptcy Court granted the motion, approved the stipulation, and so-ordered it. *See Exhibit B (Stipulation and Order Concerning Debtors’ Reclamation Bonding Of Their Surface Mining Operations In Wyoming* (Docket Number 628, entered October 8, 2015)).

Once the Bankruptcy Court so-ordered the stipulation and entered it as an order on October 8, it became more than a mere “agreement,” as PRBRC characterizes it. It has the full force of a court order. Furthermore, as the State of Wyoming has already noted, in the Notice of Bankruptcy Stay it filed November 13, 2015 in the EQC proceedings, the Order expressly prohibits what PRBRC seeks, *i.e.* the continuation of informal proceedings to seek review or revocation of ACW’s mining permits because of allegedly insufficient bonding. As the Attorney General’s Office notes, the Order provides, among other things, that “any proceedings relating to the Wyoming Substitution Demand or the Debtors’ self-bonding status, including the informal review process of DEQ, shall be stayed.” *Notice of Bankruptcy Stay*, at p. 1 citing *Order* ¶ 2 at p. 5; *see also Exhibit A (Stay Order)* at ¶¶ 2-3, 6.

In the full month that the motion and stipulation were pending before the Bankruptcy Court, and before the stipulation was so ordered, PBRBC was free to seek to be heard in that Court, but apparently it chose not to do so. Even now, instead of initiating a collateral attack on the Bankruptcy Court’s order over a month after the Order was entered, PRBRC could attempt to seek relief in the Bankruptcy Court, where jurisdiction over the matters at issue in the Petition exclusively rests.

If it were to do so, Debtors would oppose any relief to the extent it sought to undo the terms of the Order, which embodies a sensible resolution of the dispute it resolved. Specifically, the Debtors and Wyoming had differing views about whether the Bankruptcy Code would prohibit the termination of mining permits for failure to meet bonding requirements during the pendency of the bankruptcy. *See Order* at pp. 3-4 (13<sup>th</sup> and 14<sup>th</sup> “Whereas” clauses). To resolve that potential dispute a compromise was reached, whereby Wyoming received a \$61 million superpriority claim to protect Wyoming from reclamation risk in the event ACW fails to meet its actual reclamation obligations, while maintaining the right to assert additional claims in the Debtors’ bankruptcy cases. At the same time, the Order acknowledged that ANR has to continue

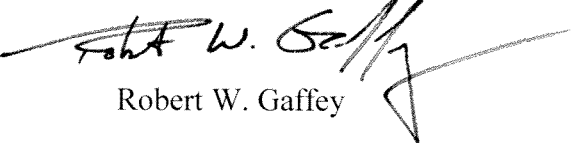
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<sup>3</sup> For convenience, a copy of the motion papers submitted in support of the Stipulation and Order are attached as Exhibit C. The docket for the bankruptcy case is readily available to any member of the public. All papers filed in the bankruptcy court in the ANR bankruptcy are available at no charge at [www.kccllc.net/alpharestructuring](http://www.kccllc.net/alpharestructuring) or for a fee at the court’s own website, <https://ecf.vaeb.uscourts.gov>

its actual reclamation when necessary and otherwise stay in compliance with its legal responsibilities. *Id.* at ¶¶ 1, 3-4.)

Nonetheless, if PBRBC has an argument to make about why this sensible resolution should be unwound, the forum to which it should be brought is the Bankruptcy Court, not by collateral proceedings which violate the stay and seek violations of the Order by Wyoming and DEQ. Accordingly, for the reasons set forth herein, the EQC proceedings should not go forward and this letter is to inform all parties that Debtors reserve all of their rights to institute all necessary and appropriate proceedings in the Bankruptcy Court, and take all other necessary and appropriate actions, to (1) enforce the automatic stay, (2) preserve Debtors' rights under the Order (3) enforce Wyoming's and DEQ's obligations under the Order; and (4) otherwise protect the Debtors' rights should the PRBRC continue to proceed in a manner inconsistent with those rights.

Respectfully,

  
Robert W. Gaffey

cc: Shannon Anderson, Esq. (PRBRC)  
James Kaste, Esq. (Deputy Attorney General)  
Jim Ruby, Esq. (EQC)



# **EXHIBIT A**

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Justin F. Paget (VSB No. 77949)

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**ORDER, PURSUANT TO SECTION 105 OF THE  
BANKRUPTCY CODE, (A) CONFIRMING THE  
PROTECTIONS OF SECTIONS 362, 365 AND 525 OF THE  
BANKRUPTCY CODE AND (B) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Section 105 of the Bankruptcy Code, for an Order (A) Confirming the Protections of Sections 362, 365 and 525 of the Bankruptcy Code and (B) Granting Certain Related Relief (the "Motion"),<sup>1</sup> filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declarations and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court finding that (a) the Court has

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.



jurisdiction over this matter pursuant to 28 U.S.C. § 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion and the Hearing was sufficient under the circumstances and (e) the requested relief confirms the protections of sections 362, 365 and 525 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declarations and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 362 of the Bankruptcy Code, and subject to paragraph 5 below, all persons (including individuals, partnerships, corporations and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby stayed, restrained and enjoined from:

- (a) commencing or continuing (including the issuance or employment of process) any judicial, administrative or other action or proceeding (including, but not limited to, any bankruptcy, liquidation, suspension of payments or any and all other similar proceedings in a foreign jurisdiction) against the Debtors that was or could have been commenced before the commencement of any of their chapter 11 cases;
- (b) recovering a claim against any of the Debtors that arose before the commencement of any of their chapter 11 cases;
- (c) enforcing, against the Debtors or against property of their estates wherever located, a judgment or order obtained before the commencement of any of their chapter 11 cases;
- (d) taking any action to obtain possession of property of the Debtors' estates or to exercise control over property of their estates wherever located or interfere in any way with the conduct by the Debtors of their businesses, including, without limitation, attempts to seize or reclaim any equipment, supplies or other assets the Debtors use in their businesses;

- (e) taking any action to create, perfect or enforce any lien against property of the Debtors' chapter 11 estate;
- (f) taking any action to create, perfect or enforce any lien against property of any of the Debtors, to the extent that such lien secures a claim that arose before the commencement of any of the Debtors' chapter 11 cases;
- (g) taking any action to collect, assess or recover a claim against any of the Debtors that arose before the commencement of any of their chapter 11 cases; and
- (h) offsetting any debt owing to any of the Debtors that arose before the commencement of any of their chapter 11 cases against any claim against any of the Debtors.

3. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials are stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all property of any of the Debtors, wherever located.

4. Pursuant to section 365 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of the Debtors' chapter 11 cases solely because of a provision in such contract or lease that is conditioned on:

- (a) the insolvency or financial condition of any Debtor at any time before the closing of the Debtors' chapter 11 cases; or
- (i) the commencement of the Debtors' chapter 11 cases.

5. This Order shall not affect the substantive rights of any party, nor create any rights, defenses or arguments not otherwise available under applicable law. Specifically, this

Order shall not affect the exceptions contained in sections 362(b), 365(b)(4) and 365(e)(2) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an unexpired lease or executory contract under section 365 of the Bankruptcy Code.

6. Pursuant to section 525 of the Bankruptcy Code (and subject to the exceptions set forth in section 525(a) of the Bankruptcy Code), all foreign and domestic governmental units are prohibited and enjoined from: (a) denying, revoking, suspending or refusing to renew any permit, license, charter, franchise or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, are insolvent during the pendency of these chapter 11 cases, are insolvent during the case but before the Debtors are granted or denied a discharge, or have not paid a debt that is dischargeable in these chapter 11 cases.

