

**AMENDMENT NO. 1
TO AMENDED AND RESTATED SAN JUAN GENERATING STATION
RECLAMATION TRUST AGREEMENT
INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO**

THIS AMENDMENT NO. 1 to the Amended and Restated San Juan Generating Station Reclamation Trust Agreement (“Amendment No. 1”) is entered into as of _____, by and between the Incorporated County of Los Alamos, New Mexico, a political division of the State of New Mexico (“Los Alamos”), in its capacity as a participant in the San Juan Project, and BOKF, N.A. dba Bank of Albuquerque (“Bank”), as Trustee (in its capacity as Trustee hereunder, the “Trustee”) for the benefit of Westmoreland San Juan Mining LLC, a Delaware corporation (“WSJM”), successor and assignee of San Juan Coal Company (“SJCC”), upon the terms and conditions set forth in this Amendment No. 1. and the Trustee are collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

A. WHEREAS, Los Alamos and the Trustee are parties to that certain Amended and Restated San Juan Generating Station Reclamation Trust Agreement dated as of April 30, 2016 (“Trust Agreement”), pursuant to which established and is funding the Trust, as that term is defined in the Trust Agreement;

B. WHEREAS, funds held in the Trust are to be used for the sole purpose of providing funds to pay SJCC for the costs of reclaiming San Juan Mine, in accordance with obligations as set out in the Mine Reclamation Agreement;

C. WHEREAS, Westmoreland Coal Company (“WCC”) and certain of WCC’s subsidiaries, including SJCC (collectively, “Debtors”), filed for Chapter 11 bankruptcy on October 9, 2018 in the U.S. Bankruptcy Court, Southern District of Texas (“Bankruptcy Court”), Bankruptcy Case No. 18-35782;

D. WHEREAS, the Bankruptcy Court issued a Confirmation Order approving the Debtors’ Chapter 11 Plan of Reorganization (“Plan”) on March 2, 2019, which Plan included the sale by WCC and certain of its subsidiaries, including SJCC, of substantially all their assets to Westmoreland Mining, LLC and its direct subsidiaries;

E. WHEREAS, the administrator for the Plan (“Plan Administrator”) has issued a Direction Letter, attached hereto as Attachment A (“Direction Letter”) in which the Plan Administrator states, on behalf of SJCC, that (1) WSJM is a direct, wholly-owned subsidiary of the purchaser Westmoreland Mining, LLC, is a designated purchaser under the asset purchase agreement, and, pursuant to the Plan, is the successor, third-party beneficiary under the CSA, the RSA and the MRTFA and is therefore entitled to receive the monthly reclamation payments that were previously made to SJCC; (2) making future reclamation payments to WSJM will not adversely affect SJCC’s interest as a beneficiary under the IRTAs; and (3) modifying SJCC’s status as a beneficiary under the IRTAs is not inconsistent with the MRTFA;

F. WHEREAS, pursuant to the Direction Letter, SJCC (1) expressly assigned to WSJM its rights to the reclamation payments under the CSA, RSA, and the MRTFA; (2) irrevocably waived its rights to any such future payments and released each of the Parties, each reclamation trust and each IRTA from and against any rights, claims, or interest of SJCC that arise or might arise from payment of the reclamation amounts to WSJM, as the successor and assignee of SJCC; (3) requested that each Party expeditiously seek to amend its IRTA to designate WSJM as the beneficiary under the IRTA; and (4) directed each Party, from and after the effective date of such amendment, to cause payments from such Party's reclamation trust to be made to WSJM;

G. WHEREAS, Counsel for WSJM has issued an opinion to and the Trustee, attached hereto as Attachment B ("Opinion Letter"), opining "that the payment of the Reclamation Payments by the Parties and each Reclamation Trust to WSJM would comply with the terms of the Reclamation Documentation, modification of SJCC's status as a beneficiary under the IRTAs is not inconsistent with the MRFTA, and making future reclamation payments to WSJM will not adversely affect SJCC's interest as a beneficiary under the IRTAs due to the bankruptcy proceedings, court orders, and the analysis provided above.";

H. WHEREAS, based on the Direction Letter and the Opinion Letter, the Parties have agreed to amend the Trust Agreement to name WSJM and its successors and assigns as the sole Beneficiary of the Trust and make related modifications, as set forth in this Amendment No. 1.

