

Addendum 303.o-8

Dragline Corridor Access Agreement

Between

**Decker Coal Company
and
Spring Creek Coal Company**

This agreement does not need an assignment since it was for a one-time purpose. The permanent easement follows this construction access easement.

ACCESS AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made and entered into this 7th day of October, 2005 (the "Effective Date"), by and between **Decker Coal Company**, a joint venture between Western Minerals, Inc. and KCP, Inc. ("**Decker**"), and **Spring Creek Coal Company**, a Montana corporation and affiliate of Western Minerals, Inc. ("**Spring Creek**").

RECITALS

A. Decker owns certain real property situated in Big Horn County, Montana, more specifically described on **Exhibit B** attached hereto (the "Premises"). Spring Creek desires the right of ingress and egress over a portion of the Premises to construct and use a temporary roadbed for walking the BE 1570W Walking Dragline, serial number 136500 ("Dragline") purchased from KCP, Inc. on September 6, 2005 from the Decker Mine to the Spring Creek Mine. Decker is willing to grant to Spring Creek such access, upon the terms and conditions set forth herein.

B. Applicable regulations of the Montana Department of Environmental Quality require that Spring Creek amend its mine permit boundary to only include all hitherto undisturbed lands which may be disturbed by walking the Dragline from the Decker Mine to the Spring Creek Mine. Such lands are depicted on the attached map as **Exhibit A** as the "Permit Amendment Area." Portions of the Permit Amendment Area are included within Decker's current mine permit, and the parties wish to set out herein the terms and conditions under which Spring Creek and Decker may use the Permit Amendment Area.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Grant of Access Rights.** Decker, to the extent it has the right to do so, hereby grants to Spring Creek and its Permitted Users, during the Initial Term a non-exclusive right: (1) to vehicular and equipment access over the Premises for the purpose of constructing a dragline walkway, moving a sub-station and electric cable and walking the Dragline across the "Dragline Corridor/Operations Area" as defined and described on Exhibit A from the Decker Mine to the Spring Creek Mine, and (2) to use the Dragline Corridor/Operations Area for construction of a dragline walkway, moving a sub-station and electric cable and walking the Dragline across the Dragline Corridor/Operations Area from the Decker Mine to the Spring Creek Mine including, all ancillary activities in connection therewith ("Operations"). Decker, to the extent it has the right to do so, hereby grants to Spring Creek and its Permitted Users, during the Reclamation Term, a non-exclusive right to access the Permit Amendment Area for the sole purpose of completing and/or complying with any reclamation obligations imposed by the State of Montana, this Agreement or otherwise required by law. As used in the Agreement, "Permitted Users"

means Spring Creek's directors, officers, agents, employees, representatives, contractors, suppliers, customers, invitees, and guests. The use of the Dragline Corridor/Operations Area by Spring Creek and its Permitted Users shall be at the sole risk and expense of Spring Creek and its Permitted Users, and Decker has not and does not hereby assume any responsibility or liability for injury, loss or damage of any nature to any person or property resulting from the activities of Spring Creek and its Permitted Users pursuant to this Agreement.

2. **Relocation of Dragline Corridor.** Decker shall have the right to change or relocate the Dragline Corridor/Operations Area only upon written consent from Spring Creek.

3. **Spring Creek's Use of the Permit Amendment Area.** Decker hereby consents to Spring Creek expanding its mine permit boundary to cover the Permit Amendment Area, including lands within the Permit Amendment Area which are within Decker's current mine permit boundary, as depicted on Exhibit A attached hereto and referred to therein as the "Dual Permitted Area", subject to the following terms and conditions.

a. Spring Creek's use of the Permit Amendment Area shall be solely for the Operations. Spring Creek shall not use the Dual Permitted Area for coal mining, storing of overburden, or for any other purpose except for the Operations.

b. Spring Creek hereby acknowledges and agrees that its use of the Dual Permitted Area for the Operations shall be subordinate to and subject to a continuous and uninterrupted right and reservation of Decker to conduct surface coal mining operations thereon, including reclamation and the placement of overburden. None of Spring Creek's activities shall interfere with Decker's use of the Dual Permitted Area for coal mining purposes.

c. The parties agree that any activities of Spring Creek associated with, the land disturbance caused by, the Operations across the Permit Amendment Area, including the Dual Permitted Area, shall be bonded under Spring Creek's bond with the Montana Department of Environmental Quality ("MDEQ"). Any activity associated with, and any land disturbance caused by, Decker's coal mining operations within the Dual Permitted Area, shall be bonded under Decker's bond with the MDEQ.