7. The Code Protections Procedures, as set forth in the Motion, are approved in their entirety.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived to the extent necessary.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Aug 5 2015

Dated: \_\_\_\_\_, 2015  
Richmond, Virginia

/s/ Kevin R Huennekens  
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: 8/5/15

WE ASK FOR THIS:

Respectfully submitted,

/s/ Tyler P. Brown  
Tyler P. Brown (VSB No. 28072)  
J.R. Smith (VSB No. 41913)  
Henry P. (Toby) Long, III (VSB No. 75134)  
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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Tyler P. Brown

# **EXHIBIT B**



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Justin F. Paget (VSB No. 77949)

*Attorneys for Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**STIPULATION AND ORDER CONCERNING DEBTORS' RECLAMATION  
BONDING OF THEIR SURFACE COAL MINING OPERATIONS IN WYOMING**

Debtors Alpha Natural Resources ("ANR") and Alpha Coal West, Inc. ("ACW" and together with ANR, the "Debtors") and the State of Wyoming and the Wyoming Department of Environmental Quality ("Wyoming" or "WDEQ," and together with the Debtors, the "Parties") hereby stipulate and agree as follows:

**RECITALS**

WHEREAS, ANR through its wholly owned subsidiary ACW, operates two surface coal mines in Wyoming, known as Belle Ayr and Eagle Butte (collectively, the "Wyoming Mines");

WHEREAS, prior to commencing surface coal mining operation in Wyoming, the operator is required to obtain a mining permit and license from the WDEQ;

WHEREAS, applicable statutes in Wyoming require surface mine operators to post reclamation bonds to provide security for the state in the event the mine operator fails to fulfill its obligation to restore the property upon which mining operations have been conducted in accordance with specified standards and an approved reclamation plan. Over the last permit cycle, the Debtors' reclamation bonding requirements in Wyoming, calculated under standards established by WDEQ, have been set at approximately \$411 million;

WHEREAS, applicable statutes in Wyoming allow surface mine operators to "self-bond" their reclamation obligations if they meet specified financial and other criteria;

WHEREAS, the Debtors have been "self-bonding" their reclamation obligations under mining permit nos. 214 and 428 through self-bond nos. SBC 0128 and SBC 131 (the "Self Bonds") in Wyoming for 5 years;

WHEREAS, on March 17, 2010, ACW executed two Coal Self-Bond Indemnity Agreements (collectively, the "Indemnity Agreements") in favor of the WDEQ and the United States – Office of Surface Mining Reclamation and Enforcement ("OSMRE"), pursuant to which ACW agreed to indemnify OSMRE and WDEQ for, among other things, its obligations under the Self-Bonds;

WHEREAS, on March 17, 2010, ANR executed two Coal Self-Bond Corporate Guaranty (collectively, the "Guarantees"), pursuant to which ANR guaranteed, among other things, ACW's obligations under the Self-Bonds;

WHEREAS, on or about May 26, 2015, the WDEQ issued a demand (the "Wyoming Substitution Demand") to ACW stating, *inter alia*, that (i) ACW's right to "self-bond" would terminate by August 24, 2015 (the "Wyoming Posting Deadline"); and (ii) ACW is required by

the Wyoming Posting Deadline to post a reclamation bond or substitute collateral of approximately \$411 million to be allowed to continue mining operations in Wyoming;

WHEREAS, the original Wyoming Posting Deadline of August 24, 2015 has been stayed by an order, unopposed by WDEQ, entered on July 29, 2015 in an appeal of the Wyoming Substitution Demand currently pending in the Sixth Judicial District Court of Campbell County, Wyoming. That stay, however, will expire upon the conclusion of an informal review process being conducted by WDEQ;

WHEREAS, the Debtors believe that they currently are in compliance with, and are continuing to fulfill, their ongoing obligations to perform reclamation under, applicable law and as required by 28 USC § 959(b), and anticipate remaining so for the duration of these chapter 11 cases;

WHEREAS, as a result of the commencement of these chapter 11 cases, Wyoming asserts that there are obligations due and owing by the Debtors under the terms of the Indemnity Agreements and Guarantees;

WHEREAS, the Debtors contend that they presently are unable to comply with the Wyoming Substitution Demand, but anticipate that either (a) they will be able to satisfy their reclamation bonding obligations to Wyoming upon confirmation of a plan of reorganization or (b) such obligations will be satisfied by a purchaser of one or both of the Wyoming Mines;

WHEREAS, as a result of the commencement of these chapter 11 cases, the Debtors assert that WDEQ is precluded under the Bankruptcy Code from seeking payments for amounts owing under the Indemnity Agreement and Guarantees, demanding additional collateral, taking actions that interfere with the Debtors' efforts to reorganize in these proceedings or revoking or refusing to renew Debtors' permits and/or licenses to operate coal mines in Wyoming due to the

Debtors' bankruptcy, financial condition or failing to provide collateral to secure the Debtors' reclamation obligations;

WHEREAS, WDEQ asserts that it is not precluded under the Bankruptcy Code from demanding additional collateral and revoking or refusing to grant, amend or renew the Debtors' permits and/or licenses to operate their coal mines in Wyoming due to the Debtors' failure to provide collateral to secure the Debtors reclamation obligations;

WHEREAS the Debtors' debtor in possession credit agreement dated as of August 6, 2015 (as it may be modified or amended, the "Credit Agreement") approved under the interim order (Docket No. 82) and any final further order approving the Debtors' postpetition financing (Docket No. 465) (collectively, and as modified or amended, the "DIP Order"), provides for, among other things, (a) a Bonding Carve-Out, which is a carve-out from the Term Facility Collateral in respect of the Bonding Superpriority Claim Amount with Superpriority Claim status entitling the authority making any applicable Bonding Request to receive proceeds of Term Facility Collateral first in priority before distribution to any Lender and (b) a Bonding Superpriority Claim, which is a Superpriority Claim granted solely in favor of a Bonding Beneficiary to satisfy a Bonding Request;<sup>1</sup>

WHEREAS, the Debtors and WDEQ wish to resolve their disagreements as to the above matters as provided herein without any adjudication of any issue of law or fact;

NOW, THEREFORE, the Parties agree as follows, subject to Bankruptcy Court approval:

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<sup>1</sup> All capitalized terms not otherwise defined in this paragraph have the meanings given to them in the Credit Agreement.

1. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period (as defined below), (a) the Debtors may satisfy the bonding requirements for their reclamation obligations without complying with the Wyoming Substitution Demand, (b) Wyoming shall have, pursuant to, as applicable, sections 105, 364 and 503 of the Bankruptcy Code and solely in the manner and to the extent as permitted as a “Bonding Superpriority Claim” under the DIP Order, an allowed superpriority claim having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code in the amount of \$61 million (the “Superpriority Claim”) against each of ANR and ACW to secure the Debtors’ reclamation obligations (provided that under no circumstances will Wyoming recover more than \$61 million on account of the Superpriority Claim) and (c) the Debtors agree that the Bonding Carve Out (and thus the Superpriority Claim) will not be terminated, as permitted under the DIP Order or otherwise, except as set forth in paragraph 6 below.

2. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period, (a) Wyoming shall not seek additional collateral or revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (b) Wyoming shall not seek to enforce the Indemnity Agreements or Guarantees or seek to revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ non-payment of obligations under the Indemnity Agreements or Guarantees and (c) any proceedings relating to the Wyoming Substitution Demand or the Debtors’ self-bonding status, including the informal review process of WDEQ, shall be stayed.

3. This Stipulation and Order is without prejudice to (a) any claims or causes of action that Wyoming may assert over and above the Superpriority Claim against the Debtors on account of any obligation to perform reclamation, the Self-Bonds, the Indemnity Agreements or the Guarantees, including with respect to the amount of such claims and the priority of such claims or causes of action and (b) any defenses or objections to such claims by the Debtors or other parties, including with respect to the amount of such claims and the priority of such claims or causes of action, all of which are expressly preserved. Except as specifically set forth in paragraphs 1 and 2 above with respect to the Debtors' reclamation bonding obligations, the Debtors agree to comply with their reclamation obligations as required by applicable law, including 28 USC § 959(b).

4. Except as specifically set forth in paragraphs 1 and 2 above, nothing in this Stipulation and Order shall in any way limit or impair the rights of Wyoming (or WDEQ) to enforce all applicable environmental and reclamation laws and regulations, and none of the Parties waive or release any legal or factual argument, claim, doctrine or defense applicable to any dispute related thereto.

5. Nothing in this Stipulation and Order shall limit any rights of the Debtors to operate, not operate, idle, close, sell or otherwise dispose of their mines in Wyoming or any right of Wyoming to object to such action.