AMENDMENT

NOW, THEREFORE, for valuable consideration, the receipt of which is acknowledged, the Parties hereby agree as follows:

I. **Defined Terms.** All capitalized terms used in this Amendment No. 1 and not otherwise defined or modified herein shall have the meanings set forth in the Trust Agreement. As used in Recitals E, F and G, (a) "MRTFA" is synonymous with the Mine Reclamation Agreement; (b) "Reclamation Trust" is synonymous with the individual reclamation trusts, including the Trust; (c) "IRTA" is synonymous with the individual reclamation trust agreements, including the Trust Agreement; (d) "Reclamation Documentation" is synonymous with the MRTFA, IRTAs, CSA and RSA collectively; (e) "Parties" is synonymous with the parties to the MRTFA, including Los Alamos; and (f) "Reclamation Payments" is synonymous with the monthly payments to be made by PNM to SJCC for the reclamation work itemized in the RSA as set forth in Exhibit D.

J. **Amendment Effective Date.** This Amendment No. 1 shall become effective on the date signed by the Trustee.

K. **Parties.** The introductory paragraph of the Trust Agreement is hereby amended by inserting "Westmoreland San Juan Mining, LLC, a Delaware limited liability company ("WSJM"), successor to and assignee of" between the words "for the benefit of" and "San Juan Coal Company".

L. **Recitals.** The Recitals are amended as follows:

a. The second recital is hereby amended by deleting the last sentence and inserting the following: “PNM and SJCC subsequently entered into a Coal Supply Agreement (“CSA”) for the supply of coal to the Project, which CSA has been transferred by SJCC to WSJM.”

b. The fifth recital is hereby amended by inserting “, which RSA has been transferred by SJCC to WSJM” at the end of the recital.

c. The seventh recital is hereby amended by deleting “have” before “entered” in the second line.

d. The following paragraph is hereby added as the eighth recital:

WHEREAS, pursuant to the Assignment, Assumption, Termination and Release Agreement among the Participants dated September 1, 2017, PNMR-D assigned to PNM, PNM assumed, and the Participants released PNMR-D from, PNMR-D’s reclamation obligations under the Mine Reclamation Agreement.

M. **Trust Beneficiary.** Section 2.1 of the Trust Agreement is hereby amended by replacing such section in its entirety with the following:

2.1 Identification of Beneficiary. The Beneficiary of this Trust (“Beneficiary”) is WSJM and its successors and permitted assigns.

N. **Notice.** Section 11.12 is hereby amended by deleting contact information for SJCC and inserting the following contact information for WSJM:

If to WSJM:

Westmoreland San Juan Mining, LLC
Attn: Joe Micheletti, Chief Operating Officer
9540 South Maroon Circle, Suite #300
Englewood, CO 80112-5730

with a copy addressed as follows:

Westmoreland Mining, LLC
Attn: Jeremy Cottrell, General Counsel
9540 South Maroon Circle, Suite #300
Englewood, CO 80112-5730

O. **Replacement of Certain References and Defined Terms.** The Trust Agreement is hereby amended by replacing “San Juan Coal Company” with “Westmoreland San Juan Mining LLC” in Section 11.12, Notices, and replacing the defined term “SJCC” with “WSJM” in the following sections of the Trust Agreement: Introductory paragraph under “Agreement,” page 2; Section 1.2, Purpose; Section 3.1, Principal Reclamation Trust Fund; Section 6.1(h), Account Statement; Section 6.1(n), Right of Interpleader; Section 6.1(p), Indemnification; Section 11.2, Spendthrift Clause; Section 11.12, Notices; Section 11.14, Entire Agreement; and Section 11.15, Third Party Beneficiaries.

P. **Governing Law.** The validity, construction, and effect of this Amendment No. 1, the administration thereof and the rights and obligations of the Parties will be governed by the laws of the State of New Mexico.

Q. **No Other Amendments; Confirmation.** Except as expressly amended by this Amendment No. 1, the provisions of the Trust Agreement shall remain in full force and effect. The Trust Agreement and this Amendment No. 1 shall be read, taken, and construed as one and the same instrument.

R. **Counterparts.** This Amendment No. 1 may be executed in any number of counterparts, and it will not be necessary that the signatures of both Parties be contained on any counterpart. Each counterpart will be deemed an original, but all counterparts together will constitute one and the same instrument.

[Signatures are on the following pages]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed on their behalf, and the signatories hereto represent that they have been duly authorized to enter into this Amendment No. 1 on behalf of the Party for whom they signed.

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Its: _____
Dated: _____

BOKF, N.A., as Trustee

By: _____
Its: _____
Dated: _____

ATTACHMENT A
DIRECTION LETTER

April 13, 2020

To the Addressees Listed on Attachment A

Re: Direction Letter —
Payment to Westmoreland San Juan Mining LLC for Reclamation Activities

To Whom It May Concern:

I write in my capacity as the plan administrator¹ for the confirmed chapter 11 plan (the “Plan”) of Westmoreland Coal Company and certain of its affiliates, including San Juan Coal Company (“SJCC”). Under the Plan, Westmoreland Coal Company and certain of its affiliates (including SJCC) sold substantially all of their assets to Westmoreland Mining LLC (“Westmoreland Mining”) and its affiliates.² Included in the assets sold to Westmoreland Mining were SJCC’s rights to receive reclamation payments (i) under a Coal Supply Agreement, dated July 1, 2015, (the “PNM CSA”) between Westmoreland Coal Company and Public Service

¹ Pursuant to the Plan, the plan administrator is the sole manager and sole officer of Westmoreland Coal Company and the other WLB Debtors (as defined in the Plan), including SJCC, succeeding to the powers of the WLB Debtors’ former managers, directors, and officers. *See* Plan Art. IV.I [Docket No. 1532].

