

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 2    STATE TRUST LANDS**  
**PART 6        RELATING TO COAL LEASES ON STATE LAND**

**19.2.6.1      ISSUING AGENCY:** Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P. O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713  
[12/31/1999; 19.2.6.1 NMAC - Rn, 19 NMAC 3. SLO 6.1, 9/30/2002]

**19.2.6.2      SCOPE:** This rule pertains to all coal resources on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs lessees of such trust lands entered into subsequent to the date of this rule.  
[12/31/1999; 19.2.6.2 NMAC - Rn, 19 NMAC 3. SLO 6.2, 9/30/2002]

**19.2.6.3      STATUTORY AUTHORITY:** The commissioner's authority to manage the trust lands is found in N.M., Const. art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.  
[12/31/1999; 19.2.6.3 NMAC - Rn, 19 NMAC 3. SLO 6.3, 9/30/2002]

**19.2.6.4      DURATION:** Permanent.  
[12/31/1999; 19.2.6.4 NMAC - Rn, 19 NMAC 3. SLO 6.4, 9/30/2002]

**19.2.6.5      EFFECTIVE DATE:** August 23, 1989, unless a later date is cited at the end of a section.  
[12/31/1999; 19.2.6.5 NMAC - Rn, 19 NMAC 3. SLO 6.5, 9/30/2002; A, 6/30/2016]

**19.2.6.6      OBJECTIVE:** The objective of 19.2.6 NMAC is to provide for the orderly and lawful administration, and the appropriate development of coal resources on trust lands by implementing House Bill 433 of the first session of the thirty-ninth legislature (Laws 1989, Chapter 200) and to specify, by regulation, provisions to be included in all coal leases issued by the commissioner of public lands after the effective date of this rule.  
[12/31/1999; 19.2.6.6 NMAC - Rn, 19 NMAC 3. SLO 6.6, 9/30/2002]

**19.2.6.7      DEFINITIONS:** As used in 19.2.6 NMAC and state coal leases:

**A.      “Logical mining unit”** - means an area under the effective control of a single operator, which is capable of being developed and operated in an efficient, economical and orderly manner as a single operation;

**B.      “Market value”** - means the amount a knowledgeable and willing buyer would pay a knowledgeable and willing seller for equivalent coal FOB at the minemouth under an arm's-length sales contract. Market value can be determined by examining comparable arm's-length sales in the same coal field, by examining arm's-length sales of coal in other fields and making adjustments for differences, or by determining a downstream value for the subject coal or coal product and netting back actual and reasonable costs to arrive at a FOB minemouth value;

**C.      “Mine plan”** - means a brief summary of how and when the leased lands will be developed. The plan should include anticipated dates for obtaining the necessary permits, commencing mining operations, and completing operations; should state anticipated annual production levels from the opening of the mine until its closing; should identify anticipated markets; and should show the planned progression and time frames for mining and reclaiming each tract within the logical mining unit;

**D.      “Proceeds”** - means the total consideration accruing to the coal seller, without deduction of any kind. It includes but is not limited to: reimbursements, payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; advanced exploration or mine development costs that are subject to recoupment through reduced prices in later sales; any other consideration given to the seller or any action taken or not taken in exchange for reduced prices; take-or-pay payments; and tax reimbursements. It is the intent of this Rule that lessees act as prudent operators in obtaining the maximum possible prices. Therefore, "proceeds" shall equal the highest price a prudent operator may receive under its contract. Also, if the operator fails to take proper or timely action to receive price increases to which it is entitled, and which action would have been taken by a prudent operator, then "proceeds" shall equal that obtainable price; and

**E.      “Recoverable reserves”** - means the commercially mineable reserve base excluding all coal that will be left such as in pillars, fenders and property barriers. Generally, recoverable reserves will be based on

quantities identified in the mine plan; however, with the concurrence of the commissioner, the amount of recoverable reserves may be changed as new information is developed.

