

NOTICE OF INTENT TO CONDUCT EXPLORATION ACTIVITIES AND AGREEMENT

This Notice of Intent to Conduct Exploration Activities and Agreement (this "Agreement") made this ____ day of _____ 2020, by New Elk Coal Company LLC, located at 12250 Highway 12, Weston, Colorado 81091 ("NECC") and the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission, located at 1313 Sherman St., Denver, Colorado 80203 (hereinafter refer to as "CPW" or the "State").

WHEREAS, NECC is the owner and operator of a coal mine located at 12250 Highway 12, Weston, Colorado 81091.

WHEREAS, CPW owns the surface estate and certain mineral estate in property located in Las Animas County, Colorado, more particularly described in Exhibit A to this Agreement and is hereinafter referred to as the "Property."

WHEREAS, NECC and CPW are parties to that certain Coal Mining Lease, dated March 14, 2008, as amended (the "Mining Lease"). Pursuant to Section 21 of the Mining Lease, NECC has the right to conduct exploration activities on the Property provided that "an exploration Notice of Intent is submitted to and approved by DRMS." A copy of Mining Lease is attached hereto as Exhibit B.

WHEREAS, NECC intends to include a copy of this Agreement with its Notice of Intent to DRMS.

WHEREAS, NECC wishes to enter the Property for purposes of drilling and related exploration activities in accordance with the rights granted to NECC under the aforementioned Mining Lease and in accordance with the DRMS exploration permit.

WHEREAS, CPW is willing to grant NECC and its authorized representatives permission to access the Property for such purposes upon all of the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and in the Mining Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Permission to Enter. Provided that NECC complies with Section 21 of the Mining Lease, CPW grants permission to NECC, its officers, employees, agents, contractors, and all other persons authorized by NECC, the right to enter and use the Property for the purposes described in paragraph 2 below.

2. Scope of Exploration Activities. NECC, or authorized persons acting on its behalf (collectively referred to as "NECC"), intend to undertake certain exploration activities on the Property, which shall include the construction of up to 17 drilling equipment pads, each of which shall measure approximately 100' x 100', and the drilling of up to 17 holes, each of which shall be approximately 5" wide to the maximum depth of 1240', at the approximate locations depicted

on Exhibit C attached hereto (collectively, the "Exploration Activities"). NECC shall utilize existing roadways to access the areas for the Exploration Activities and there are no plans to construct any new roadways in connection with these activities. For purposes of performing these activities, NECC shall utilize an excavator, a road grader, a borehole drilling machine and ancillary equipment. The drilling activities to be performed by NECC on the Property are expected to commence in mid-April 2020 and are estimated to be completed within approximately one hundred twenty (120) days from the date of NECC's initial entry onto the Property to conduct the Exploration Activities.

3. Conditions to Entry. The foregoing permission for entry is subject to each of the following conditions:

a. NECC shall maintain in a reasonably neat and clean condition at all times both the areas of the Property in the vicinity of the drilling activities and all other areas of the Property utilized in connection with the Exploration Activities.

b. Following the conclusion of the Exploration Activities, NECC shall remove from the Property all equipment, tools, supplies, and materials used in connection with such activities and shall return the Property to the condition that existed immediately prior to the drilling activities described in this Agreement and in compliance with the applicable reclamation requirements of the Colorado Division of Reclamation Safety and Health.

c. NECC shall notify CPW at least fifteen (15) days in advance of commencing any earth moving or excavation operations on the Property, including moving in excavators, drilling machines or other heavy equipment.

d. Persons entering the Property for the purposes set forth herein may be asked by employees or authorized representatives of CPW to produce appropriate identification and may be excluded from the Property if they fail to do so.

4. Insurance. NECC shall cause or require its contractors to maintain, in full force and effect the following minimum insurance:

(i) Workers compensation and employer liability coverage as required by statutes;

(ii) Commercial general liability coverage (including bodily injury and property damage) in an amount of not less than \$1 million;

(iii) Automobile liability coverage (including bodily injury and property damage) in an amount of not less than \$1 million;

(iv) Professional liability coverage in an amount not less than \$1 million; and

(v) Contractor's pollution liability coverage in an amount not less than \$1 million.

5. Term. The parties agree that this Agreement shall terminate on October 30, 2020, unless extended in writing.

6. Limitation of State Liability. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

7. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties.

8. Authority. Each person executing this Agreement on behalf of a party represents and warrants that he or she is authorized to execute this Agreement on behalf of such party and to bind such a party by its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

NEW ELK COAL COMPANY LLC

By: 
Its: Pres & Gen Mgr.

**THE DIVISION OF PARKS AND WILDLIFE
FOR EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF NATURAL RESOURCES
AND ON BEHALF OF THE PARKS AND
WILDLIFE COMMISSION**

By: 
Its: Southeast Regional Manager