6. The Superpriority Claim shall terminate on the earlier of the date that (a) Wyoming or WDEQ breaches this Stipulation and Order, (b) OSMRE revokes, terminates, refuses to grant or amend or takes any other adverse action with respect to the Debtors' Wyoming mining permits or licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (c) a third-party replaces the

Superpriority Claim with collateral or bonding acceptable to WDEQ or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in accordance with applicable law becomes effective by its terms.

7. For purposes of this Stipulation and Order, "Compliance Plan Period" shall mean the earlier of the date that (a) the Superpriority Claim is terminated pursuant to paragraph 6 hereof; (b) the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code; (c) the lenders under the Credit Agreement exercise remedies against the Term Facility Collateral; or (d) January 31, 2017.

8. This Stipulation and Order is without prejudice to the rights of the Parties under applicable laws and regulations concerning the Debtors' bonding obligations subsequent to the Compliance Plan Period.

9. In the event that the Court does not approve this Stipulation and Order: (a) nothing contained herein shall be deemed to be a waiver of any claims or defenses or an admission of liability by any Party hereto; and (b) this Stipulation and Order shall be null and void, and all rights of the Parties prior to this Stipulation and Order shall be preserved.

10. Upon approval by the Court, the Parties are authorized and empowered to take all actions deemed necessary to implement the terms of this Stipulation and Order.

11. Nothing in this Stipulation shall modify, alter or otherwise affect the rights or remedies of the agent of the lenders under the Debtors' postpetition debtor in possession financing facility or be deemed to authorize the Debtors to violate the terms of such financing facility.

12. This Stipulation and Order sets forth the entire agreement and understanding by and among the Parties. No amendment, waiver or modification of any

provision of this Stipulation and Order shall be effective unless the same shall be in writing and signed by the Parties and approved by the Court.

13. This Stipulation and Order may be signed in counterparts which, when taken as a whole, shall constitute one and the same document; and facsimile or other electronic copies of signatures shall be deemed originals.

14. Each individual signing this Stipulation and Order on behalf of any Party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that he or she is authorized to execute this Stipulation and Order in his or her representative capacity with binding effect, as reflected below and on behalf of the Party indicated.

15. This Stipulation and Order shall be governed by and shall be interpreted in accordance with the laws of the State of Virginia, except to the extent the Bankruptcy Code applies, without regard to Virginia's rules governing conflicts of laws.

16. The Court shall retain jurisdiction (and the Parties consent to such retention of jurisdiction) with respect to any disputes arising from, or other actions to interpret, administer or enforce, the terms and provisions of this Stipulation and Order.



Alpha Natural Resources, Inc.

State of Wyoming and Wyoming Department  
of Environmental Quality

By: /s/ Richard H. Verheij

By: /s/ James C. Kaste

Richard H. Verheij  
Executive Vice President, General Counsel &  
Corporate Secretary  
Alpha Natural Resources  
One Alpha Place  
Bristol, Virginia 24209

James C. Kaste  
Deputy Attorney General  
Andrew Kuhlmann  
Senior Assistant Attorney General  
Water & Natural Resources Division  
123 State Capitol  
Cheyenne, Wyoming 82002

Alpha Coal West, Inc.

By: /s/ Richard H. Verheij

Richard H. Verheij  
Vice President & Secretary  
Alpha Coal West, Inc.  
One Alpha Place  
Bristol, Virginia 24209

Dated: October \_\_\_, 2015  
Richmond, Virginia  
Oct 8 2015

/s/ Kevin R. Huennekens

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket:10/8/15

WE ASK FOR THIS:

Respectfully submitted,

/s/ Henry P. (Toby) Long, III  
Tyler P. Brown (VSB No. 28072)  
J.R. Smith (VSB No. 41913)  
Henry P. (Toby) Long, III (VSB No. 75134)  
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and

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*Attorneys for the Debtors  
and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

# **EXHIBIT C**

JONES DAY  
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Justin F. Paget (VSB No. 77949)

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**NOTICE OF MOTION AND RELATED HEARING**

**PLEASE TAKE NOTICE** that, on September 8, 2015, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the following motion (the "Motion") with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court"): *Motion of the Debtors, Pursuant to Bankruptcy Rule 9019, for Entry of Stipulation and Order Concerning Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming.*

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion may be obtained at no charge at [www.kcclle.net/alpharestructuring](http://www.kcclle.net/alpharestructuring) or for a fee at <https://ecf.vaeb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected. You should read the Motion carefully and discuss it with your attorney, if you have one in the chapter 11 cases. (If you do not have an attorney, you may wish to consult one).

**PLEASE TAKE FURTHER NOTICE** on August 5, 2015, the Court entered the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"), which approved certain notice, case management and administrative procedures attached thereto as Schedule 1 (the "Case Management Procedures").

The Case Management Procedures, among other things, prescribe the manner in which Objections must be filed and served and set forth when certain hearings will be conducted. A copy of the Case Management Order may be obtained at no charge at [www.kccllc.net/alpharestructuring](http://www.kccllc.net/alpharestructuring) or for a fee at <https://ecf.vaeb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the Motion, then, by **September 29, 2015** (the "Response Deadline"), you or your attorney must:

- File with the Court, either electronically or at the address shown below, a written response to the Motion pursuant to Rule 9013-1(H) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia and the Case Management Procedures. If you mail your written response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the Response Deadline.

**If a response is not properly and timely filed and served, the Court may deem any opposition waived, treat the Motion as conceded and enter appropriate orders granting the requested relief without further notice or hearing.**

Clerk of the Court  
United States Bankruptcy Court  
701 East Broad Street  
Suite 4000  
Richmond, VA 23219

In accordance with the Case Management Procedures, you must also serve a copy of your written response on the parties to the Master Service List and the 2002 List and any Affected Entity (as such terms are defined in the Case Management Order) so that the response is received on or before the Response Deadline.

- Attend a hearing before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, at 11:00 a.m. (prevailing Eastern Time) on October 6, 2015, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219.

**PLEASE TAKE FURTHER NOTICE THAT** you should consult the Case Management Procedures before filing any written response.

Dated: September 8, 2015  
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III  
Tyler P. Brown (VSB No. 28072)  
J.R. Smith (VSB No. 41913)  
Henry P. (Toby) Long, III (VSB No. 75134)  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**MOTION OF THE DEBTORS, PURSUANT TO  
BANKRUPTCY RULE 9019, FOR ENTRY OF STIPULATION  
AND ORDER CONCERNING RECLAMATION BONDING OF  
THEIR SURFACE COAL MINING OPERATIONS IN WYOMING**

Alpha Natural Resources, Inc. ("ANR") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

**Background**

1. On August 3, 2015 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By an order of the Court (Docket No. 129), the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being

administered jointly. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. A comprehensive description of the Debtors' business and operations, capital structure and the events leading to the commencement of these chapter 11 cases can be found in the amended declarations of (a) Kevin S. Crutchfield, Chief Executive Officer and Chairman of the Board of Directors of ANR (Docket No. 45) and (b) Philip J. Cavatoni, Executive Vice President and Chief Financial and Strategy Officer of ANR (Docket No. 46), in support of the Debtors' "first day" pleadings, which are incorporated by reference.

#### **Jurisdiction**

3. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Relief Requested**

4. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors hereby seek the entry of a stipulation and order in the form attached hereto as Exhibit A (the "Stipulation and Order") approving and memorializing the terms of the Debtors' settlement of certain issues (the "Settlement") with the State of Wyoming ("Wyoming") and the Wyoming Department of Environmental Quality (the "WDEQ") regarding the Debtors' reclamation bonding of their surface coal mining operations in Wyoming. In further support of the relief requested herein, the Debtors incorporate the *Declaration of Andrew McCallister in Support of Motion of the Debtors, Pursuant to Bankruptcy Rule 9019, for Entry of Stipulation and Order Concerning Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming* (the "McCallister Declaration"), attached hereto as Exhibit B.