**F. “Schedule of fees”** - means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.6.7 NMAC - Rn, 19 NMAC 3. SLO 6.7, 9/30/2002; A, 6/30/2016]

**19.2.6.8 LANDS SUBJECT TO LEASE-COMPETITIVE BID:** Coal mining leases may be issued upon acreage shown to be open upon the New Mexico state land office tract books. Leases shall be issued only to the highest bidder either by sealed bid or at public auction; provided, however, the commissioner may in the commissioner’s discretion withhold any tract from leasing and may reject all bids offered for any tract, if the commissioner determines that withholding or rejection is in the best interests of the trust.

[12/31/1999; 19.2.6.8 NMAC - Rn, 19 NMAC 3. SLO 6.8, 9/30/2002; A, 6/11/2019]

**19.2.6.9 APPLICATIONS:** Applications for coal leases shall be made in ink or typewritten, in duplicate, upon forms to be prescribed by the commissioner. The application shall be acknowledged and shall be accompanied by a minimum initial charge of five hundred dollars (\$500.00) or the first (1st) year rental, whichever is greater, plus a nonrefundable application fee as set forth in the schedule of fees.

[12/31/1999; 19.2.6.9 NMAC - Rn, 19 NMAC 3. SLO 6.9, 9/30/2002; A, 6/30/2016]

**19.2.6.10 NOTICE OF SALE:** On or before twenty (20) days prior to the date of any coal lease sale, notice of the sale shall be posted in a conspicuous place in the New Mexico state land office in Santa Fe specifying the place, date, and hour of sale and containing a description of the lands to be offered for lease, with a statement of the minimum bid which will be accepted and whether the lands will be offered by sealed bid or by public auction. In addition, the notice shall be mailed by regular mail to all persons requesting notice of coal lease sales.

[12/31/1999; 19.2.6.10 NMAC - Rn, 19 NMAC 3. SLO 6.10, 9/30/2002]

**19.2.6.11 ACCEPTANCE OF BIDS:** Up to the hour set for such sale, the commissioner will receive sealed bids for a coal lease upon any tract of land described in the posted notice. All sealed bids submitted will be opened at the hour mentioned in the notice and, if the tract is designated in the notice of sale as being offered for sealed bid, then the lease will be awarded to the highest and best sealed bid. If the tract is designated in the notice of sale as being offered for sale at public auction, then any sealed bid received will be considered as the first (1st) oral bid for the subject tract.

[12/31/1999; 19.2.6.11 NMAC - Rn, 19 NMAC 3. SLO 6.11, 9/30/2002]

**19.2.6.12 TIE BIDS:** When two or more sealed highest and best bids received for the same tract of land are equal and if such highest and best bidders are present and cannot agree, by stipulation in writing, on how the tract shall be awarded, the commissioner or the commissioner’s designee shall call such equal highest and best bidders before the commissioner on the same day the bids are opened, and again offer such tract at auction to such bidders only, and grant such lease to the highest and best bidder. If such bidders are not present when the bids are opened, then the commissioner will notify the bidders to submit sealed proposals within 10 days next following the date of the sale.

[12/31/1999; 19.2.6.12 NMAC - Rn, 19 NMAC 3. SLO 6.12, 9/30/2002; A, 6/11/2019]

**19.2.6.13 LIMITATIONS TO NOT MORE THAN TWO (2) PERSONS OR LEGAL ENTITIES -- WAIVER:** As a matter of administration and without affecting property rights in coal leases, whenever more than two (2) persons or legal entities apply for the issuance of a coal lease, the commissioner shall grant the lease in the names of no more than two (2) persons acting as attorneys-in-fact for all potential interest owners. In the case of a trust, the trust must be express and a copy of the creating document filed with the commissioner. If more than two (2) trustees are named, a lease shall be granted in the names of no more than two (2) trustees acting as attorneys-in-fact for all trustees. The limitations in this Rule may be waived by the commissioner for good cause.