² *See* Art. IV.C; Asset Purchase Agreement §§ 1.01 [Docket No. 1621] (“‘Purchased US Business’ means the business, operations and ownership of the Sellers (wherever the business, operations and assets are situated or conducted) related to (i) the mining, processing, preparation, selling and shipping of coal and related operations conducted with regards to the US Mining Complexes, (ii) the mineral development drilling, exploration and related operations conducted with regards to the US Mining Complexes and (iii) the selling, marketing, purchasing and blending of coal and related operations, in each case with regards to the US Mining Complexes, including all operations of the Sellers located at Westmoreland’s Englewood, Colorado headquarters.”); Asset Purchase Agreement §§ 2.01 [Docket No. 1621] (“Upon the terms and subject to the conditions of this Agreement, Buyer agrees, and agrees to cause the relevant Designated Buyers, to purchase from the Sellers, and the Sellers agree to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, to Buyer, or the relevant Designated Buyers, at the Closing, free and clear of all Encumbrances, other than Permitted Encumbrances, all of the Sellers’ right, title and interest in, to and under the Purchased US Business and all of the Sellers’ **assets, properties, leases, rights, interests, Contracts and claims (in each case, other than the Excluded Assets)**, wherever situated or located, whether real, personal or mixed, whether tangible or intangible, whether identifiable or contingent, whether owned, leased, licensed, used or held for use in or relating to the Purchased US Business, and whether or not reflected on the books and records of Sellers, as the same shall exist immediately prior to the Closing, including the following”) (emphasis added); Asset Purchase Agreement §§ 2.15 [Docket No. 1621] (“Buyer shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 2.15, one or more Affiliates to (i) purchase specified Transferred Assets (including specified Assumed Contracts and Assumed Leases), (ii) assume specified Assumed Liabilities, and/or (iii) employ certain Transferred Employees on and after the Closing Date”). Westmoreland San Juan Mining LLC signed the asset purchase agreement as a designated purchaser.

Company of New Mexico (“PNM”), (ii) under a Reclamation Services Agreement, dated July 1, 2015, (the “PNM RSA”) between Westmoreland Coal Company and PNM, and (iii) as the third party beneficiary of an Amended and Restated Mine Reclamation and Trust Funds Agreement, dated July 31, 2015, (the “MRTFA”) among PNM; Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; and Tri-State Generation and Transmission Association, Inc. (each a “Party” and collectively, the “Parties”).

Westmoreland San Juan Mining LLC is a direct, wholly-owned subsidiary of the purchaser Westmoreland Mining, is a designated purchaser under the asset purchase agreement, and, pursuant to the Plan, is the successor third party beneficiary under the PNM CSA, PNM RSA, and the MRTFA and is therefore entitled to receive the monthly reclamation payments that were previously made to SJCC.³ For the avoidance of doubt, SJCC hereby expressly assigns to Westmoreland San Juan Mining LLC its rights to the reclamation payments under the PNM CSA, PNM RSA, and the MRTFA.

In my capacity as plan administrator for the confirmed Plan of Westmoreland Coal Company and certain of its affiliates, including SJCC, on behalf of SJCC, the modifications to the San Juan Generating Station Reclamation Trust Agreements (collectively, “IRTAs”) between the individual Parties and their individual trustees to permit reclamation payments made to SJCC to now be made to Westmoreland San Juan Mining LLC will not adversely affect the interests of SJCC.

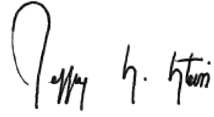
The plan administrator requests that each Party expeditiously seek to amend its IRTA to designate Westmoreland San Juan Mining LLC as the beneficiary under the IRTA. SJCC, as the current beneficiary of the PNM RSA, the MRTFA, and the IRTAs governing the rights, title, and interest in the reclamation payments, directs each Party, from and after the effective date of such amendment, to cause payments from such Party’s reclamation trust to be made to Westmoreland San Juan Mining LLC, and SJCC irrevocably waives its rights to all such payments. SJCC hereby releases each of the Parties, each reclamation trust⁴ and each IRTA from and against any rights, claims, or interest of SJCC that arise or might arise from payment of the reclamation amounts to Westmoreland San Juan Mining LLC, as the successor and assignee of SJCC. SJCC further affirms and represents that making future reclamation payments to Westmoreland San Juan Mining LLC will not adversely affect SJCC’s interest as a beneficiary under the IRTAs and, as a result of the bankruptcy proceedings, court-approved asset sales, and the confirmed plan of reorganization, modifying SJCC’s status as a beneficiary under the IRTAs is not inconsistent with the MRTFA.