**Facts Relevant to This Motion**

5. In the mining context, environmental reclamation is the process whereby a mining company is required, once mining operations have ceased, to return the mined land to an environmentally safe, aesthetically pleasing and sustainable state. The Debtors have reclamation obligations that arise pursuant to state and federal law with respect to all of their mining operations. Governing statutes generally require that property upon which such mining operations have been conducted be restored in accordance with specified standards and an approved reclamation plan. Standards for mine reclamation have been established by various state and federal regulatory agencies that dictate the reclamation requirements at the Debtors' mining properties. The Debtors' reclamation obligations consist principally of costs necessary to (a) reclaim refuse and slurry ponds, (b) reclaim the pit and support acreage at surface mines, (c) seal portals at deep mines and (d) treat water used in mining operations.

***The Debtors' Wyoming Operations***

6. As set forth in the McCallister Declaration, Debtor Alpha Coal West, Inc. ("ACW") – a wholly-owned subsidiary of ANR – has operated coal mines in Wyoming (through its predecessors, subsidiaries and affiliates) since the 1970s. ACW's present Wyoming operations consist of two surface mining sites, known as Belle Ayr and Eagle Butte (together, the "Wyoming Mines"). ACW's Wyoming operations employ approximately 580 people, and the Wyoming Mines shipped 36.5 million tons of coal in 2014. The Belle Ayr operation consists of one mine that extracts coal from a 75-foot thick coal seam. Eagle Butte consists of one mine that extracts coal from coal seams of approximately 100 feet in thickness. Coal from the Wyoming Mines is shipped principally by rail to power plants throughout the western, midwestern and southern United States.

7. ACW has had an exemplary record of environmental and reclamation compliance in Wyoming. The Wyoming Mines are inspected every month by the WDEQ. In addition, state inspectors annually review the company's compliance with air and water quality standards. No significant incidents of non-compliance with environmental, reclamation or safety requirements have occurred at the Wyoming Mines. Notably, ACW has never been cited for improperly performing its reclamation obligations. In fact, ACW has received awards for the quality of its reclamation program. During the last five years (since ACW began self-bonding), ACW has received only two minor citations, one of which was self-reported. Neither of these citations was related to reclamation, and both were immediately corrected by ACW. The Debtors believe that ACW currently is in compliance with, and is continuing to fulfill, its ongoing obligations to perform reclamation under, applicable law and as required by 28 U.S.C. § 959(b), and anticipate remaining so for the duration of these chapter 11 cases.

***The WDEQ's Permitting and Bonding Requirements***

8. Each surface coal mining operation in Wyoming is required to obtain a mining permit from the WDEQ prior to commencing operations. See Wyo. Stat. § 35-11-405. In addition, the mine operator must obtain a license from the WDEQ, which authorizes the operator (ACW in this case) to conduct mining operations at each permitted mine. See Wyo. Stat. § 35-11-410. Among other requirements to obtain a permit or license for surface coal mining operations, each mine operator must post a reclamation bond. See Wyo. Stat. § 35-11-406, 410(c). The amount of the required reclamation bond is determined by the WDEQ in accordance with guidelines published by the State of Wyoming. See id. The WDEQ determines the amount of the bond based on an analysis of a "worst case" reclamation scenario for a given 12-month period. See Wyo. Stat. § 35-11-417(c). In calculating this estimate, the WDEQ assumes that ACW (with all of its existing equipment, staff, facilities, historical

knowledge, expertise and capabilities) would disappear completely from the Eagle Butte and Belle Ayr mining sites and that the WDEQ would have to undertake reclamation efforts without any assistance provided by ACW.

9. Mine operators that meet certain criteria may be authorized to "self-bond." See Wyo. Stat. § 35-11-417(d). If a mine operator is permitted to self-bond, such operator and/or its corporate parent is required to provide a financial guarantee that all reclamation work, as and when actually necessary, will be completed in accordance with a reclamation plan approved by the WDEQ. See id. Liability under a self-bond continues until all reclamation, restoration and abatement work is completed at the relevant site. See Wyo. Stat. § 35-11-417(e). Under Wyoming law, a mine operator remains liable for reclamation costs that may arise in connection with a former mine site, during a minimum liability period that extends five to ten years (depending on certain factors) after the operator's reclamation work completed. See id. Once this liability period has expired, a mine operator that has performed reclamation work in compliance with applicable law can formally request that the WDEQ release the operator's bond. See id.

10. The WDEQ is empowered to enforce compliance with Wyoming bonding requirements by various means, including by imposing "permit blocks" – i.e., penalties designed to prevent non-compliant mine operators from obtaining or renewing mining permits in Wyoming and other states. See Wyo. Stat. § 35-11-403(a)(4) (empowering the Administrator of the Land Quality Division to recommend, among other things, the "revocation and suspension of permits [and] licenses"); Wyo. Stat. § 35-11-403(a)(4) (requiring a "sworn statement that the applicant has not forfeited a bond posted for reclamation purposes" as a condition to issuance of a permit). The WDEQ may also suspend or revoke existing mine permits under certain

circumstances, including if the WDEQ determines that adequate financial assurance has not been posted for a particular permit. See Wyo. Stat. § 35-11-403(a)(4). With respect to self-bonding, the WDEQ claims a right to suspend or revoke a mine operator's license if: (a) the WDEQ determines that the operator is no longer qualified to self-bond for purposes of satisfying its reclamation bonding requirements under applicable law; (b) the WDEQ requests that the mine operator substitute a commercial surety or collateral bond for the self-bond; and (c) the mine operator does not make such substitution within 90 days. 020-040-11 Wyo. Code R. § 5(a)-(b).

***Self-Bonding of ACW's Reclamation Obligations***

11. Since 2010, ACW has relied on self-bonding for its Wyoming Mines. The Debtors currently self-bond approximately 96% of ACW's Wyoming reclamation obligations. In that regard, ACW and ANR, as its parent-guarantor, have made yearly financial showings to the WDEQ (specifically, that ANR meets required financial ratios as set forth in applicable Wyoming regulations). To memorialize this self-bonding arrangement, ACW has executed a self-bond agreement with the WDEQ as well as an indemnity agreement in favor of the WDEQ and the federal Office of Surface Mining Reclamation and Enforcement (the "OSMRE") for each of the relevant permits. In addition, ANR has executed a corporate guaranty in favor of the WDEQ and the OSMRE for each of the permits in question. On a yearly basis, ANR and ACW have sought renewal of their self-bonding arrangement by submitting updated financial information (including their most recent Forms 10-K and 10-Q) and by executing such agreements. The WDEQ issued its last annual renewal to ACW on December 19, 2014, which ACW and ANR understood would authorize them to continue their self-bonding program in Wyoming for a one-year period. For the year ending December 2014, the WDEQ set ACW's self-bonding obligations for its two Wyoming mines, in the aggregate, at approximately \$411 million.

*The Wyoming Substitution Demand*

12. On May 26, 2015, following approximately one month of discussions and the provision of information from ACW and ANR to the WDEQ at its request, the WDEQ issued a demand to ACW (the "Wyoming Substitution Demand"). The Wyoming Substitution Demand asserted that: (a) ACW's right to self-bond with respect to its reclamation obligations in Wyoming (supported by ANR's guarantee) would terminate as of August 24, 2015 (the "Posting Deadline"); and (b) on or before the Posting Deadline, ACW was required to post a commercial surety bond or substitute collateral<sup>1</sup> in the amount of approximately \$411 million as a condition to being allowed to continue mining operations in Wyoming. The Wyoming Substitution Demand cited no actual reclamation or environmental concerns or costs associated with the Wyoming Mines, and it did not impose any new compliance obligations on ACW.

13. ACW and ANR disagreed with the determination made by the WDEQ in the Wyoming Substitution Demand and pursued both administrative and judicial appeals thereof. On July 24, 2015, with Wyoming's concurrence, the Debtors filed an unopposed motion (the "Stay Motion") before the Sixth Judicial District Court of Campbell County, Wyoming (the "Wyoming Court"), seeking a stay of, among other things, the Posting Deadline until after a final conference with WDEQ is held (the "Stay"). On July 29, 2015, the Wyoming Court entered an order granting the Stay Motion and imposing the Stay. Although the final conference before WDEQ has not yet been convened, representatives of the Debtors and Wyoming have engaged in

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<sup>1</sup> Pursuant to applicable regulations, the substitute collateral may consist of (a) cash, (b) governmental securities, (c) certificates of deposit, (d) an irrevocable letter of credit or (e) "[a]n alternative method of financial assurance that is acceptable to the Administrator and provides for a comparable level of assurance for performance of reclamation obligations." 020-040-11 Wyo. Code R. § 2(r); 020-040-11 Wyo. Code R. § 5(a)-(b).

confidential settlement discussions (both before and after the Petition Date) about a potential resolution of the issues arising from the Wyoming Substitution Demand.

