

EXHIBIT 46
MEMORANDUM OF UNDERSTANDING
WITH
DIVISION OF PARKS AND WILDLIFE

Memorandum of Understanding

This Memorandum of Understanding (“**MOU**”) is entered into this ____ day of November, 2021, by and between 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 (“**State**”) located at 6060 Broadway, Denver, Colorado 80216, and New Elk Coal Company LLC, a Colorado limited liability company, (“**New Elk**”) located at 12250 State Hwy 12, Weston, Colorado 81091. (The State and New Elk collectively are referred to hereafter as the “**Parties.**”)

Whereas:

1. The Parties entered into a Coal Mining Lease (“**Lease**”) dated March 14, 2008, which included portions of Bosque Del Oso SWA (“**SWA**”).
2. On December 23, 2011, the Parties amended the Lease (“**Amendment #1**”), which added terms relating to water monitoring, reclamation and restoration of monitoring areas.
3. On May 9, 2012, the Parties amended the Lease (“**Amendment #2**”), which added additional property and royalty terms to the Lease.
4. On March 3, 2020, the Parties amended the Lease (“**Amendment #3**”), which revised the calculation of royalty payments due to the State under the Lease.
5. Renewed production has commenced on the Leased premises and the Parties have consulted and wish to memorialize the Parties’ agreed upon terms on how day-to-day operations will be conducted.
6. New Elk has indicated that there is a need to temporarily use trucks as the means to haul coal from the Leased premises.

Now therefore, the Parties hereby agree to the following:

1. New Elk will only haul coal off the Leased premises between the hours of 6:00am and 6:00pm with a maximum of 8 trucks per hour using the Apache Canyon/West entrance of the SWA.
2. New Elk will install a road gate on the south side of railroad right-of-way at the Apache Canyon/West entrance of the SWA and a gate at the entrance of the campground on the SWA. The Parties will periodically consult and assess the adequacy of the cattle guard at the Apache Canyon/West entrance and New Elk will install a new cattle guard if necessary, at the sole discretion of the State.
3. For the duration of the hauling, New Elk will maintain the road(s) used by New Elk to a condition acceptable to the State, as well as perform periodic weed control, as needed, along such road(s) using an herbicide acceptable to the State. New Elk will also control dust pollution during the duration of the hauling using water or a dust reducing agent suitable for use near waterways and is approved by the State.
4. New Elk will adhere to 15 miles per hour speed limit for all vehicles operating on the Leased premises, and install and maintain signs clearly showing such speed limit along such road(s).
5. New Elk trucks exiting the Leased premises will be required to yield to incoming traffic coming onto the Leased premises from Highway 12, and install clearly visible signs displaying such yielding procedures.
6. New Elk trucks will not utilize compression release engine braking, or jake braking on the Leased premises.

7. New Elk agrees to allow public access on the existing haul road and entire right away for licensed hunters from the start of CO hunting seasons until the end of CO hunting seasons. New Elk also agrees to public access for CPW employees, Bar NI Ranch employees, orgis, additional gas company employees and associated contractors on the existing haul road and entire right away.
8. This agreement shall be effective so long as New Elk is trucking coal off of the Leased premises, and the Parties shall consult and reassess the terms of this agreement to make changes, as needed, at least annually for the life of this agreement.

This MOU does not require the expenditure of State funds.

<p>New Elk Coal Company LLC</p> <p> Signature</p> <p>Randy L Wiles Full Name</p> <p>General Manager Title</p> <p>1/4/2022 Date</p>	<p>STATE OF COLORADO</p> <p>Jared S. Polis, Governor</p> <p>Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission</p> <p>Dan Gibbs, Executive Director</p> <p> Signature</p> <p>Brett Ackerman Full Name</p> <p>Southeast Regional Manager - CPW Title</p> <p>1/27/2022 Date</p>
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