³ See Plan Art. XIV.F; Asset Purchase Agreement § 2.15 (“The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign, Affiliate, officer, director, manager, trustee, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.”).

⁴ Reclamation trusts were established by each of the Parties, for the purpose of satisfying, together with the other Parties, reclamation payments owed by PNM to SJCC under Section 4.1 of the PNM RSA.

The Parties and the Trustees under the IRTAs may rely on this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Stein". The signature is written in a cursive, somewhat stylized font.

Jeffrey S. Stein
Plan Administrator
Westmoreland Coal Company *et al.*,
including San Juan Coal Company

EXECUTION COPY

ATTACHMENT A

ADDRESSEES

Public Service Company of New Mexico

Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

Tucson Electric Power Company

88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

Incorporated County of Los Alamos, New Mexico

c/o County Clerk
1000 Central Ave., Suite 240
Los Alamos, NM 87544

With a copy to:

Incorporated County of Los Alamos, New Mexico
c/o Utilities Manager
1000 Central Ave., Suite 130
Los Alamos, NM 87544

M-S-R Public Power Agency

c/o General Manager
1231 11th Street
Modesto, CA 95354

Southern California Public Power Authority

c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

City of Farmington

c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

With a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

Utah Associated Municipal Power Systems

c/o General Manager
155 North 400 West, Suite 480
Salt Lake City, UT 84103

City of Anaheim

c/o City Clerk
200 South Anaheim Boulevard
Suite 217 (2nd Floor)
Anaheim, CA 92805

With a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

Tri-State Generation and Transmission Association, Inc.

c/o Chief Executive Officer
1100 W 116th Avenue
Westminster, CO 80234

OR

P.O. Box 33695
Denver, CO 80233

The following Addressees are referred to collectively as the “Trustees”:

**Trustee for Public Service Company of
New Mexico San Juan Generating
Station Reclamation Trust Agreement:**

Wells Fargo Bank, N.A.
3800 Howard Hughes Parkway, 3rd Floor
MAC S4733-03A
Las Vegas, NV 89169
Attn: Gaye Borden

**Trustee for City of Anaheim San Juan
Generating Station Reclamation Trust
Agreement:**

U.S Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services
Reference: San Juan Project Trust / City of
Anaheim

**Trustee for City of Farmington San Juan
Generating Station Reclamation Trust
Agreement:**

Bank of Albuquerque
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87109
Attn: Donald Fennema
Senior Vice President and Trust Officer
Corporate Trust
BOK Financial Services provided by
BOKF, NA

**Trustee for Incorporated County of Los
Alamos, New Mexico San Juan
Generating Station Reclamation Trust
Agreement:**

Bank of Albuquerque
Corporate Trust
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87109

**Trustee for M-S-R Public Power Agency
San Juan Generating Station
Reclamation Trust Agreement:**

U.S Bank National Association
One California Street, 10th Floor
San Francisco, CA 94711
Attn: Corporate Trust Services

**Trustee for Southern California Public
Power Authority San Juan Generating
Station Reclamation Trust Agreement:**

U.S Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services
c/o Linda Verstuyft

With a copy to:

Michelle Knutson
Assistant Vice President | Relationship
Manager
U.S. Bank
U.S. Bank Center Phoenix, LM-AZ-X16P
101 N 1st Ave, Suite 1600
Phoenix, AZ 85003

**Trustee for Utah Associated Municipal
Power Systems San Juan Generating
Station Reclamation Trust Agreement:**

Zions First National Bank-Trust
Department
One South Main Street, Suite 1200
Salt Lake City, UT 84133-1109

**Trustee for Tucson Electric Power
Company San Juan Generating Station
Reclamation Trust Agreement**

and for

**Tri-State Generation and Transmission
Association, Inc. San Juan Generating
Station Reclamation Trust Agreement:**

U.S. Bank National Association
Global Corporate Trust
Attn: Michelle Mena-Rosado
100 Wall Street, 6th floor
New York, New York 10005

ATTACHMENT B

OPINION LETTER

ATTACHMENT A

Kramer Levin



1177 Avenue of the Americas
New York, NY 10036
T 212.715.9100
F 212.715.8000

CONFIDENTIAL

To the Addressees Listed on Attachment A

Re: Payment to Westmoreland San Juan Mining LLC for Reclamation Activities

Dear Addressees:

We act as counsel to Westmoreland Mining Holdings LLC, a Delaware limited liability company ("WMH"), and its subsidiaries, including Westmoreland San Juan Mining LLC, an indirect wholly-owned subsidiary of WMH ("WSJM")¹. We are delivering this letter at the request of the Parties (as defined below) in connection with the assignment and assumption of certain contracts referenced herein and related reclamation activity payments now payable to WSJM pursuant to the sale of the relevant assets in chapter 11, as further described below.