14. The Debtors have limited ability to satisfy the Wyoming Substitution Demand. The posting of more than \$400 million in collateral to support the performance of the Debtors' reclamation obligations and permit the continuation of their Wyoming operations (a) would impose a significant burden on the Debtors' liquidity and (b) is not authorized under the terms of the Debtors' debtor in possession credit agreement dated as of August 6, 2015 (as it may be modified or amended, the "Credit Agreement"), which was approved on an interim basis by an order of this Court entered on August 4, 2015 (Docket No. 82) (as may be modified or amended by any final order, the "DIP Order"). Moreover, the option of providing a commercial surety bond in the required amount provides no viable alternative because, in addition to the expense of posting such a surety bond in terms of premiums and administrative fees, the Debtors would be required to provide collateral to support their obligations under any such bond.

15. The Debtors believe that the ability of Wyoming to require ACW to post of \$411 million in collateral or bond as a condition to ACW's continued operation in Wyoming is stayed under, or otherwise prohibited by, the Bankruptcy Code. Wyoming, however, does not agree that such actions are stayed or otherwise prohibited. Absent a resolution of this dispute, upon the expiration of the Stay, an automatic permit block would take effect with respect to ACW, and the WDEQ would be authorized to seek to permanently block the issuance of new or amended permits to ACW. The WDEQ also could take actions to revoke ACW's license to mine in Wyoming, which could, in turn, lead to permitting issues in other states.<sup>2</sup> After extensive

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<sup>2</sup> Section 510(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 *et seq.*, requires a surface mining permit applicant to file "a schedule listing any and all notices of violations of this chapter and any law, rule, or regulation of the United States, or of any department or agency in the United

negotiations, however, the Debtors and Wyoming have reached a resolution of this dispute as set forth in the Stipulation and Order.

***The Terms of the Settlement***

16. The DIP Order provides for a carve-out from the Term Facility Collateral (as defined in the DIP Order) in the amount of \$100 million (the "Bonding Carve Out") to allow governmental authorities making a demand for any surety bond, letter of credit or other financial assurance, pursuant to applicable law, to obtain a claim (a "Bonding Superpriority Claim") against the Term Facility Collateral having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code. The DIP Order further authorizes the Debtors to terminate the Bonding Carve Out by issuing and delivering a written notice to that effect to the DIP Agent (as defined in the DIP Order).

17. As set forth in the Stipulation and Order,<sup>3</sup> the parties have agreed that, commencing on the date the Stipulation and Order is approved by the Court, through the Compliance Plan Period:<sup>4</sup> (a) the Debtors may satisfy the bonding requirements for their

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(continued...)

States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application." 30 U.S.C. § 1260(c). The section further provides that "[w]here the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or such other laws referred to this subsection [sic], the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation." *Id.*

<sup>3</sup> The terms of the Settlement summarized herein are qualified in their entirety by the Stipulation and Order. In the event of any conflict between the terms of this Motion and the Stipulation and Order, the terms of the Stipulation and Order shall govern.

<sup>4</sup> "Compliance Plan Period" is defined in the Stipulation and Order as the earlier of the date that: (a) the Superpriority Claim (as defined below) is terminated pursuant to the Stipulation and Order; (b) the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code; (c) the lenders under the Credit Agreement exercise remedies against the Term Facility Collateral; or (d) January 31, 2017.

reclamation obligations without complying with the Wyoming Substitution Demand;

(b) Wyoming shall have, pursuant to, as applicable, sections 105, 364 and 503 of the Bankruptcy Code, and solely in the manner and to the extent permitted as a Bonding Superpriority Claim under the DIP Order, an allowed superpriority claim having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code in the amount of \$61 million (the "Superpriority Claim") against each of ANR and ACW to secure the Debtors' reclamation obligations (provided that under no circumstances will Wyoming recover more than \$61 million on account of the Superpriority Claim); and (c) the Bonding Carve Out (and thus the Superpriority Claim) will not be terminated, as permitted under the DIP Order or otherwise, except in accordance with the Stipulation and Order.

18. The Superpriority Claim shall terminate on the earliest of the date that:

(a) Wyoming or the WDEQ breaches the Stipulation and Order; (b) the OSMRE revokes, terminates, refuses to grant or amend or takes any other adverse action with respect to the Debtors' Wyoming mining permits or licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations; (c) a third party replaces the Superpriority Claim with collateral or bonding acceptable to the WDEQ; or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in accordance with applicable law becomes effective by its terms.

19. The parties further have agreed that, commencing on the date the Stipulation and Order is approved by the Court through the Compliance Plan Period: (a) any proceedings relating to the Wyoming Substitution Demand or the Debtors' self-bonding status, including the informal review process of the WDEQ, shall be stayed; and (b) Wyoming will not seek additional collateral or revoke, terminate, refuse to grant or amend or take any other adverse



action with respect to the Debtors' mining permits and licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations.

20. The Stipulation and Order is without prejudice to (a) any claims or causes of action that Wyoming may assert over and above the Superpriority Claim against the Debtors on account of reclamation obligations and (b) any defenses or objections to such claims or causes of action by the Debtors or other parties. Moreover, except as specifically set forth in the Stipulation and Order, nothing therein limits or impairs any right of: (a) Wyoming (or the WDEQ) to enforce all applicable environmental and reclamation laws and regulations; or (b) the Debtors to operate, not operate, idle, close, sell or otherwise dispose of their mines in Wyoming, or of Wyoming to object to such action. In addition, the Stipulation and Order is without prejudice to the rights of the parties subsequent to the Compliance Plan Period.

#### **Argument**

##### ***The Standard for Approval of Settlements Under Bankruptcy Rule 9019***

21. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The United States Supreme Court has noted that "[c]ompromises are a 'normal part of the process of reorganization.'" Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citing Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)). In TMT Trailer, the Supreme Court stated that compromises and settlements must be "fair and equitable." 390 U.S. at 424; see also Martin v. Kane (In re A&C Prods.), 784 F.2d 1377, 1381 (9th Cir. 1986); Shaia v. Three Rivers Wood, Inc. (In re Three Rivers Woods, Inc.), No. 98-38685-T, 2001 WL 720620, at \*6 (Bankr. E.D. Va. Mar. 20, 2001); In re Frye, 216 B.R. 166, 174 (Bankr. E.D. Va. 1997); In re Austin, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995).

22. In determining whether a proposed compromise and settlement is fair and equitable, a court should consider various factors, including: (a) the probability of success in litigation or dispute resolution; (b) the potential difficulties, if any, in collection on a judgment; (c) the complexity of the litigation or dispute resolution process involved and "the expense, inconvenience and delay necessarily attending it;" and (d) the paramount interest of the creditors. Frye, 216 B.R. at 174; see also Three Rivers Wood, 2001 WL 720620, at \*\*5-6; Austin, 186 B.R. at 400.

23. Additionally, the Court must determine whether the proposed settlement is in the best interests of the Debtors and their estates. Frye, 216 B.R. at 174 ("In order to approve a compromise, this court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable."); In re Energy Coop. Inc., 886 F.2d 921, 927 (7th Cir. 1989) ("The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate."). The factors that courts consider to determine the best interests of the estate are similar to the factors to determine whether the settlement is fair and reasonable. In re Bullis, 515 B.R. 284, 288 (Bankr. E.D. Va. 2014) ("The best interests of the estate are met by considering the same factors a court considers in reviewing any proposed settlement: (1) the probability of success on the merits in the litigation; (2) possible difficulties of collecting any judgment which might be obtained; (3) the complexity, expense, and likely duration of any ensuing litigation; and (4) the interests of the creditors, giving proper deference to their reasonable views.").

