

SEPTEMBER 24, 2015 CROW TRIBAL LEGISLATURE SPECIAL SESSION

LR No. 15-11

Introduced by the Natural Resources Committee

A Legislative Resolution Titled:

A RESOLUTION OF THE CROW TRIBAL LEGISLATURE APPROVING THE BIG METAL SURFACE ACCESS AGREEMENT

Legislative Findings:

WHEREAS, pursuant to Joint Action Resolution No. JAR13-01, the Crow Tribal Legislature and the Chairman of the Executive Branch approved the Exploration Agreement, Option to Lease Agreement, and Coal Leases between the Crow Tribe of Indians and Big Metal Coal Co. LLC in January 2013 (collectively, the “Big Metal Agreements”) covering approximately 1.4 billion tons of Tribal coal in the southeastern portion of the Reservation; and

WHEREAS, the BIA Regional Director approved the Option to Lease Agreement and the Exploration Agreement on June 14, 2013 pursuant to the Indian Mineral Development Act of 1982; and

WHEREAS, following BIA approval, Big Metal Coal Co. LLC (“Big Metal”) has diligently pursued coal exploration, environmental studies, cultural resource surveys, surface landowner access agreements, and other activities necessary for the development of the Tribal coal in the Big Metal Project Area; and

WHEREAS, since BIA approval, and in compliance with the Big Metal Agreements, Big Metal has made option payments to the Crow Tribe totaling \$6.75 million, together with \$152,935 in Scholarship payments and in excess of \$400,000 in other Tribal regulatory payments, including for cultural resource surveys and TERO fees; and

WHEREAS, Big Metal has completed initial coal exploration drilling, and the Exploration Agreement, as extended pursuant to its terms, will expire on September 28, 2015; and

WHEREAS, Big Metal plans to continue pursuing permitting and development efforts toward the possible exercise of the first Option pursuant to the Option Agreement, and in order to continue such efforts, it is necessary for Big Metal to have continued access to Tribal surface lands after the Exploration Agreement expires and until Options are exercised and Coal Leases receive final approval by the BIA; and

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WHEREAS, to allow for these continued development activities, the Chairman of the Executive Branch has negotiated a Surface Access Agreement, attached hereto and incorporated by reference, that provides legal access to Tribal surface lands within the Big Metal Project Area for the purposes, among other things, of collecting environmental samples and water quality information, conducting archaeological and cultural resource surveys, and other mine and environmental permitting activities, conducting land surveys and mapping, and ingress and egress for access to neighboring lands for similar purposes; and

WHEREAS, allowing for Big Metal's continued access to Tribal lands within the Project Area, without additional compensation to the Tribe, is in the best interests of the Crow Tribe and Tribal members with the objective of developing Tribal coal to provide revenue to the Tribal Government, and employment and per capita payments to Tribal members;

NOW, THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE IN SPECIAL SESSION:


That in furtherance of the objectives of JAR13-01, the Chairman of the Executive Branch is hereby authorized to execute, and take such further actions as are necessary to implement and administer, the Surface Access Agreement attached hereto and incorporated by reference.

BE IT FINALLY RESOLVED:

That this Tribal Resolution shall take effect immediately upon becoming duly adopted by the Legislature.

CERTIFICATION

I hereby certify that this Legislative Resolution titled; **A RESOLUTION OF THE CROW TRIBAL LEGISLATURE APPROVING THE BIG METAL SURFACE ACCESS AGREEMENT** was duly approved by the Crow Tribal Legislature with a vote of 13 in favor, 0 opposed, and 0 abstained and that a quorum was present on this 24th day of **September, 2015**.


