

WATER SERVICE CONTRACT

THIS CONTRACT is entered into and made effective this 11<sup>th</sup> day of July, 1991, by and between WEBSTER COUNTY WATER DISTRICT, hereinafter referred to as ("District"), of Route 2, Box 111A, Sebree, Webster County, Kentucky 42455, party of the first part, and THE PITTSBURG & MIDWAY COAL MINING CO., hereinafter referred to ("P&M"), of 6400 South Fiddler's Green Circle, Englewood, Arapahoe County, Colorado 80111-4991, party of the second part;

WITNESSETH:

That for and in consideration of the mutual covenants and considerations herein set forth, the parties hereto mutually agree as follows:

1. GRANT OF WATER: The District shall provide water to P&M at its Sebree Mine development - Highway 494 location and to such other facilities as later may be constructed by P&M adjacent to the water distribution system to be constructed from Highway 41 to Highway 494. All water shall be potable, treated water meeting applicable purity standards of applicable regulatory agencies and shall be furnished at a reasonably constant pressure in compliance with the requirement of applicable regulatory agencies.

2. QUANTITY OF WATER TO BE FURNISHED: The District shall provide water to P&M at its Highway 494 location in amounts adequate to facilitate the operation of the contemplated Sebree Mine development.

In the event P&M constructs facilities, which are contemplated with the Sebree Mine development plan as of the

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BY: George Helle  
PUBLIC SERVICE COMMISSION MANAGER

effective date of this agreement, adjacent to the water distribution system, referred to herein, service of water shall be provided by the District based upon the availability of water.

Should P&M demand a quantity of water that interrupts residential service, it is specifically agreed by the parties that residential use of water from the District shall take priority over use of water by P&M. In the event the District is unable to supply its residential customers with water in accordance with the rules and regulations of the applicable regulatory agencies, then the District shall have the right to restrict the use of water by P&M in such amounts and for such periods of time as may be reasonably necessary to satisfactorily supply the residential customers.

3. METERING EQUIPMENT: The District shall furnish, install, and maintain all required metering devices. If any meter fails to register for any period, the District shall adjust all charges for water consumed by P&M according to the procedure as approved by the Public Service Commission.

4. BILLING PROCEDURE: P&M shall pay to the District, for all water consumed, compensation based upon the rates as approved by the Kentucky Public Service Commission. The District agrees to furnish to P&M at its Highway 494 location, not later than the 5th day of each month with an itemized statement of the amount of water furnished P&M during the preceding month. P&M agrees to pay to the District, not later than the 15th day of each month, for water delivered in accordance with the schedule of rates approved by the Kentucky Public Service Commission and failure to make payments by the date due shall cause a penalty to be imposed for late payment of ten percent (10%) of the total amount of the bill.

5. RIGHT-OF-WAY: P&M hereby grants to the District right-of-ways over and through all lands owned or controlled by P&M for the purpose of constructing, operating, maintaining and repairing

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the water line referred to herein. P&M shall designate the locations of such right-of-ways to insure that the water line does not interfere with mining or processing operations.

6. DATE OF COMMENCEMENT OF WATER SERVICE: The District shall proceed with all possible dispatch to construct the subject water distribution system and service shall be provided to P&M as soon as possible and when all lines are in place, but in no event later than December 31, 1991. The water distribution system shall be completed in an efficient and workmanlike manner in compliance with generally accepted engineering practices.

The District shall not be responsible for any loss or damage arising or resulting from the failure to construct the water distribution line and providing service prior to the date indicated herein should such loss or damage result from any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental restraint, unavailability of equipment or supplies, and any other cause, whether of the kinds specifically enumerated above or otherwise, which is not reasonably within the control of the District or for any delay which is a direct and proximate result of actions of P&M.

7. FAILURE TO DELIVER: The District, shall at all times, operate and maintain its system in an efficient manner and shall take such action as may be necessary to provide P&M with the quantities of water required by P&M subject to the restrictions set forth above. It is further agreed that temporary or partial failures to deliver water shall be remedied as quickly as possible with the conditions, circumstances and requirements being considered.

8. REGULATORY AGENCIES: This Contract is subject to such rules, regulations, or laws as may be applicable to similar

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BY: Shirley L. ...  
PUBLIC SERVICE COMMISSION MANAGER

agreements in the Commonwealth of Kentucky and the District and P&M will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.

9. FURTHER CONDITIONS: This Contract is subject to the following conditions:

(a) This agreement to supply water to P&M is based upon a preliminary estimate of the costs of the construction of the distribution system to be \$90,000.00. In the event the actual bids received for the construction of this system exceed this amount, then this Contract shall void and the parties shall renegotiate its terms.

(b) Emergency failures of pressure or supply due to main supply lines breaks, power failure, flood, fire and the use of water to fight fire, earthquake or other catastrophes shall excuse the District from its obligation to supply water service to P&M during such emergencies.

(c) This Contract is subject to the approval of the Public Service Commission.

10. CONSTRUCTION COSTS: P&M shall pay the District fifty percent (50%) of the actual cost to construct the water distribution system, including engineering fees, not to exceed a total payment to the District of Forty-Five Thousand Dollars (\$45,000.00). Such payment shall be due and owing to the District within fifteen (15) days of P&M's receipt of an itemized invoice from the District. The District may present periodical invoices to P&M and P&M agrees to pay such invoices within the time period indicated but it not to exceed in the total the sum of \$45,000.00.

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BY: George Walker  
PUBLIC SERVICE COMMISSION MANAGER

This contract is executed this 11<sup>th</sup> day of July,  
1991.

WEBSTER COUNTY WATER DISTRICT

Aubrey Mooney  
Aubrey Mooney, Chairman

THE PITTSBURG & MIDWAY COAL  
MINING CO.

By: DF Gotten RDG  
Its: Vice President

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BY: [Signature]  
PUBLIC SERVICE COMMISSION MANAGER