4. **Term.** The "Initial Term" of this Agreement shall begin on the Effective Date and shall terminate at 12:00 midnight on April 28, 2006 ("Initial Term Termination Date"). The "Reclamation Term" of this Agreement shall begin on the day following the Initial Term Termination Date and shall terminate on the earlier of (i) October 1, 2017 or (ii) the date all of Spring Creek's reclamation obligations imposed by the State of Montana, this Agreement or by law associated with the Operations on the Permit Amendment Area have been met.

5. **Payments.** As compensation for surface damages, Spring Creek will pay to Decker the following:

a. Within one hundred and twenty (120) days of executing this Agreement, Spring Creek will pay Decker a one time lump-sum payment of One Hundred and Twenty Five Thousand Dollars (\$125,000) as full and final compensation for future removal of fill material placed in Decker's Pit 16 West ("Cross-Pit Fill Area") identified and defined in Exhibit A attached hereto for the dragline crossing. In the event Spring Creek places more than 160,000 cubic yards of fill material in this Cross-Pit Fill Area, Spring Creek agrees to pay \$1.20/cy for each cubic yard in excess of 160,000 cy. The fill volume shall be calculated for only those areas within the Cross-Pit Fill Area, and will be at Spring Creek's sole cost and expense. Decker and Spring Creek shall mutually agree upon the fill quantity inside the Cross-Pit Fill Area prior to payment.

b. Decker acknowledges and agrees that any payments provided for herein represent full compensation to Decker for damages resulting from the reasonable and customary use of and construction of the dragline walkway on the Dragline Corridor/Operations Area. Spring Creek acknowledges and agrees that the payments provided for herein do not include damage to permitted reclamation, Flood Control Reservoir No. 1, topsoil piles, power lines, native rangeland outside the Permit Amendment Area, or injuries to persons or any other damage or destruction caused to Decker's sub-station, electric cable or other property on the Premises. This Agreement does not relieve Spring Creek from liability due to Spring Creek's negligence or due to spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes. Any fires caused by Spring Creek or its Permitted Users shall be paid for by paying the cost of replacement pasture, plus replacement and/or repair costs for all personal property destroyed or damaged, plus any fire suppression costs incurred by Decker. The cost of replacement pasture will be the amount generally accepted in the area for like kind pasture. Spring Creek will reclaim fireguards and other disturbances created while fighting the fire to Decker's satisfaction.

6. Restoration.

a. Except for the Cross-Pit Fill Area and the Dual Permitted Area to the extent Decker is conducting or has conducted coal mining operations subjecting it to reclamation liability within such area, Spring Creek shall restore the Dragline Corridor/Operations Area, including all private roads, walkways, and access areas to the same condition, as reasonably possible, as was existing prior to Spring Creek's use of the Dragline Corridor/Operations Area for the Operations. All surface restoration in the Permit Amendment Area shall be accomplished to the reasonable satisfaction of MDEQ and in the Dual Permitted Area to the reasonable satisfaction of MDEQ and Decker.

b. Prior to any disturbance, Spring Creek will salvage topsoil and place such topsoil in a designated stockpile. Spring Creek shall use appropriate and reasonable measures to prevent erosion and non-source pollution. Spring Creek shall fully restore all private roads, Pit 11 West ramp 4, walkways, and access areas as near as possible to the condition which existed prior to such operations. The blading, grid rolling and placement of crushed scoria to restore the ramp 4 walkway to its original condition is at the sole cost

and expense of Spring Creek. All surface restoration shall be accomplished to the reasonable satisfaction of Decker and the MDEQ.

c. In the event Spring Creek disturbs Decker's reclamation, the amount of disturbance and compaction will be minimized to prevent permanent damage to existing vegetation. Reclamation areas traversed pursuant to Spring Creek's Operations will be scarified if necessary and interseeded to Decker's satisfaction by April 28, 2006.

d. In the event Spring Creek or its Permitted Users breach this Agreement and such breach is not cured within thirty (30) days, or if such breach cannot reasonably be cured within (30) days and such cure has not commenced and diligently performed within thirty (30) days, after Spring Creek receives written notice of such breach Decker may terminate this Agreement.

7. **Compliance with Laws and Regulations.** Spring Creek, on its own behalf and on behalf of its Permitted Users, shall comply with all applicable Federal, State and local laws, ordinances, orders, rules and regulations in its use of the Premises, as well as all of Decker's rules and regulations with respect to the use thereof.