Senator Patrick Alden, Jr.
Pro-Tem Speaker of the House
Crow Tribal Legislature

ATTEST:


Senator Eric Birdinground
Pro-Tem Secretary of the House
Crow Tribal Legislature



**A Legislative Resolution Titled: A RESOLUTION OF THE CROW TRIBAL
LEGISLATURE APPROVING THE BIG METAL SURFACE ACCESS AGREEMENT**

Bill or Resolution: LR15-11 **Introduced by:** Natural Resources Committee **Date of Vote:** 9/24/2015
Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> </u>	<u> </u>	<u> </u>
C. Stewart	<u> </u>	<u> </u>	<u> </u>
P. Hill	<u> X </u>	<u> </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr.	<u> </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<u> </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> X </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
B. Good Luck	<u> X </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
E. Birdinground <i>Secretary of the House Pro-Tem</i>	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Speaker of the House Pro-Tem</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 13 </u>	<u> 0 </u>	<u> 0 </u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Pat Alden
Senator Pat Alden, Jr.
Pro-Tem Speaker of the House

Date

Eric Birdinground
Senator Eric Birdinground
Pro-Tem Secretary of the House

Date

SURFACE ACCESS AGREEMENT

THIS AGREEMENT is made and entered into effective this ____ day of September, 2015 ("Effective Date"), by and between the **CROW TRIBE OF INDIANS** (Apsaalooke Nation) of the Crow Reservation, whose address is P.O. Box 159, Crow Agency, Montana 59022 ("Crow Tribe"), and **BIG METAL COAL CO. LLC**, with its principal place of business at 505 South Gillette Avenue, Gillette, Wyoming 82716 ("Big Metal").

To facilitate continued collection of environmental and archaeological data upon expiration of the Exploration Agreement between the parties and until Big Metal exercises its rights under the Option to Lease Agreement ("Option"), the Crow Tribe desires to grant Big Metal access to surface land it owns which are described below. In consideration of the payments made under the Exploration Agreement, the receipt and sufficiency of which are hereby acknowledged, it is agreed:

1. The Crow Tribe is the owner of the Subject Lands held in trust for their benefit by the United States.

2. The Crow Tribe grants to Big Metal, which under this Agreement, shall include Big Metal's successors, assigns, employees, affiliates, agents and representatives, subject to limitations hereinafter stated, a non-exclusive right of access for the sole purpose of accessing for environmental studies, archaeological studies, and ingress and egress, to those lands which the Crow Tribe holds an interest, or acquires an interest during the term of this Agreement, within the following described area ("Subject Lands"):

Township 8 South, Range 38 East, MPM

Those portions of Sections 13-36 lying west of the 107th Meridian

Township 8 South, Range 37 East, MPM

Sections 10-15, 22-27, and 34-36

Township 9 South, Range 38 East, MPM

Those portions of all Sections lying west of the 107th Meridian

Township 9 South, Range 37 East, MPM

Sections 1, 12, 13

Township 10 South, Range 38 East, MPM

Those portions of Sections 1, 2, 3, 4, 5, and 6 lying west of the 107th Meridian

A map depicting the Subject Lands is attached as **Exhibit 1**. As of the date of this Agreement, tracts in which the surface is wholly-owned by the Crow Tribe consist of approximately 1,960 acres.

3. The Option, subsequent coal leases and associated payments made by Big Metal to the Crow Tribe shall be good and sufficient consideration for this Agreement.

4. Big Metal's access under this Agreement shall continue:

- A. So long as Big Metal continues to make all payments required by the Option or under any Coal Lease with the Crow Tribe, or
- B. For six (6) years from the Effective Date, which shall automatically renew, unless either party provides notice of termination thirty (30) days prior to the renewal,

Whichever shall first occur.

5. Big Metal shall have the following rights during the term of this Agreement:

- A. The right of ingress and egress to enter onto Subject Lands to collect vegetation, soil or other environmental samples, conduct archeological and soil surveys, collect water quality information, and otherwise conduct whatever activities are necessary to complete environmental baseline studies (collectively, "Work").
- B. The right of ingress and egress on Subject Lands to transport over or onto Subject Lands any and all equipment necessary to survey and collect any and all environmental and other data required to obtain a Governmental Permit and/or to support Big Metal's Work.
- C. The right to survey and establish survey points or targets for mapping purposes.
- D. The right to cross Subject Lands to access neighboring property through use of already existing roads or established tracks and gates. The right to construct new access roads through and across Subject Lands is permitted only as approved by the Crow Tribe and as further set forth herein.