[12/31/1999; 19.2.6.13 NMAC - Rn, 19 NMAC 3. SLO 6.13, 9/30/2002]

**19.2.6.14 TERM OF LEASE:** State coal leases shall be issued for the following terms:

**A.** A primary of five (5) years;

**B.** If, at the end of the primary term, the lessee has submitted a mine plan, which is not subsequently disapproved by the commissioner within three (3) months after submission, and the lessee has either incorporated the leased land with adjacent land (if necessary) into a logical mining unit or has shown to the satisfaction of the commissioner that adjacent land, needed to form the logical mining unit, is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then the coal lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five (5) years; and

**C.** If, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent (1%) of the estimated recoverable reserves from the leased lands or one percent (1%) of the estimated recoverable reserves from the logical mining unit, then the lease shall not expire but shall continue as long as the one percent (1%) production is maintained. Provided, that, for purposes of determining if the one percent (1%) annual production has been maintained during any year after the end of the second (2nd) year following the beginning of production, the annual production, averaged over the previous three (3) years, shall be used. For purposes of this provision, annual rates of production shall be measured from lease anniversary date to lease anniversary date. [12/31/1999; 19.2.6.14 NMAC - Rn, 19 NMAC 3. SLO 6.14, 9/30/2002]

**19.2.6.15 PRODUCTION ROYALTIES:** State coal leases shall provide for a royalty of twelve and one-half percent (12 1/2%) of the proceeds received from the sale of all surface-mined coal or, at the option of the commissioner, the market value of the surface-mined coal, and eight percent (8%) of the proceeds received from the sale of all underground-mined coal or, at the option of the commissioner, the market value of the underground-mined coal. The royalty rate may be reduced by the commissioner upon a showing that the leases for the non-state lands in the same logical mining unit provide for a lower rate or that the leased lands will be bypassed and not mined without a rate reduction. [12/31/1999; 19.2.6.15 NMAC - Rn, 19 NMAC 3. SLO 6.15, 9/30/2002]

**19.2.6.16 ADVANCE ROYALTIES:** In lieu of the actual production requirement, expiration of a lease may be prevented by the timely payment of an advance royalty equal to the estimated royalty obligation which would be due if one percent (1%) of the recoverable reserves of the leased land were produced. Payment of the advance royalty on or before a lease anniversary date will act to extend the lease until the next ensuing anniversary date; provided, however, that the lease shall not be extended for more than ten (10) years by payment of advance royalties. Any credit later taken for advance royalties against actual production royalties due shall not exceed fifty percent (50%) of the total royalty due for any single reporting period. [12/31/1999; 19.2.6.16 NMAC - Rn, 19 NMAC 3. SLO 6.16, 9/30/2002]

**19.2.6.17 EXPLORATION SURETY:** Before the issuance of a state coal lease, the lessee shall execute and file with the commissioner a good and sufficient exploration bond or other appropriate surety in an amount equal to fifteen dollars (\$15.00) for each acre of the leased premises to ensure compensation for damage to the surface or surface improvements caused by exploration activities on the leased lands. Any surety filed with the commissioner pursuant to the provisions of this rule, shall be released by the commissioner either upon the acceptance of a development bond or surety pursuant to 19.2.6.18 NMAC or upon the termination of the lease and a showing that compensation has been paid for any damage to the surface or surface improvements caused by exploration activities. The commissioner, in the commissioner's discretion, may allow an exploration bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act to satisfy the requirement of this rule. [12/31/1999; 19.2.6.17 NMAC - Rn, 19 NMAC 3. SLO 6.17, 9/30/2002; A, 6/11/2019]

**19.2.6.18 DEVELOPMENT SURETY:**

**A.** Before commencing excavation operations or development upon leased lands, a lessee shall execute and file with the commissioner a good and sufficient bond or other appropriate surety in an amount to be fixed by the commissioner and based upon the approved mine plan to:

- (1) guarantee the performance of all covenants and obligations under the coal lease, including the obligation to pay royalties;
- (2) ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the mine permit issued by the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act;

(3) ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the coal lessee and any surface owner.

**B.** A bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act will satisfy the requirements in Subsection B of 19.2.6.18 NMAC unless the commissioner, in the commissioner's discretion, determines that the bond filed with the mining and minerals division is insufficient. Any bond or surety filed with the commissioner pursuant to the provisions of this Rule shall be released by the commissioner upon a showing that the lessee has complied with the obligations as specified in Subsections A, B and C of 19.2.6.18 NMAC.