8. **Indemnification.**

a. Spring Creek shall defend, indemnify and hold Decker and its partners and joint venturers, and their respective officers, directors, shareholders, agents, employees, invitees, licensees, lessees, agents and contractors harmless from and against any and all claims actions, administrative proceedings, judgments, damages, penalties, fines, costs, taxes, assessments, liabilities, interest or losses, (including reasonable attorney's fees and expenses), together with all other costs and expenses of any kind or nature arising from (a) use of the Premises by Spring Creek or its Permitted Users; (b) the conduct of Spring Creek's business, or from any activity, work or thing done, permitted or suffered by Spring Creek or its Permitted Users in or about the Premises; (c) any breach or default in the performance of any obligation in Spring Creek's or its Permitted Users' part to be performed under the terms hereof; or (d) the negligent, intentional or willful acts or omissions of Spring Creek or its Permitted Users.

b. Decker shall defend, indemnify and hold Spring Creek and its partners and joint venturers, and their respective officers, directors, shareholders, agents, employees, invitees, licensees, lessees, agents and contractors harmless from and against any and all claims actions, administrative proceedings, judgments, damages, penalties, fines, costs, taxes, assessments, liabilities, interest or losses, (including reasonable attorney's fees and expenses), together with all other costs and expenses of any kind or nature to the extent arising from the negligent, intentional or willful acts or omissions of Decker.

9. **Insurance.** Prior to commencement of the work, Spring Creek shall procure, and at all times thereafter maintain with insurers acceptable to Decker and having an A.M. Best's rating of A-VII or better, the following minimum insurance:

a. Workers' Compensation ("WC") coverage to statutory limits required where the work is being performed and Employer's Liability (EL) coverage of not less than \$1,000,000 each accident.

b. Commercial General Liability ("CGL") of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include coverage extensions for: (1) contractual liability, (2) products/completed operations, (3) X.C.U. hazards as applicable and (4) independent contractors.

c. Automobile Liability ("AL") of not less than \$2,000,000 each accident, covering "any auto," or covering all owned, non-owned and hired vehicles used in its operations.

Spring Creek's insurance shall be primary and non-contributory to any other applicable insurance maintained by Decker.

Spring Creek shall cause its CGL, AL, and all excess/umbrella liability insurers to name Decker as an additional insured to the maximum limits of liability coverage carried by Spring Creek hereunder. Spring Creek shall cause its WC policy to contain a waiver of subrogation in favor of Decker.

Spring Creek shall provide Decker with certificates of insurance establishing compliance with the above requirements prior to beginning any work under this contract. The certificates shall provide for thirty (30) days written notice to Decker in the event of policy cancellation. Spring Creek shall cause its contractors to procure and maintain the same insurance as outlined above. Spring Creek shall obtain certificates of insurance from its contractors and deliver them to Decker. These insurance requirements shall support, but shall not limit Spring Creek's duties, obligations and liabilities under any other provisions of this contract.

10. **Limitation and Non-Exclusivity.** The rights granted to Spring Creek pursuant to this Agreement are non-exclusive and are subject to all prior, leases, right-of-way agreements, encumbrances or other grants of rights.

11. **Governing Law.** This Agreement shall be governed by and construed and interpreted under the laws of the State of Montana.

12. **Non-Assignability; No Third Party Rights.** The rights of Spring Creek hereunder are not assignable and any purported assignment, directly or indirectly, of this Agreement or any rights or interest therein shall be void and of no force or effect. This Agreement is only for the benefit of Spring Creek and its Permitted Users and is not intended to provide nor does it provide that any third party be entitled to any direct or indirect, express or implied, rights or benefits hereunder. Specifically, nothing contained in this Agreement shall be

deemed a gift or dedication of any portion of the Premises to the general public or for the general public for any public purpose whatsoever.

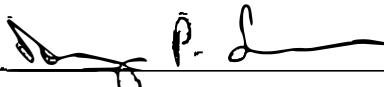
13. **Survival.** The provisions of Paragraph 8 shall survive the expiration or termination of this Agreement.

14. **Enforcement.** If either party defaults under the terms of this Agreement, the nondefaulting party shall be entitled to recover its costs and attorney fees incurred in entering this Agreement.

15. **Notification.** Spring Creek shall notify and receive prior approval from Decker of all activities that disturb Decker's existing reclamation or undisturbed areas located within Decker's Permit Boundary and outside the Permit Amendment Area. Spring Creek shall submit a detailed Plan to Decker prior to entry upon reclamation or undisturbed areas within Decker's Permit Boundary and outside the Permit Amendment Area. Construction activities will commence only after Decker has approved in writing a Plan and obtained written approval from the MDEQ.

IN WITNESS WHEREOF, the parties hereto or their duly authorized representatives have executed this Agreement as of the date first above written.