24. When reviewing a proposed settlement, however, the Court should not substitute its judgment for that of the Debtors. See In re Carla Leather, Inc., 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). Instead, the court must determine "whether the settlement falls below

the lowest point in the range of reasonableness" Three Rivers Woods, 2001 WL 720620, at \*6 (quoting Austin, 186 B.R. at 400). Where a proposed settlement is not below the lowest point of what is fair and reasonable and represents the best interests of the estate as a whole, the court should approve it pursuant to Bankruptcy Rule 9019. Three Rivers Woods, 2001 WL 720620, at \*6.

***This Settlement Satisfies the Relevant Standard***

25. The Settlement represents a sound exercise of the Debtors' business judgment, falls well within the range of reasonableness and is in the best interests of the Debtors' estates. Although the Debtors dispute, given the commencement of these cases, the WDEQ's authority to require the posting of \$411 million in collateral or a replacement bond as a condition to ACW's continued operation in Wyoming, the Debtors cannot be certain that they will prevail in such a dispute. If the Debtors were to litigate this dispute and fail, they would be faced with the limited options of closure or fire sale of the Wyoming Mines – if such a sale would be possible in the current environment – which could potentially impact the Debtors' operations in other states and would, at a minimum, be very disruptive to their restructuring efforts and the livelihood of the approximately 600 employees who work at the Wyoming Mines.

26. The Settlement resolves the issues presented by the Wyoming Substitution Demand with effectively no net expense to the Debtors' estates, because (a) the Debtors are required to fulfill their reclamation obligations in connection with operating their business pursuant to 28 U.S.C. § 959 and (b) there are no borrowing costs associated with the Superpriority Claim. Moreover, the Settlement eliminates the requirement that the Debtors commit large amounts of cash to provide collateral to the WDEQ or to issuers of commercial surety bonds, which the Debtors are not authorized to do under the terms of the Credit Agreement and DIP Order. Finally, the Settlement addresses the public's environmental

concerns by expressly providing for the continuation of ACW's ongoing reclamation activities and reserving Wyoming's right to enforce all applicable environmental laws.

27. Accordingly, the Settlement is fair and reasonable, well above the lowest point in the range of reasonableness and in the best interests of the Debtors' estates and creditors. The Debtors therefore believe that the Court should approve the Settlement pursuant to Bankruptcy Rule 9019.

**Notice**

28. In accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"), notice of this Motion has been given to (a) the WDEQ, (b) all parties on the Master Service List (as defined in the Case Management Order) and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**No Prior Request**

29. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Stipulation and Order; and (ii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: September 8, 2015  
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III  
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PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**Exhibit A**

Stipulation and Order

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*Proposed Attorneys for Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**STIPULATION AND ORDER CONCERNING DEBTORS' RECLAMATION  
BONDING OF THEIR SURFACE COAL MINING OPERATIONS IN WYOMING**

Debtors Alpha Natural Resources (“ANR”) and Alpha Coal West, Inc. (“ACW” and together with ANR, the “Debtors”) and the State of Wyoming and the Wyoming Department of Environmental Quality (“Wyoming” or “WDEQ,” and together with the Debtors, the “Parties”) hereby stipulate and agree as follows:

**RECITALS**

WHEREAS, ANR through its wholly owned subsidiary ACW, operates two surface coal mines in Wyoming, known as Belle Ayr and Eagle Butte (collectively, the “Wyoming Mines”);

WHEREAS, prior to commencing surface coal mining operation in Wyoming, the operator is required to obtain a mining permit and license from the WDEQ;

WHEREAS, applicable statutes in Wyoming require surface mine operators to post reclamation bonds to provide security for the state in the event the mine operator fails to fulfill its obligation to restore the property upon which mining operations have been conducted in accordance with specified standards and an approved reclamation plan. Over the last permit cycle, the Debtors' reclamation bonding requirements in Wyoming, calculated under standards established by WDEQ, have been set at approximately \$411 million;

WHEREAS, applicable statutes in Wyoming allow surface mine operators to "self-bond" their reclamation obligations if they meet specified financial and other criteria;

WHEREAS, the Debtors have been "self-bonding" their reclamation obligations under mining permit nos. 214 and 428 through self-bond nos. SBC 0128 and SBC 131 (the "Self Bonds") in Wyoming for 5 years;

WHEREAS, on March 17, 2010, ACW executed two Coal Self-Bond Indemnity Agreements (collectively, the "Indemnity Agreements") in favor of the WDEQ and the United States – Office of Surface Mining Reclamation and Enforcement ("OSMRE"), pursuant to which ACW agreed to indemnify OSMRE and WDEQ for, among other things, its obligations under the Self-Bonds;

WHEREAS, on March 17, 2010, ANR executed two Coal Self-Bond Corporate Guaranty (collectively, the "Guarantees"), pursuant to which ANR guaranteed, among other things, ACW's obligations under the Self-Bonds;

WHEREAS, on or about May 26, 2015, the WDEQ issued a demand (the "Wyoming Substitution Demand") to ACW stating, *inter alia*, that (i) ACW's right to "self-bond" would terminate by August 24, 2015 (the "Wyoming Posting Deadline"); and (ii) ACW is required by



the Wyoming Posting Deadline to post a reclamation bond or substitute collateral of approximately \$411 million to be allowed to continue mining operations in Wyoming;

WHEREAS, the original Wyoming Posting Deadline of August 24, 2015 has been stayed by an order, unopposed by WDEQ, entered on July 29, 2015 in an appeal of the Wyoming Substitution Demand currently pending in the Sixth Judicial District Court of Campbell County, Wyoming. That stay, however, will expire upon the conclusion of an informal review process being conducted by WDEQ;

WHEREAS, the Debtors believe that they currently are in compliance with, and are continuing to fulfill, their ongoing obligations to perform reclamation under, applicable law and as required by 28 USC § 959(b), and anticipate remaining so for the duration of these chapter 11 cases;

WHEREAS, as a result of the commencement of these chapter 11 cases, Wyoming asserts that there are obligations due and owing by the Debtors under the terms of the Indemnity Agreements and Guarantees;

WHEREAS, the Debtors contend that they presently are unable to comply with the Wyoming Substitution Demand, but anticipate that either (a) they will be able to satisfy their reclamation bonding obligations to Wyoming upon confirmation of a plan of reorganization or (b) such obligations will be satisfied by a purchaser of one or both of the Wyoming Mines;

WHEREAS, as a result of the commencement of these chapter 11 cases, the Debtors assert that WDEQ is precluded under the Bankruptcy Code from seeking payments for amounts owing under the Indemnity Agreement and Guarantees, demanding additional collateral, taking actions that interfere with the Debtors' efforts to reorganize in these proceedings or revoking or refusing to renew Debtors' permits and/or licenses to operate coal mines in Wyoming due to the

Debtors' bankruptcy, financial condition or failing to provide collateral to secure the Debtors' reclamation obligations;

WHEREAS, WDEQ asserts that it is not precluded under the Bankruptcy Code from demanding additional collateral and revoking or refusing to grant, amend or renew the Debtors' permits and/or licenses to operate their coal mines in Wyoming due to the Debtors' failure to provide collateral to secure the Debtors reclamation obligations;

WHEREAS the Debtors' debtor in possession credit agreement dated as of August 6, 2015 (as it may be modified or amended, the "Credit Agreement") approved under the interim order [Docket No. 82] and any final further order approving the Debtors' postpetition financing (Docket No. [ ]) (collectively, and as modified or amended, the "DIP Order"), provides for, among other things, (a) a Bonding Carve-Out, which is a carve-out from the Term Facility Collateral in respect of the Bonding Superpriority Claim Amount with Superpriority Claim status entitling the authority making any applicable Bonding Request to receive proceeds of Term Facility Collateral first in priority before distribution to any Lender and (b) a Bonding Superpriority Claim, which is a Superpriority Claim granted solely in favor of a Bonding Beneficiary to satisfy a Bonding Request;<sup>1</sup>

WHEREAS, the Debtors and WDEQ wish to resolve their disagreements as to the above matters as provided herein without any adjudication of any issue of law or fact;

NOW, THEREFORE, the Parties agree as follows, subject to Bankruptcy Court approval:

---

<sup>1</sup> All capitalized terms not otherwise defined in this paragraph have the meanings given to them in the Credit Agreement.

1. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period (as defined below), (a) the Debtors may satisfy the bonding requirements for their reclamation obligations without complying with the Wyoming Substitution Demand, (b) Wyoming shall have, pursuant to, as applicable, sections 105, 364 and 503 of the Bankruptcy Code and solely in the manner and to the extent as permitted as a “Bonding Superpriority Claim” under the DIP Order, an allowed superpriority claim having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code in the amount of \$61 million (the “Superpriority Claim”) against each of ANR and ACW to secure the Debtors’ reclamation obligations (provided that under no circumstances will Wyoming recover more than \$61 million on account of the Superpriority Claim) and (c) the Debtors agree that the Bonding Carve Out (and thus the Superpriority Claim) will not be terminated, as permitted under the DIP Order or otherwise, except as set forth in paragraph [7] below.

2. Commencing on the date this Stipulation and Order is approved by the Court through the Compliance Plan Period, (a) Wyoming shall not seek additional collateral or revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (b) Wyoming shall not seek to enforce the Indemnity Agreements or Guarantees or seek to revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors’ mining permits or licenses on account of the Debtors’ non-payment of obligations under the Indemnity Agreements or Guarantees and (c) any proceedings relating to the Wyoming Substitution Demand or the Debtors’ self-bonding status, including the informal review process of WDEQ, shall be stayed.

3. This Stipulation and Order is without prejudice to (a) any claims or causes of action that Wyoming may assert over and above the Superpriority Claim against the Debtors on account of any obligation to perform reclamation, the Self-Bonds, the Indemnity Agreements or the Guarantees, including with respect to the amount of such claims and the priority of such claims or causes of action and (b) any defenses or objections to such claims by the Debtors or other parties, including with respect to the amount of such claims and the priority of such claims or causes of action, all of which are expressly preserved. Except as specifically set forth in paragraphs 1 and 2 above with respect to the Debtors' reclamation bonding obligations, the Debtors agree to comply with their reclamation obligations as required by applicable law, including 28 USC § 959(b).

4. Except as specifically set forth in paragraphs 1 and 2 above, nothing in this Stipulation and Order shall in any way limit or impair the rights of Wyoming (or WDEQ) to enforce all applicable environmental and reclamation laws and regulations, and none of the Parties waive or release any legal or factual argument, claim, doctrine or defense applicable to any dispute related thereto.

5. Nothing in this Stipulation and Order shall limit any rights of the Debtors to operate, not operate, idle, close, sell or otherwise dispose of their mines in Wyoming or any right of Wyoming to object to such action.

6. The Superpriority Claim shall terminate on earlier of the date that (a) Wyoming or WDEQ breaches this Stipulation and Order, (b) OSMRE revokes, terminates, refuses to grant or amend or takes any other adverse action with respect to the Debtors' Wyoming mining permits or licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations, (c) a third-party replaces the

Superpriority Claim with collateral or bonding acceptable to WDEQ or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in accordance with applicable law becomes effective by its terms.

7. For purposes of this Stipulation and Order, "Compliance Plan Period" shall mean the earlier of the date that (a) the Superpriority Claim is terminated pursuant to paragraph 6 hereof; (b) the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code; (c) the lenders under the Credit Agreement exercise remedies against the Term Facility Collateral; or (d) January 31, 2017.

8. This Stipulation and Order is without prejudice to the rights of the Parties under applicable laws and regulations concerning the Debtors' bonding obligations subsequent to the Compliance Plan Period.

9. In the event that the Court does not approve this Stipulation and Order: (a) nothing contained herein shall be deemed to be a waiver of any claims or defenses or an admission of liability by any Party hereto; and (b) this Stipulation and Order shall be null and void, and all rights of the Parties prior to this Stipulation and Order shall be preserved.

10. Upon approval by the Court, the Parties are authorized and empowered to take all actions deemed necessary to implement the terms of this Stipulation and Order.

11. Nothing in this Stipulation shall modify, alter or otherwise affect the rights or remedies of the agent of the lenders under the Debtors' postpetition debtor in possession financing facility or be deemed to authorize the Debtors to violate the terms of such financing facility.

12. This Stipulation and Order sets forth the entire agreement and understanding by and among the Parties. No amendment, waiver or modification of any

provision of this Stipulation and Order shall be effective unless the same shall be in writing and signed by the Parties and approved by the Court.

13. This Stipulation and Order may be signed in counterparts which, when taken as a whole, shall constitute one and the same document; and facsimile or other electronic copies of signatures shall be deemed originals.

14. Each individual signing this Stipulation and Order on behalf of any Party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that he or she is authorized to execute this Stipulation and Order in his or her representative capacity with binding effect, as reflected below and on behalf of the Party indicated.

15. This Stipulation and Order shall be governed by and shall be interpreted in accordance with the laws of the State of Virginia, except to the extent the Bankruptcy Code applies, without regard to Virginia's rules governing conflicts of laws.

16. The Court shall retain jurisdiction (and the Parties consent to such retention of jurisdiction) with respect to any disputes arising from, or other actions to interpret, administer or enforce, the terms and provisions of this Stipulation and Order.

Alpha Natural Resources, Inc.

State of Wyoming and Wyoming Department  
of Environmental Quality

By: /s/ Richard H. Verheij

By: /s/ James C. Kaste

Richard H. Verheij  
Executive Vice President, General Counsel &  
Corporate Secretary  
Alpha Natural Resources  
One Alpha Place  
Bristol, Virginia 24209

James C. Kaste  
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Andrew Kuhlmann  
Senior Assistant Attorney General  
Water & Natural Resources Division  
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Alpha Coal West, Inc.

By: /s/ Richard H. Verheij

Richard H. Verheij  
Vice President & Secretary  
Alpha Coal West, Inc.  
One Alpha Place  
Bristol, Virginia 24209

Dated: October \_\_\_\_, 2015  
Richmond, Virginia

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

McCallister Declaration



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Justin F. Paget (VSB No. 77949)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,  
  
Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**DECLARATION OF ANDREW McCALLISTER IN SUPPORT OF MOTION  
OF THE DEBTORS, PURSUANT TO BANKRUPTCY RULE 9019, FOR  
ENTRY OF STIPULATION AND ORDER CONCERNING RECLAMATION  
BONDING OF THEIR SURFACE COAL MINING OPERATIONS IN WYOMING**

I, Andrew McCallister, declare under penalty of perjury pursuant to 28 U.S.C.

§ 1746 that the following is true and correct:

1. I am the Vice President and Assistant General Counsel – Environmental Affairs of Alpha Natural Resources, Inc. ("ANR"), one of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"). I have held these positions at ANR since May 1, 2015. From November 10, 2014 to April 30, 2014, I was Vice President & Assistant General Counsel – Mining and Environmental for ANR. As part of my employment and services in these capacities, I am generally familiar with the Debtors' history, day-to-day

operations, business and environmental affairs, as well as the Debtors' regulatory compliance and reclamation efforts. I submit this Declaration in support of the *Motion of the Debtors, Pursuant to Bankruptcy Rule 9019, for Entry of Stipulation and Order Concerning Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming* (the "Motion").

2. This Declaration is based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtors' management and the Debtors' professionals; (c) my review of relevant documents; and (d) my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If called upon to testify, I could and would testify to the facts set forth in this Declaration. I am authorized by the Debtors to submit this Declaration.

***The Debtors' Reclamation Obligations***

3. In the mining context, environmental reclamation is the process whereby a mining company is required, once mining operations have ceased, to return the mined land to an environmentally safe, aesthetically pleasing and sustainable state. The Debtors have reclamation obligations that arise pursuant to state and federal law with respect to all of their mining operations. Governing statutes generally require that property upon which such mining operations have been conducted be restored in accordance with specified standards and an approved reclamation plan. Standards for mine reclamation have been established by various state and federal regulatory agencies that dictate the reclamation requirements at the Debtors' mining properties. The Debtors' reclamation obligations consist principally of costs necessary to (a) reclaim refuse and slurry ponds, (b) reclaim the pit and support acreage at surface mines, (c) seal portals at deep mines and (d) treat water used in mining operations.