**C.** With the approval of the commissioner, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee or its successors or assigns has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal, or geothermal resources and of all state rights of way and easements executed with the commissioner including the payment of royalties when due and compliance with all established mining plans and reclamation requirements. [12/31/1999; 19.2.6.18 NMAC - Rn, 19 NMAC 3. SLO 6.18, 9/30/2002; A, 6/11/2019]

**19.2.6.19 ASSIGNMENTS:** Any lease in good standing may, with the written approval of the commissioner, upon such terms and conditions as the commissioner may require, and payment of the fee as set forth in the schedule of fees, be assigned or sublet to third persons; provided, however, no assignment of an undivided interest nor any assignment or sublease of less than a legal subdivision shall be recognized or approved. Provided further, however, the record owner of any coal lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner; but nothing herein shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof. All assignments shall be formally executed by the proper parties upon forms prescribed and furnished by the commissioner and shall recite, among other things, the consideration received for the assignment. Assignments shall be filed in triplicate in the New Mexico state land office in Santa Fe. The original copy of each assignment will be recorded and filed as a public record in the New Mexico state land office and one copy will be returned to the person entitled to the same. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities as provided in 19.2.6.13 NMAC. [12/31/1999; 19.2.6.19 NMAC - Rn, 19 NMAC 3. SLO 6.19, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

**19.2.6.20 ASSIGNMENT BY CONSOLIDATION:** In cases where corporations consolidate, transfer of coal interest to the newly created corporation shall be accomplished pursuant to 19.2.6.19 NMAC. [12/31/1999; 19.2.6.20 NMAC - Rn, 19 NMAC 3. SLO 6.20, 9/30/2002]

**19.2.6.21 ASSIGNMENT BY MERGER:** In cases where two (2) or more corporations merge, transfer of coal interests to the surviving corporation shall be accomplished by filing with the commissioner a copy of the merger agreement or certificate of merger. Thereafter, the coal lease shall be transferred on the books of the New Mexico state land office in the name of the surviving corporation. [12/31/1999; 19.2.6.21 NMAC - Rn, 19 NMAC 3. SLO 6.21, 9/30/2002]

**19.2.6.22 ASSIGNMENT BY REORGANIZATION:** Where the assets of any corporation are taken over under court order by a corporation, the procedure will follow the provisions of the court order, which should direct separate assignments to be executed and filed for approval in the New Mexico state land office. [12/31/1999; 19.2.6.22 NMAC - Rn, 19 NMAC 3. SLO 6.22, 9/30/2002]

**19.2.6.23 [RESERVED]**  
[12/31/1999; 19.2.6.23 NMAC - Rn, 19 NMAC 3. SLO 6.23, 9/30/2002; Repealed, 6/30/2016]

**19.2.6.24 LEASES ISSUED PRIOR TO JULY 1, 1989:** The owner of any coal lease issued prior to July 1, 1989, and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, upon the expiration thereof, obtain a new lease for the leased lands, without having to submit a

competitive bid, by filing an application therefor with the commissioner and paying the application fee as set forth in the schedule of fees. The form of the new lease shall be as prescribed in 19.2.6.26 NMAC. [12/31/1999; 19.2.6.24 NMAC - Rn, 19 NMAC 3. SLO 6.24, 9/30/2002; A, 6/30/2016]

**19.2.6.25 EFFECTIVE DATE:** The provisions of 19.2.6 NMAC shall apply to all coal leases issued by the commissioner on or after July 1, 1989. [12/31/1999; 19.2.6.25 - Rn, 19 NMAC 3. SLO 6.25, 9/30/2002]

**19.2.6.26 FORM OF LEASE:** Coal leases shall be of the following form and shall contain the following provisions:

(SAMPLE ONLY)

NEW MEXICO STATE LAND OFFICE

COAL MINING LEASE

APPLICATION NO. \_\_\_\_\_ LEASE NO. \_\_\_\_\_

THIS AGREEMENT, dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, made and entered into between the STATE OF NEW MEXICO, acting by and through the undersigned, its COMMISSIONER OF PUBLIC LANDS, hereinafter called the "lessor", and \_\_\_\_\_, hereinafter called the "lessee".