6. Big Metal shall have the right to collect any and all environmental, archeological and other data required for a Governmental Permit, subject to the provisions in Paragraph 7. Big Metal shall have the right to drill and establish water-monitoring wells, establish surface water monitoring sites, and establish air quality monitoring sites ("Monitoring Sites") for the purpose of collecting environmental data required to obtain a Governmental Permit. If Big Metal determines to establish Monitoring Sites, it shall notify and coordinate the location of the Monitoring Sites with the Crow Tribe and sites will be established in compliance with applicable governmental regulation. Upon removal of the Monitoring Sites, Big Metal shall retain the right of ingress and egress to reclaim the Monitoring Sites as required by applicable governmental regulation to obtain bond release.

7. Big Metal shall obtain necessary archeological and cultural resource clearances in accordance with the Apsaalooke Cultural Resource Protection Act, the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act of 1979, and other applicable Federal and Tribal cultural resource protection laws as to which Big Metal has been notified, before the start of any exploration activities. When directed by the Tribe or the Secretary, Big Metal shall obtain, at its own expense, a qualified archaeologist to examine and, if necessary, excavate or recover any ruins or other objects of historical or cultural significance located on the Subject Lands. The Tribe shall provide to Big Metal or its archaeologist information and locations of all known or expected cultural resource sites, including sites of religious and traditional importance as such phrase is used in the National Historic Preservation Act, Section 101(d), that are present on the Subject Lands and further designate those sites it desires be designated for specific protection, which protection may include restriction or prohibition of rights provided in this Agreement and in the immediate vicinity of those sites. Such mitigation or recovery actions will be conducted only after consultation with the Tribe, including its Tribal Historic Preservation Officer, the Bureau of Indian Affairs, and the Advisory Council on Historic Preservation, if appropriate, and in accordance with agreements reached through such consultation. Any objects that are excavated or recovered shall be turned over to the Tribe or the appropriate Federal agency for curative, storage, display or other use or disposal at the expense of the Tribe or Federal agency unless otherwise agreed by parties to the consultation, including Big Metal.

8. Big Metal, at its sole option, may terminate this Agreement at any time. Regardless of the length of this Agreement, Big Metal's right to enter upon Subject Lands for purposes of completing reclamation, as described herein, shall not terminate until reclamation is complete.

9. This Agreement is granted upon the following express terms, covenants, and conditions:

- A. Damages. Big Metal shall conduct all operations authorized in this Agreement with due regard to preventing damages to watersheds and water resources, vegetation, timber, soil, roads, bridges, cattle guards, fences, and other improvements, including construction, operation, or maintenance of any of the facilities on or connected with this Agreement which causes damage to the watershed or pollution of the water resources. On termination of operations under this Agreement, Big Metal shall make provisions for the conservation, repair, reclamation and protection of the property on which Big Metal has worked and leave all such areas in a condition that will not be hazardous to life and limb, and will be to the reasonable satisfaction of the Tribe and the Superintendent.
- B. Liability for Damage. Big Metal is liable for any and all damages resulting from its operations under this Agreement, including injury to the Crow Tribe, and each individual, tenants, licensees, and/or surface owners, and for any

and all damage to, or destruction of, all property caused by Big Metal's operations hereunder. Big Metal agrees to save and hold the Crow Tribe, and each individually, the United States, licensees, the surface owners and their tenants harmless from all suits for injury or claims for damages to persons and property resulting from Big Metal's operations under this Agreement.