DECKER COAL COMPANY

By: 

Name: Dewey P. Simmons

Title: Mine Manager

SPRING CREEK COAL COMPANY

By: 

Name: Clayton Walker

Title: Mine Manager



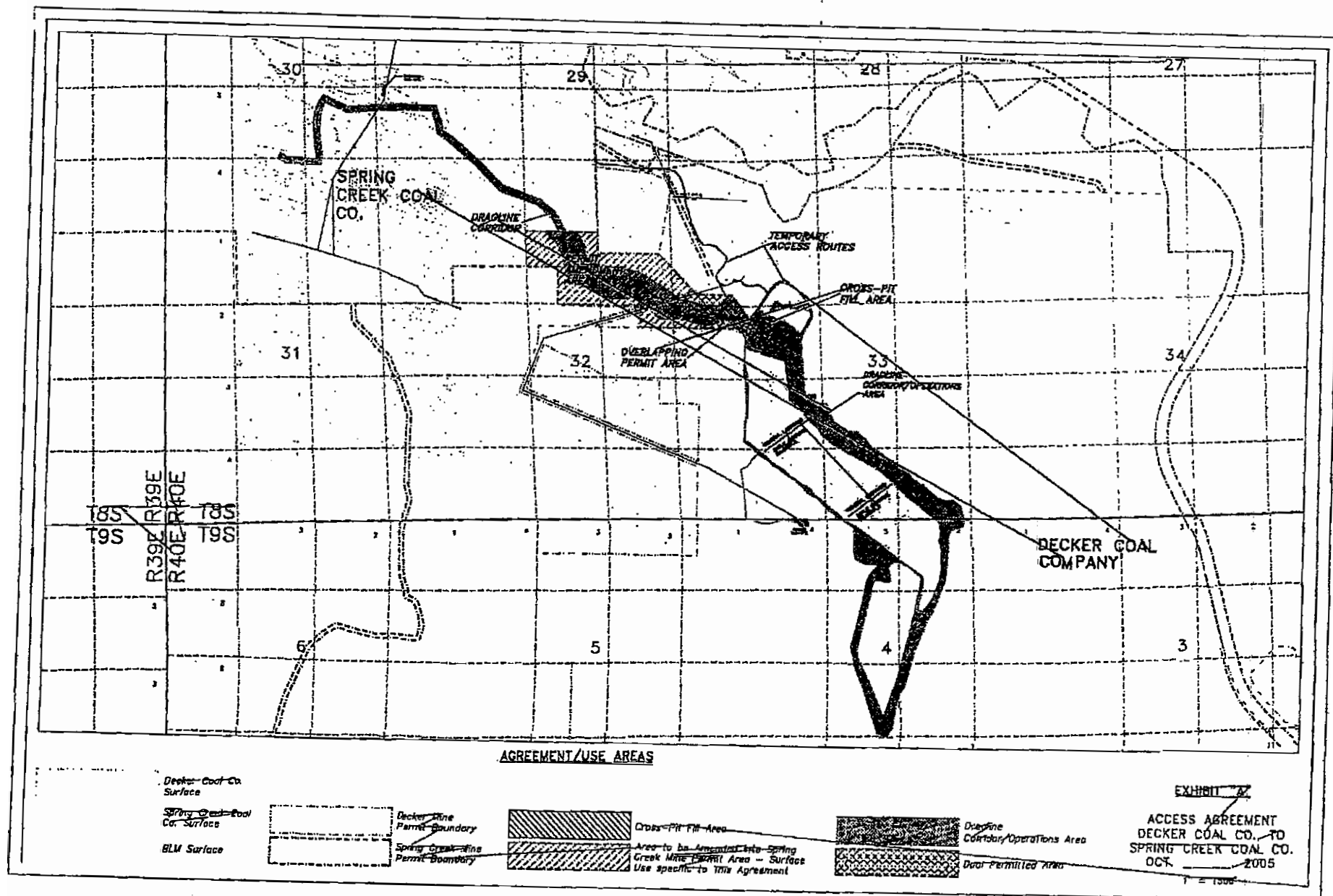


EXHIBIT B

LEGAL DESCRIPTION OF THE PREMISES

Township 8 South, Range 40 East, Montana Principal Meridian

Section 32: All

Section 33: All

Section 34: W2W2

Section 29: S2SW, NW4SW4, S2SE

Section 28: S2SW, SW4SE4,

Section 27: SW4SW4,

Township 9 South, Range 40 East, Montana Principal Meridian

Section 3: NW4,

Section 4: NW4, NW4NE4, N2SW, NW4SE4