WITNESSETH:

WHEREAS, lessee has filed in the New Mexico State Land Office an application for a coal lease for the purpose of exploring for, mining, developing, and producing coal upon the lands hereinafter described, and has tendered \_\_\_\_\_ (\$ \_\_\_\_\_), for the first annual rental payment, together with the application fee as set forth in the schedule of fees, and \_\_\_\_\_ (\$ \_\_\_\_\_), for a bonus;

NOW THEREFORE, in consideration of the above tender, receipt of which is acknowledged, and the COVENANTS herein, lessor hereby grants, and leases to lessee, exclusively, for the sole and only purpose of exploring for, mining, developing, producing, and removing coal in, upon or under the following described lands in \_\_\_\_\_ County, New Mexico:

together with the right to use so much of the surface as is reasonably necessary to explore for, mine, develop, produce, and remove the coal.

TO HAVE AND TO HOLD the said lands and privileges granted hereunder for a primary term of five (5) years.

IN CONSIDERATION OF THE PREMISES, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. As royalty, lessee shall pay to lessor twelve and one-half percent (12 1/2%) of the proceeds received from the sale of all surface-mined coal or, at the option of the lessor, the market value thereof, and eight percent (8%) of the proceeds received from the sale of all underground-mined coal or, at the option of the lessor, the market value thereof. The royalty rate may be reduced by the lessor upon a showing by the lessee that the leases for non-state coal in the same logical mining unit provide for a lower rate or that the lands leased hereunder will be bypassed and not mined without a rate reduction. Such royalty is due in full on the last day of the month following the calendar month of sale and shall be reported to the lessor, together with such other information as may be required by the lessor, upon forms prescribed by the lessor. In the event of a dispute as to the amount of royalty due, the lessee shall assume the burden of proof in any court action arising out of such dispute.

2. As rental, lessee shall pay to lessor annually on or before each anniversary date of this lease the sum of five dollars (\$5.00) per acre or fraction thereof, such rental payments to continue so long as this lease shall remain in force.

3. Lessee agrees to pay interest on delinquent royalty and rental payments at the rate of one percent (1%) per month, or fraction thereof, accruing from the date said payment becomes due.

4. If, at the end of the primary term, the lessee has submitted a mine plan, which is not subsequently disapproved by the lessor within three (3) months after submission, and the lessee has either incorporated the land leased hereunder with adjacent land into a logical mining unit or has shown to the satisfaction of the lessor that the adjacent land is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then this lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five (5) years.

5. If, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent (1%) of the estimated recoverable reserves from the leased lands or one percent (1%) of the estimated recoverable reserves from the logical mining unit, then this lease shall not expire but shall continue as long as the one percent (1%) production is maintained. Provided, that, for purposes of determining if the one percent (1%) annual production has been maintained during any year after the end of the second (2nd) year following the beginning of production, the annual production averaged over the previous three (3) years, shall be used. For purposes of this paragraph, annual rates of production shall be measured from lease anniversary date to lease anniversary date.

6. In lieu of actual production at or after the end of the secondary term hereof, lessee may prevent the expiration of this lease by the timely payment of an advance royalty equal to the estimated royalty obligation which would be due if one percent (1%) of the recoverable reserves in the lands leased hereunder were produced. Payment of such advance royalty on or before a lease anniversary date will act to prevent the expiration of this lease until the next ensuing lease anniversary date; provided, that this lease shall not be extended for more than ten (10) years by payment of advance royalties. Any credit later taken in any month for advance royalties shall not exceed fifty percent (50%) of the actual production royalty due for that month.