Reference is made to that certain Amended and Restated Mine Reclamation and Trust Funds Agreement, dated as of July 31, 2015 (the "MRTFA"), entered into by and among Public Service Company of New Mexico ("PNM") and eight other entities party thereto² (the "Parties").

You have asked whether the Parties and the Trustees would be in compliance with the terms of the Reclamation Documentation (defined below) if they made Reclamation Payments (defined below) to WSJM.

Based on the analysis in this letter, we are of the opinion that the Parties and the Trustees would be in compliance with the terms of the Reclamation Documentation if they made Reclamation Payments to WSJM.

Background

We understand that certain of the Parties collectively own the San Juan Generating Station, a coal fired power plant located near Farmington, New Mexico (the "SJGS").

¹ WSJM is a direct wholly-owned subsidiary of Westmoreland Mining, LLC ("Westmoreland Mining"), which is a direct wholly-owned subsidiary of WMH.

² These entities are: Tucson Electric Power Company; The City of Farmington, New Mexico; M-S-R Public Power Agency; The Incorporated County of Los Alamos, New Mexico; Southern California Public Power Authority; City of Anaheim; Utah Associated Municipal Power Systems; and Tri-State Generation and Transmission Association, Inc.



Coal for the operation of the SJGS comes from the mining facility referred to as the “San Juan Mine” located adjacent to the SJGS (the “San Juan Mine”). The coal is currently supplied to SJGS under a Coal Supply Agreement, dated July 1, 2015 (the “CSA”), between Westmoreland Coal Company (“WCC”), the parent company of San Juan Coal Company (“SJCC”), and PNM.

Under the CSA, PNM agreed to “compensate SJCC for all reclamation and related liabilities, obligations and costs associated with disturbance on the [San Juan Mine] resulting in any way from the supply of coal for [the SJGS]....” Concurrently upon entering into the CSA, PNM and WCC entered into a Reclamation Services Agreement, dated July 1, 2015 (the “RSA”) pursuant to which SJCC provides reclamation services in connection with the San Juan Mine. Upon execution of the CSA and RSA, WCC immediately assigned its rights and obligations under both agreements to SJCC. Under the RSA, PNM agreed to pay SJCC “on a monthly basis” a sum for the work itemized in the RSA at Exhibit D (the “Reclamation Payments”). (RSA at § 4.1)

Pursuant to the MRTFA, the Parties agreed to share the responsibility for the Reclamation Payments. (MRTFA at § 3.0). Each Party is required to establish an individual reclamation trust (the “Reclamation Trusts”) through an individual Reclamation Trust Agreement (“IRTA”) for the purpose of satisfying, together with the other Parties, the Reclamation Payments payable by PNM to SJCC under Section 4.1 of the RSA. (MRTFA at § 4.1)

While SJCC is not a direct party to the MRTFA, under § 16.2 of the MRTFA SJCC is an intended third party beneficiary. The IRTAs do not have the same successors or assigns language relating to SJCC or to the defined term Beneficiary as is in the MRTFA. However, as required under § 2.1 of Exhibit 3 of the MRTFA (the Mandatory Provisions), SJCC is a beneficiary of each Reclamation Trust. SJCC is defined in the MRTFA as “San Juan Coal Company, a Delaware corporation, or its successors or assigns.” (*Id.* at § 2.1.81) (emphasis added).

Each IRTA sets forth the procedures for payment to SJCC. The MRTFA Operating Agent³ bills each Party for reclamation costs invoiced by SJCC at least ten business days prior to the date that SJCC is due payment. (IRTA at § 3.1). After reviewing and approving the invoice, each Party must direct the Trustee of the respective Reclamation Trust to pay the invoice “by making payment out of the assets of the Reclamation Trust, in immediately available funds, to SJCC.” (IRTA at § 3.1). We understand that to date, many of the Parties have made regular payments to SJCC through the Reclamation Trusts as contemplated by the MRTFA, IRTAs, CSA, and the RSA (collectively, the “Reclamation Documentation”).

On October 9, 2018, WCC, SJCC, and other subsidiaries of WCC (collectively, the “Debtors”), filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). The Bankruptcy Court issued a Confirmation Order approving the Debtors’ Chapter 11 Plan of Reorganization (the “Plan”) on March 2, 2019. The former first lien lenders of the Debtors formed WMH for the purpose of consummating (directly and indirectly through its subsidiaries) the transactions contemplated by the Plan and the PSA (defined below).