***The Debtors' Wyoming Operations***

4. Debtor Alpha Coal West, Inc. ("ACW") – a wholly-owned subsidiary of ANR – has operated coal mines in Wyoming (through its predecessors, subsidiaries and affiliates) since the 1970s. ACW's present Wyoming operations consist of two surface mining sites, known as Belle Ayr and Eagle Butte (together, the "Wyoming Mines"). The Wyoming Mines employ approximately 580 people and shipped 36.5 million tons of coal in 2014. The Belle Ayr operation consists of one mine that extracts coal from a 75-foot thick coal seam. Eagle Butte consists of one mine that extracts coal from coal seams of approximately 100 feet in thickness. Coal from the Wyoming Mines is shipped principally by rail to power plants throughout the western, midwestern and southern United States.

5. ACW has had an exemplary record of environmental and reclamation compliance in Wyoming. The Wyoming Mines are inspected every month by the Wyoming Department of Environmental Quality (the "WDEQ"). In addition, state inspectors annually review the company's compliance with air and water quality standards. No significant incidents of non-compliance with environmental, reclamation or safety requirements have occurred at the Wyoming Mines. Notably, ACW has never been cited for improperly performing its reclamation obligations. In fact, ACW has received awards for the quality of its reclamation program. During the last five years (since ACW began self-bonding), ACW has received only two minor citations, one of which was self-reported. Neither of these citations was related to reclamation, and both were immediately corrected by ACW. I believe that ACW currently is in compliance with, and is continuing to fulfill, its ongoing obligations to perform reclamation under, applicable law and as required by 28 U.S.C. § 959(b).

***The WDEQ's Permitting and Bonding Requirements***

6. Each surface coal mining operation in Wyoming is required to obtain a mining permit from the WDEQ prior to commencing operations. In addition, the mine operator must obtain a license from the WDEQ, which authorizes the operator (ACW in this case) to conduct mining operations at each permitted mine. Among other requirements to obtain a permit or license for surface coal mining operations, each mine operator must post a reclamation bond. The amount of the required reclamation bond is determined by the WDEQ in accordance with guidelines published by the State of Wyoming. The WDEQ determines the amount of the bond based on an analysis of a "worst case" reclamation scenario for a given 12-month period. In calculating this estimate, the WDEQ assumes that ACW (with all of its existing equipment, staff, facilities, historical knowledge, expertise and capabilities) would disappear completely from the Eagle Butte and Belle Ayr mining sites and that the WDEQ would have to undertake reclamation efforts without any assistance provided by ACW.

7. Mine operators that meet certain criteria may be authorized to "self-bond." If a mine operator is permitted to self-bond, such operator and/or its corporate parent is required to provide a financial guarantee that all reclamation work, as and when actually necessary, will be completed in accordance with a reclamation plan approved by the WDEQ. Liability under a self-bond continues until all reclamation, restoration and abatement work is completed at the relevant site. Under Wyoming law, a mine operator remains liable for reclamation costs that may arise in connection with a former mine site, during a minimum liability period that extends five to ten years (depending on certain factors) after the operator's reclamation work completed. Once this liability period has expired, a mine operator that has performed reclamation work in compliance with applicable law can formally request that the WDEQ release the operator's bond.

8. The WDEQ is empowered to enforce compliance with Wyoming bonding requirements by various means, including by imposing "permit blocks" – i.e., penalties designed to prevent non-compliant mine operators from obtaining or renewing mining permits in Wyoming and other states. The WDEQ may also suspend or revoke existing mine permits under certain circumstances, including if the WDEQ determines that adequate financial assurance has not been posted for a particular permit. With respect to self-bonding, the WDEQ claims a right to suspend or revoke a mine operator's license if: (a) the WDEQ determines that the operator is no longer qualified to self-bond for purposes of satisfying its reclamation bonding requirements under applicable law; (b) the WDEQ requests that the mine operator substitute a commercial surety or collateral bond for the self-bond; and (c) the mine operator does not make such substitution within 90 days.

***Self-Bonding of ACW's Reclamation Obligations***

9. Since 2010, ACW has relied on self-bonding for its Wyoming Mines. The Debtors currently self-bond approximately 96% of ACW's Wyoming reclamation obligations. In that regard, ACW and ANR, as its parent-guarantor, have made yearly financial showings to the WDEQ (specifically, that ANR meets required financial ratios as set forth in applicable Wyoming regulations). To memorialize this self-bonding arrangement, ACW has executed a self-bond agreement with the WDEQ as well as an indemnity agreement in favor of the WDEQ and the federal Office of Surface Mining Reclamation and Enforcement (the "OSMRE") for each of the relevant permits. In addition, ANR has executed a corporate guaranty in favor of the WDEQ and the OSMRE for each of the permits in question. On a yearly basis, ANR and ACW have sought renewal of their self-bonding arrangement by submitting updated financial information (including their most recent Forms 10-K and 10-Q) and by executing such agreements. The WDEQ issued its last annual renewal to ACW on

December 19, 2014, which ACW and ANR understood would authorize them to continue their self-bonding program in Wyoming for a one-year period. For the year ending December 2014, the WDEQ set ACW's self-bonding obligations for the Wyoming Mines, in the aggregate, at approximately \$411 million.

***The Wyoming Substitution Demand***

10. On May 26, 2015, following approximately one month of discussions and the provision of information from ACW and ANR to the WDEQ at its request, the WDEQ issued a demand to ACW (the "Wyoming Substitution Demand"). The Wyoming Substitution Demand asserted that: (a) ACW's right to self-bond with respect to its reclamation obligations in Wyoming (supported by ANR's guarantee) would terminate as of August 24, 2015 (the "Posting Deadline"); and (b) on or before the Posting Deadline, ACW was required to post a commercial surety bond or substitute collateral in the amount of approximately \$411 million as a condition to being allowed to continue mining operations in Wyoming. The Wyoming Substitution Demand cited no actual reclamation or environmental concerns or costs associated with the Wyoming Mines, and it did not impose any new compliance obligations on ACW.

11. ACW and ANR disagreed with the determination made by the WDEQ in the Wyoming Substitution Demand and pursued both administrative and judicial appeals thereof. On June 9, 2015, ANR requested an informal conference with the Director of the WDEQ to address the Wyoming Substitution Demand. On June 26, 2015, ANR and ACW exercised their statutory right under Wyoming law to seek judicial review of WDEQ's revocation of the Debtors' self-bond by filing an appeal thereof in the Sixth Judicial District Court of Campbell County, Wyoming (the "Wyoming Court"). On July 9, 2015, the Director of the WDEQ agreed to hold an informal conference to consider the issues raised by ANR with respect to the Wyoming Substitution Demand. On July 24, 2015, with Wyoming's concurrence, the Debtors

filed an unopposed motion (the "Stay Motion") before the Wyoming Court, seeking a stay of, among other things, the Posting Deadline until after a final conference with WDEQ is held (the "Stay"). On July 29, 2015, the Wyoming Court entered an order granting the Stay Motion and imposing the Stay. As of the filing of the Motion, the final conference before the WDEQ has not yet been convened.

12. The Debtors have limited ability to satisfy the Wyoming Substitution Demand. The posting of more than \$400 million in collateral to support the performance of the Debtors' reclamation obligations and permit the continuation of their Wyoming operations (a) would impose a significant burden on the Debtors' liquidity and (b) is not authorized under the terms of the Debtors' debtor in possession credit agreement, which was approved on an interim basis by an order of this Court entered on August 4, 2015 (Docket No. 82). Moreover, the option of providing a commercial surety bond in the required amount provides no viable alternative because, in addition to the expense of posting such a surety bond in terms of premiums and administrative fees, the Debtors would be required to provide collateral to support their obligations under any such bond.

I, Andrew McCallister, declare under penalty of perjury that the foregoing is true and correct.

Dated: September 8, 2015  
Charleston, West Virginia

By: /s/ Andrew McCallister  
Andrew McCallister  
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