7. The lessee, with the written approval of the lessor, may assign or sublet this lease in whole or in part; provided, however, that no assignment of an undivided interest nor any assignment or sublease of less than a legal subdivision shall be recognized or approved by the lessor. Provided further, however, the lessee may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements, or other instruments to be approved by the lessor; but nothing herein contained shall relieve the lessee from complying with any of the terms or provisions hereof.

8. Lessee, including lessee's heirs, assigns, agents, and contractors shall at lessee's own expense fully comply with and conform to accepted operational standards and practices in general use in the industry and all laws, regulations, rules, ordinances, and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to the public health and welfare, including but not limited to conservation, reclamation, sanitation, aesthetics, pollution, cultural properties, fire, and ecology. Such agencies are not to be deemed third (3rd) party beneficiaries hereunder; however, this clause is enforceable by the lessor in the same manner as other covenants of this lease.

9. The lessor or lessor's authorized representative shall have the right to enter the leased lands for the purpose of measuring the cubical contents of every opening from which coal has been extracted and to otherwise inspect the leased lands to ensure that proper royalties have been paid. The lessor or lessor's representative shall have the right to inspect all records, books, or accounts pertaining to the mining, extraction, transportation, and marketing of coal produced from the leased lands and, at the request of the lessor, the lessee shall furnish contracts, reports, samples, logs, assays, or cores within reasonable bounds as the lessor may determine to be necessary to the proper administration of the leased lands and this lease. In addition, lessee shall furnish annually and at such other times as the lessor may require, plats, maps, or tracings, clearly and accurately showing all development work upon the leased lands, and other related information, with a report as to all buildings, structures, or other work placed in or upon the leased lands, and a statement as to the amount and grade of coal produced and sold.

10. The value of any unpaid royalty shall become a prior lien upon the production from the leased lands and the improvements situated thereon.

11. Before commencing excavation operations or development upon the leased lands, the lessee shall execute and file with the lessor a good and sufficient bond or other appropriate surety in an amount to be fixed at that time by the lessor and based upon the approved mine plan to:

A. Guarantee the performance of all covenants and obligations under this lease, including the obligation to pay royalties;

B. Ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act; and

C. Ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the lessee and any surface owner.

A bond filed with the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act will satisfy the requirements of Subsection B of this Paragraph unless the lessor, in the lessor's discretion, determines that the bond filed with the Mining and Minerals Division is insufficient. Any bond, filed with the lessor pursuant to the provisions of this Paragraph, shall be released by the lessor upon a showing that lessee has complied with the obligations as specified in Subsections A, B, and C of this Paragraph.

12. Lessor may cancel this lease for nonpayment of rentals, nonpayment of royalties, or violation of any of the terms or covenants thereof; provided, however, that before any such cancellation shall be made, lessor, must mail to lessee, by registered or certified mail addressed to the post office address of the lessee shown by the lease, or by specific written notice of change of address furnished by lessee, a thirty (30) day notice of intention to cancel this lease, specifying the default for which the lease is subject to cancellation. No proof or receipt of notice shall be necessary and thirty (30) days after such mailing, lessor may enter cancellation unless lessee shall have sooner remedied the default; provided, that if the violation cannot be remedied within the thirty (30) day period and the lessee shall have commenced operations to substantially remedy the violation within such period, the lease shall not be canceled as long as lessee diligently pursues actions necessary to remedy the violation.

13. With the consent of the lessor this lease may be relinquished in whole or in part; provided, that the lessor will not approve any relinquishment of an undivided interest nor less than a legal subdivision. When filed and approved, such relinquishment shall be effective from the date of filing. Upon relinquishment of the lease, lessee shall be relieved from further obligations and liabilities hereunder as to the lands surrendered subject, however, to the continued obligations to: make payment of all accrued rentals and royalties; protect or restore the surface and surface resources consistent with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department; and to otherwise perform other obligations accrued under the lease.

14. Coalbed methane gas is specifically excluded and reserved from this lease, except for small incidental quantities which may have to be vented or flared to achieve access to coal. Although lessee may engage in insitu coal gasification in order to remove coal, such gasification shall not disturb or diminish commercial quantities of coalbed methane gas.