C. Forest Protection. Big Metal hereby agrees:

- (1) Not to cut, destroy, or damage timber that exceeds six (6) inches in diameter without prior authority of the Crow Tribe and the BIA Superintendent or his or her authorized representative, such authorization to be made only where required by Big Metal, pursuant to necessary mining operations.
- (2) To pay for all such timber that exceeds six (6) inches in diameter and is cut, destroyed, or damaged at rates prescribed by the Superintendent or his or her authorized representative, such rates to be determined on the basis of sales of similar timber in the vicinity.
- (3) Not to interfere with the sale or removal of timber from Subject Lands by contractors operating under an approved timber sales contract now in effect or which may be entered into during the term of this Agreement.
- (4) To do all in its power to prevent and suppress forest, brush, or grass fires on Subject Lands and to require its employees, contractors, subcontractors, and employees of contractors or subcontractors to do likewise. To place its employees, its contractors, subcontractors, and the employees of such contractors or subcontractors employed on Subject Lands, who are qualified to suppress fires, at the disposal of any authorized officer of the BIA for the purpose of suppressing forest, brush, or grass fires with the understanding that the payment for such services shall be made at rates to be determined by the Superintendent or his or her authorized representative, which rates shall not be less than the rates of pay prevailing in the vicinity for services of similar character, *provided* that no payment shall be made for services rendered for the suppression of fires for which Big Metal, its employees, contractors, or subcontractors, or the employee of such contractors or subcontractors, are responsible.
- (5) To pay for the loss of all timber ten (10) inches or more in diameter occasioned by fires for which it, or any of its employees, its contractors, subcontractors, or the employees of such contractors or subcontractors, are responsible for the start or spread, the assessment of the value of such damages to be determined by the

Superintendent or his or her authorized representative on the basis of the value of such timber on sales of similar timber in the vicinity. Also, to pay liquidated damages for all young timber less than ten (10) inches in diameter destroyed by such fires and to pay fall costs for the suppression of fires for which it, or any of its employees, contractors, or subcontractors, or employees of such contractors or subcontractors, is responsible.

- (6) Not to burn rubbish, trash, or other inflammable materials, except with the consent of the authorized representatives of the Crow Tribe and the BIA Superintendent, and not to use explosives in such a manner as to scatter inflammable materials on the surface of Subject Lands during the fire season, except as authorized to do so by such representatives.

D. Inspection. Subject Lands and the operations and appurtenances of Big Metal may be inspected by the authorized representatives of the Crow Tribe, and their agents or any authorized representative of the Secretary of the Interior upon reasonable notice to Big Metal.

E. Roads. Big Metal may use existing roads, if any, on Subject Lands and shall have the privilege of constructing and maintaining, at its own expense, any additional roads across Subject Lands that are necessary in carrying on the actual prospecting and exploration work, providing that the location of such roads be approved in writing by the Chairman of the Crow Tribe and the Superintendent of the Crow Indian Agency. No part of any road or roads shall inure to the benefit of the public and the public shall obtain no rights thereon, but upon termination of this Agreement for any cause whatsoever, or if at any time it shall become unnecessary for Big Metal to use any such road for conducting the operations authorized under this Agreement or subsequent lease, the right to use said road shall thereupon cease and the Crow Tribe shall have the option to require Big Metal to reclaim the additional roads it constructed to their original condition, to the extent reasonably practicable, or preserve such roads with all the rights vesting in the Crow Tribe in accordance with law. Big Metal shall hold the Crow Tribe, and each individually, and the United States harmless and indemnify them against any and all loss or damage that might result from the construction or maintenance by Big Metal of said roads in a negligent manner; *provided, however,* The Crow Tribe hereby acknowledges that said roads are being built for limited use for exploration purposes as specifically described herein, and Big Metal shall have no obligation hereunder to maintain such roads for uses in addition to those uses specifically described herein. Upon termination of this Agreement, Big Metal shall have no obligation to maintain any roads constructed or maintained by Big Metal under this Agreement.