³ “Operating Agent” is defined in the MRTFA as “the Participant or other entity which has been selected by the Participants as the entity responsible for the operation and maintenance of the Project pursuant to the SJPPA; as of the Effective Date, PNM is the Operating Agent.”



Transfer to WSJM of the Assets of SJCC

In accordance with the Plan, on March 15, 2019, WCC and certain of its subsidiaries, including SJCC, sold substantially all of their assets (excluding certain mines and certain other assets not relevant here) to Westmoreland Mining and its direct subsidiaries, including WSJM. The sale was made pursuant to a Purchase and Sale Agreement dated March 15, 2019 (the "PSA").

Under § 2.01 of the PSA, Westmoreland Mining and its subsidiaries purchased substantially all of the assets of WCC and certain of its subsidiaries (including SJCC; collectively referred to in the PSA as "Sellers"), as set forth in greater detail in Article II of the PSA.⁴ These include various contracts between SJCC and PNM, including the CSA and RSA.

Under the terms of two Contribution and Distribution Agreements, each dated the date of the PSA (the "CDAs"), SJCC and its affiliate San Juan Transportation Company ("SJTC") assigned to WSJM its rights and interest in the Purchased US Assets⁵ and WSJM assumed the "Assumed Liabilities", which includes the reclamation obligations imposed on SJCC by the RSA.⁶

As the assignee of all of the relevant assets of SJCC, including its contractual rights, and having assumed all of the relevant liabilities of SJCC, in each case in respect of the San Juan Mine and its operations, WSJM is the successor and assign of SJCC for purposes of the Reclamation Documentation. By the terms of the MRTFA, WSJM has therefore succeeded to SJCC as the third party beneficiary under the MRTFA and each IRTA, including with respect to payment of the Reclamation Payments. With WSJM being the successor to SJCC, the Parties and each Reclamation Trust are required to make

⁴ The assets are termed "Purchased US Assets" and include "all of the Sellers' right, title and interest in, to and under the Purchased US Business and all of the Sellers' assets, properties, leases, rights, interests, Contracts and claims..... used or held for use in or relating to the Purchased US Business." Specifically, the Purchased US Assets include: "all right, title and interest of the Sellers' now or hereafter existing, in, to and under (i) the Contracts listed on Schedule 2.01(f), including ... all Contracts with customers of the Purchased US Business (including all Contracts for the sale of coal by the US Mining Complexes) whether or not listed on Schedule 2.01(f)." (See §2.01(f) of the PSA). The CSA and RSA are listed on Schedule 2.01(f) of the PSA, attached as Exhibit A. (See pgs. 16-17 of Schedule 2.01(f) to the PSA). As defined in the PSA, the Purchased US Business includes the San Juan Mine. (See definition of US Mining Complexes at pg. 17 of the PSA).

⁵ Under the terms of the CDAs, SJCC and its affiliate did "contribute, convey, transfer, assign and deliver to" WSJM all of the right, title and interest of SJCC and its affiliate SJTC in and to the Purchased US Assets in which they have such right, title and interest. (See Section 1 of San Juan Complex of Preparatory Steps CDA).

⁶ Specifically, WSJM did "assume from [SJCC and its affiliate] and agree[] to timely pay, perform and discharge in accordance with their respective terms, all of the Assumed Liabilities of [SJCC and its affiliate]." (See Section 3 of San Juan Complex of Preparatory Steps CDA). "Assumed Liabilities" includes all liabilities of the Sellers under contracts assumed by Westmoreland Mining and its subsidiaries arising after Closing and that are not on account of a breach by Sellers occurring before Closing, and all reclamation and similar post-mining liabilities under applicable law of the mining complexes acquired under the PSA. (See § 2.04 of the PSA).



payment of the Reclamation Payments to WSJM to the same extent as they were previously obligated to do so to SJCC.

The Bankruptcy Court's Confirmation Order

The sale transaction and the assignment of the Purchased US Assets, including without limitation SJCC's contracts and the rights to payments thereunder and obligations and liabilities thereunder as described above, to WSJM was approved by the Bankruptcy Court in its confirmation order approving the Plan (the "Confirmation Order"), and are binding and enforceable by the terms of the Confirmation Order. (See § XVIII and § XXII, ¶ 43 of the Confirmation Order).