15. Lessee may make or place such improvements and equipment upon the leased land as may be reasonably necessary to explore for, mine and remove coal, and upon termination of this lease for any reason, lessee may remove such improvements and equipment as can be removed without material injury to the premises; provided, however, that all rentals and royalties have been paid and that such removal is accomplished within one hundred eighty (180) days of the termination date. All improvements and equipment remaining upon the premises after the removal date, as set forth in accordance with this Paragraph, shall be forfeited to lessor without compensation.

16. Lessee shall not mortgage any improvements placed upon the land.

17. The State has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the coal that will be produced from the lands covered by this lease.

18. All the obligations, covenants, agreements, rights, and privileges of this lease shall extend to and be binding and inure to the benefit of the lawful and recognized assigns or successors in interest of the parties hereto.

19. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands leased and the right to continue existing uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder or the approval of easements or rights of way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

20. Lessee shall be liable and agree to pay for all damage to livestock, growing crops, water, or other tangible improvements on the leased lands as may be suffered by reason of development, use, and occupation of the lands by lessee.

21. Any and all water rights developed on the leased lands by lessee shall be developed in the name of lessor. Lessee, at its own expense, shall comply with all regulations of, and obtain all necessary permits from, the office of the State Engineer. Lessee shall have the full and free use of such water rights for lease operations during the term of the lease. Upon expiration or termination of the lease, such water rights shall be retained by lessor. During the term of the lease, lessee shall preserve, protect, and defend such water rights.

22. Lessee shall save and hold harmless, indemnify, and defend the State of New Mexico, the commissioner of Public Lands, and the commissioner’s agents in their official and individual capacities, of and from any and all liability claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of lessee hereunder, off or on the leased lands, or the presence on said lands of any agent, contractor, or subcontractor of lessee. All terms and provisions of this instrument shall be binding upon the contractors and subcontractors of lessee in like manner as the same are binding upon lessee, and all acts and doings of said contractors and subcontractors shall be deemed and treated as the same and held responsible by lessee.

23. Lessee shall exercise reasonable diligence, care, and skill in the operating of the leased lands in accordance with standard and approved mining methods and practices. Lessee shall conduct all exploration, development, and mining operations in a good workmanlike manner having due regard to the health and safety of employees, the prevention of waste, and the preservation of the property for further productive operations. All mining and related productive operations are to be subject to inspection by lessor or lessor’s duly authorized agent.

24. See attached stipulations, if any, hereby made part of this lease.

IN WITNESS WHEREOF, the State of New Mexico has hereunto signed and caused its name to be signed by its commissioner of Public Lands thereunto duly authorized, with the seal of the commissioner’s office affixed, and the lessee has signed this agreement to be effective the day and year above written.

STATE OF NEW MEXICO  
BY: \_\_\_\_\_  
COMMISSIONER OF PUBLIC LANDS

LESSEE \_\_\_\_\_

(PERSONAL ACKNOWLEDGMENT)

STATE OF \_\_\_\_\_ )  
  )ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by



\_\_\_\_\_  
My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)  
of \_\_\_\_\_ a \_\_\_\_\_  
(Corporation) (State or County)

corporation, on behalf of said corporation.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

[12/31/1999; 19.2.6.26 NMAC - Rn, 19 NMAC 3. SLO 6.26, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

**HISTORY OF 19.2.6 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

CPL 69-5, Rules And Regulations Concerning The Sale, Lease, And Other Disposition Of State Trust Lands, filed 9/02/1969;

CPL 71-2, filed 12/16/1971;

CPL 77-1, filed 1/7/1977;

Rule 6, Rules And Regulations Relating To Coal Prospecting Permits And Coal Leases On State Land - Coal Prospecting Permits, filed 3/11/1981;

SLO Rule 6, Filed 1/20/1984;

SLO Rule 6, Amendment No. 1, filed 11/28/1984;

SLO Rule 6, Amendment No. 2, filed 9/19/1986;

SLO Rule 6, filed 8/23/1989;

SLO Rule 6, Amendment No. 1, filed 6/16/1995.

**History of Repealed Material: [Reserved]**