- F. Rights-of-Way. Applications for rights-of-way shall be made by Big Metal pursuant to the requirements of 25 C.F.R. 169.
- G. Water. Subject to consent of the Crow Tribe, and the approval of the BIA Superintendent as applicable, Big Metal may use surface water on Subject Lands for drilling use insofar as the Crow Tribe has the right to grant such use. Big Metal shall obtain any Tribal, other Federal, or, if applicable, state permits required for water use or appropriation or water well drilling and appurtenant water use on the Crow Reservation, including but not limited to compliance with Tribal water rights laws and regulations.
- H. Assignment. Big Metal agrees not to assign the permit or any interest therein to any third party except with the written approval of the Secretary of the Interior or his authorized representative.
- I. Surrender and Termination. Big Metal may, in writing, surrender this Agreement at any time upon the performance of all Big Metal's obligations hereunder and upon a showing satisfactory to the Crow Tribe and the Secretary of the Interior or his or her authorized representative, that full provision has been made for the conservation and protection of the property on which Big Metal worked. If this Agreement has been recorded, Big Metal shall file a recorded release with its application for surrender.
- J. Regulations. Big Metal agrees to comply with all the laws and regulations applicable to Subject Lands and mineral leases on Indian lands, including, but not limited to, regulations in 25 C.F.R. Parts 211 and 216.
- K. Bond. If required by applicable laws, Big Metal shall furnish to the Superintendent of the Crow Indian Agency, Crow Agency, Montana, an acceptable surety reclamation bond in the amount required by the Governmental Permit.
- L. Cancellation and Forfeiture. When, in the opinion of the Secretary of the Interior or his or her authorized representative, there has been a material violation of any of the terms and conditions of this Agreement or the applicable regulations, the Secretary or his authorized representative may at any time after thirty (30) days' written notice to Big Metal, specifying the violations, declare this Agreement void; provided, however, that such a declaration shall not be effective should Big Metal cure any such violation before the end of the thirty (30) day period.
- M. A copy of this Agreement shall at all times be in the possession of the crew chief or some other member of Big Metal's crew while conducting the field operations.
- N. During the field operations, no employees or contractors of Big Metal may hunt, fish, or carry firearms within Subject Lands.

- O. Big Metal shall remove all paper, cans, wire, and other refuse it deposits on Subject Lands.
- P. Big Metal shall use all commercially reasonable technology to prevent the propagation of noxious weeds on the Subject Lands, and control all noxious weeds as may become established within areas used or disturbed by Big Metal. Any ground disturbance created by Big Metal shall be reseeded and noxious weeds controlled, to the extent commercially reasonable, until areas disturbed by Big Metal are returned to as good condition as existed prior to Big Metal's use.

10. **Authority.** The Chairman of the Executive Branch of the Crow Tribe is authorized to execute this Agreement on behalf of the Crow Tribe by the Act of the Crow Joint Action Resolution No. JAR13-01 (January 2013) and Legislative Resolution No. LR15-____ (September 15, 2015). Pending approval by the BIA Superintendent, this Agreement is authorized by 25 U.S.C. § 81.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date and year first above written.