The Confirmation Order expressly states that Westmoreland Mining and its designated purchaser subsidiaries acquired the Purchased US Assets subject to reclamation agreements.⁷

Certain provisions of the CSA (see § 14.9) and the RSA (see § 13) purport to restrict assignment of those contracts. However, under § 365(f) of the federal bankruptcy code, the bankruptcy trustee may assign a contract of the debtor notwithstanding a provision in the contract that prohibits, restricts, or conditions its assignment. 11 U.S.C. § 365(f). Consistent with § 365, the Confirmation Order provides for the assignment of the CSA and RSA "without the need for any further action or consent that may otherwise be required under applicable nonbankruptcy law."⁸

⁷ The Confirmation Order states:

Reclamation Agreements. Notwithstanding any provisions of the Plan or this Order to the contrary, the Purchaser [WMH and its subsidiaries] is acquiring the Transferred Assets subject to the terms and provisions of reclamation agreements executed by certain of the WLB Debtors and counterparties that include utilities and/or utility owners, which reclamation agreements, among other provisions, provide that funds generated under, or in connection with, coal supply, escrow, or other agreements related to mining operations of the WLB Debtors or their designees are dedicated to the payment and performance of certain obligations relating to such mining operations as set forth in such reclamation agreements.

(§ XXII, ¶ 43 of the Confirmation Order; emphasis added).

⁸ The Confirmation Order states:

Entry of this Confirmation Order shall constitute approval of all assumptions, assignments, and rejections provided for under the Plan, including the assumption and assignment of the Executory Contracts or Unexpired Leases as provided in the Sale Transaction Documentation and the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions, assignments or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan or Sale Transaction Documentation are effective as of the Plan Effective Date without the need for any further action or consents that may otherwise be required under applicable nonbankruptcy law. (§ XVIII of the Confirmation Order).



Therefore, the CSA and RSA have been assigned to the Purchaser, notwithstanding any provisions in the CSA and RSA that may otherwise require the consent of the counterparty to the assignment.

In accordance with the Confirmation Order, WSJM has acquired the San Juan Mine subject to the agreements relating to the reclamation activities. This includes both the obligation to conduct the reclamation activities previously undertaken by SJCC, as well as the right to the funds necessary to perform such reclamation activities, in each case to the extent previously received by SJCC. Consistent with the Confirmation Order, the Reclamation Payments under the Reclamation Documentation previously made by the Parties to SJCC should properly be made to WSJM.

Modification of the IRTAs

We understand that the Parties intend to seek an amendment of the IRTAs in order to name WSJM as beneficiary of each IRTA. Such a modification would not be inconsistent with the MRTFA, given that (i) the beneficiary of the MRTFA is "San Juan Coal Company [SJCC], a Delaware corporation, or its successors or assigns." (*Id.* at § 2.1.81) (emphasis added) and (ii) as detailed above, WSJM is the successor and assign of SJCC.

Letter from San Juan Coal Company

In accordance with a letter which is being simultaneously delivered to you by SJCC (the "SJCC Direction Letter"), SJCC has expressly directed the Parties and each Reclamation Trust, from and after the effective date of the amendment of the IRTAs, to make all future Reclamation Payments under the Reclamation Documentation to its assignee, WSJM, and to thereafter take all future direction (including without limitation payment instructions) from WSJM as its assignee. In addition, the SJCC Direction Letter states that SJCC's interest as Beneficiary, as defined in the IRTAs, is not adversely affected by the assignment of Reclamation Payments to WSJM, and it includes a release by SJCC of all claims against the Parties and each Reclamation Trust that might arise from payment of the reclamation amounts to WSJM, as assignee of SJCC.

The express assignment under the SJCC Direction Letter is consistent with the terms of the Reclamation Documentation, and provides an independent basis on which the Parties and each Reclamation Trust should make Reclamation Payments to WSJM.

Conclusion

Under the PSA and the CDAs, WSJM has succeeded to all the right, title, and interest of SJCC in and to SJCC's assets relating to the San Juan Mine and its operations (other than excluded assets not relevant here). As the successor and assign of SJCC, WSJM is a beneficiary of the payment obligations of the Parties and each Reclamation Trust under the Reclamation Documentation to the same extent as SJCC previously benefited from those obligations. The transfer and assignment to WSJM of SJCC's right, title and interest as aforesaid has been approved by order of the Bankruptcy Court, with express reference to the agreements relating to reclamation. SJCC has also expressly assigned to WSJM its rights to the Reclamation Payments in the SJCC Direction Letter and, from and after the effective date of the amendment of the IRTAs, directed all future payments be made to WSJM. Accordingly, it is our view that the payment of the Reclamation Payments by the Parties and each Reclamation Trust to WSJM would comply with the



terms of the Reclamation Documentation, modification of SJCC's status as a beneficiary under the IRTAs is not inconsistent with the MRTFA, and making future reclamation payments to WSJM will not adversely affect SJCC's interest as a beneficiary under the IRTAs due to the bankruptcy proceedings, court orders, and the analysis provided above.