CROW TRIBE OF INDIANS

By: _____
Darrin Old Coyote
Its: Chairperson

BIG METAL COAL CO. LLC

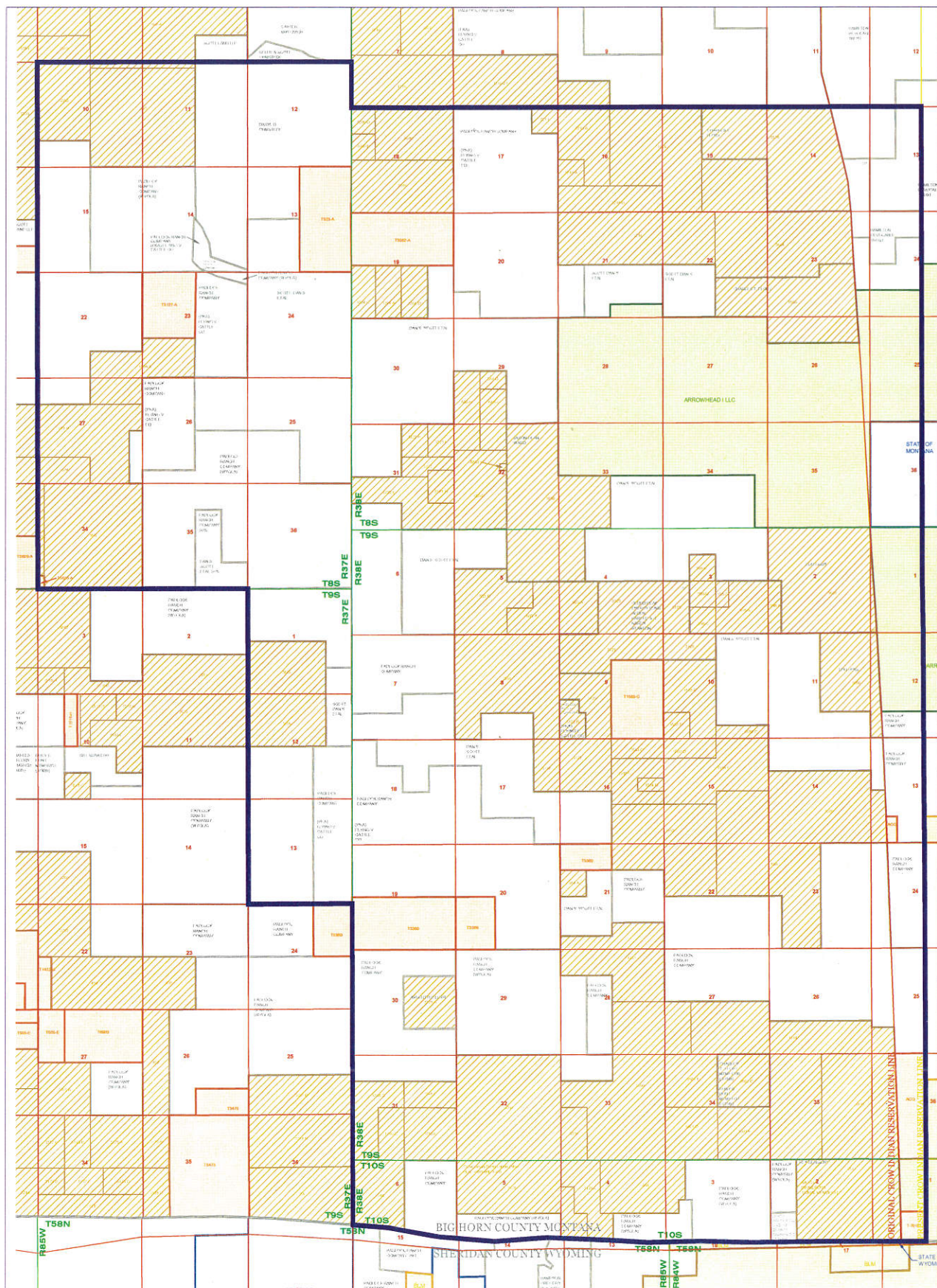
By: _____
Bruce E. Jones
Its: Vice President of Technical Services

Big Metal Coal Co. LLC
Attn. Land Department
505 S. Gillette Avenue (82716)
P.O. Box 3009
Gillette, WY 82717
(307) 685-6120

APPROVED this ____ day of _____, 20____.

SUPERINTENDENT

Authority in accordance with 209 DM8, 230 DM1, 3 IAM 4 (release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Release dated April 21, 2003, and in accordance with 25 USC 2218, inclusive of subparts (a), (b), (c), (d), (e), and (f).



Legend

- SAA Boundary
- Crow Tribal Surface
- Allotted Surface
- CPE Surface
- Fee Surface
- State Surface



Big Metal Coal Mine

P.O. BOX 3009
GILLETTE, WYOMING 82717
(307) 687-0000



Crow Tribal Lands
Surface Access Agreement

Exhibit 1

DRAWN BY: JCO SHEET 1 OF 1 DATE: 06/23/2015
SCALE: 1"=4.00' FILE NUMBER: 100-50-100-000