This letter is being delivered to the Parties and the Trustees at their request in connection with the agreements described in the Reclamation Documentation and may not be relied on or otherwise used by any other person or by you for any other purpose, without our express prior written consent, except that the Parties may also rely on this letter for purposes of delivery of certifications to the Trustees of the respective Reclamation Trusts, as required by the IRTAs (§ 4.1) in connection with amendment of the IRTAs and/or other Reclamation Documentation to expressly permit Reclamation Payments to be made by the Parties to WSJM.

Please contact Charles S. Warren of our firm with any questions you may have regarding this letter.

Sincerely,

Kramer Levin Naftalis & Frankel LLP

ATTACHMENT A

ADDRESSEES

Public Service Company of New Mexico

Attn: Vice President, PNM Generation
2401 Aztec N.E., Bldg. A
Albuquerque, NM 87107

With a copy to:

Public Service Company of New Mexico
c/o Secretary
414 Silver Ave. S.W.
Albuquerque, NM 87102

Tucson Electric Power Company

88 E. Broadway Blvd.
MS HQE901
Tucson, AZ 85701
Attn: Corporate Secretary

Incorporated County of Los Alamos, New Mexico

c/o County Clerk
1000 Central Ave., Suite 240
Los Alamos, NM 87544

With a copy to:

Incorporated County of Los Alamos, New Mexico
c/o Utilities Manager
1000 Central Ave., Suite 130
Los Alamos, NM 87544

M-S-R Public Power Agency

c/o General Manager
1231 11th Street
Modesto, CA 95354

Southern California Public Power Authority

c/o Executive Director
1160 Nicole Court
Glendora, CA 91740

City of Farmington

c/o City Clerk
800 Municipal Drive
Farmington, NM 87401

With a copy to:

Farmington Electric Utility System
Electric Utility Director
101 North Browning Parkway
Farmington, NM 87401

Utah Associated Municipal Power Systems

c/o General Manager
155 North 400 West, Suite 480
Salt Lake City, UT 84103

City of Anaheim

c/o City Clerk
200 South Anaheim Boulevard
Suite 217 (2nd Floor)
Anaheim, CA 92805

With a copy to:

Public Utilities General Manager
201 South Anaheim Boulevard
Suite 1101
Anaheim, CA 92805

Tri-State Generation and Transmission Association, Inc.

c/o Chief Executive Officer
1100 W 116th Avenue
Westminster, CO 80234

OR

P.O. Box 33695
Denver, CO 80233

The following Addressees are referred to collectively as the "Trustees":

**Trustee for Public Service Company
of New Mexico San Juan Generating
Station Reclamation Trust
Agreement:**

Wells Fargo Bank, N.A.
3800 Howard Hughes Parkway, 3rd
Floor
MAC S4733-03A
Las Vegas, NV 89169
Attn: Gaye Borden

**Trustee for City of Farmington San
Juan Generating Station
Reclamation Trust Agreement:**

Bank of Albuquerque
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87109
Attn: Donald Fennema
Senior Vice President and Trust
Officer
Corporate Trust
BOK Financial Services provided by
BOKF, NA

**Trustee for M-S-R Public Power
Agency San Juan Generating
Station Reclamation Trust
Agreement:**

U.S Bank National Association
One California Street, 10th Floor
San Francisco, CA 94711
Attn: Corporate Trust Services

With a copy to:

Michelle Knutson
Assistant Vice President |
Relationship Manager
U.S. Bank
U.S. Bank Center Phoenix, LM-AZ-
X16P
101 N 1st Ave, Suite 1600
Phoenix, AZ 85003

**Trustee for City of Anaheim San Juan
Generating Station Reclamation Trust
Agreement:**

U.S Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services
Reference: San Juan Project Trust /
City of Anaheim

**Trustee for Incorporated County of
Los Alamos, New Mexico San Juan
Generating Station Reclamation Trust
Agreement:**

Bank of Albuquerque
Corporate Trust
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87109

**Trustee for Southern California Public
Power Authority San Juan
Generating Station Reclamation Trust
Agreement:**

U.S Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services
c/o Linda Verstuyft

**Trustee for Utah Associated
Municipal Power Systems San Juan
Generating Station Reclamation Trust
Agreement:**

Zions First National Bank-Trust
Department
One South Main Street, Suite 1200
Salt Lake City, UT 84133-1109

**Trustee for Tucson Electric Power
Company San Juan Generating
Station Reclamation Trust Agreement**

and for

**Tri-State Generation and
Transmission Association, Inc. San
Juan Generating Station
Reclamation Trust Agreement:**

U.S. Bank National Association
Global Corporate Trust
Attn: Michelle Mena-Rosado
100 Wall Street, 6th floor
New York, New York 10005