

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973
Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

Counsel to the Debtors

Local Counsel to the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

NOTICE OF CLAIM SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that the Debtors hereby file this notice that, pursuant to Section 8.2 of the *Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [ECF No. 1704, Ex. A] (the “**Plan**”), the Debtors entered into the Settlement Agreement with the United States, on behalf of the United States Department of Agriculture, Forest Service, attached hereto as Exhibit A, which Settlement Agreement has become effective upon the filing of this Notice.

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 8.2 of the Plan, no notice to or approval by the Bankruptcy Court or any other party is required.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

Dated: April 26, 2017
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

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Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
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-and-

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Counsel to the Debtors

SCHEDULE 1

(Debtor Entities)

- | | |
|--|---|
| 1. James River Coal Company (2012) | 18. IRP WV Corp. (6050) |
| 2. BDCC Holding Company, Inc. (3200) | 19. James River Coal Sales, Inc. (3417) |
| 3. Bell County Coal Corporation (0806) | 20. James River Coal Service Company (2577) |
| 4. Bledsoe Coal Corporation (4821) | 21. James River Escrow Inc. (0314) |
| 5. Bledsoe Coal Leasing Company (6654) | 22. Jellico Mining, LLC (4545) |
| 6. Blue Diamond Coal Company (3812) | 23. Johns Creek Coal Company (9412) |
| 7. Buck Branch Resources LLC (1459) | 24. Johns Creek Elkhorn Coal Corporation (9199) |
| 8. Chafin Branch Coal Company, LLC (7873) | 25. Johns Creek Processing Company (4021) |
| 9. Eolia Resources, Inc. (0587) | 26. Laurel Mountain Resources LLC (1458) |
| 10. Hampden Coal Company, LLC (4334) | 27. Leeco, Inc. (4176) |
| 11. International Resource Partners LP (8669) | 28. Logan & Kanawha Coal Co., LLC (5716) |
| 12. International Resources Holdings I LLC (9838) | 29. McCoy Elkhorn Coal Corporation (8373) |
| 13. International Resources Holdings II LLC (1567) | 30. Rockhouse Creek Development, LLC (9583) |
| 14. International Resources, LLC (2522) | 31. Shamrock Coal Company, Incorporated (1843) |
| 15. IRP GP Holdco LLC (5380) | 32. Snap Creek Mining, LLC (6858) |
| 16. IRP Kentucky LLC (1454) | 33. Triad Mining Inc. (9005) |
| 17. IRP LP Holdco Inc. (4447) | 34. Triad Underground Mining, LLC (9041) |

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

SHAMROCK COAL COMPANY,
INC.,

Debtor.

Chapter 11

Case No. 14-31883 (KRH)

Jointly Administered With
Case No. 14-31848

SETTLEMENT AGREEMENT

WHEREAS, Debtor and certain of its affiliates (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”) a voluntary petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”) on April 7, 2014 (the “Petition Date”), which has been jointly administered as part of *In re: James River Coal, Co., et al*, Case No. 14-31848 (the “Bankruptcy Case”);

WHEREAS, the United States, on behalf of the United States Department of Agriculture, Forest Service (“Forest Service”), has filed a proof of claim (Claim No. 1450, filed October 6, 2014) (the “Forest Service Proof of Claim”), contending that the Debtor Shamrock Coal Company, Inc. is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the following Sites (referred to Collectively as the “Forest Service Sites”):

- a. The Shamrock Mines Nos. 1 and 6 Site, located in northern McCreary County, Kentucky (the “SM 1&6 Site”);

- b. The Shamrock Mines Nos. 5 and 5C Site, located in northern McCreary County, Kentucky (the “SM 5&5C Site”);
- c. The Shamrock Mine No. 9 Site, located in Northern McCreary County, Kentucky (the “SM 9 Site”);
- d. The Shamrock Mines Nos. 9A and 9B Site, located in Northern McCreary County, Kentucky (the “SM 9A&B Site”);
- e. The Shamrock Mines 18 Complex, located in Southern Clay and Leslie Counties, Kentucky (the “SM18 Complex”);
- f. The Shamrock Mines No. 7 and 7A Site, located in northern McCreary County, Kentucky (the “SM7&7A Site”);
- g. The Shamrock Mine No. 8 Site, located in northern McCreary County, Kentucky (the “SM 8 Site”);
- h. The Shamrock Mines Nos. 2 and 3 Site, located in Northern McCreary County, Kentucky (the “SM 2&3 Site”);

WHEREAS, the Forest Service Proof of Claim asserts the aforementioned response cost liability, in the amount of \$12,431,000 as a general unsecured claim;

WHEREAS, the Debtors disagree with the United States’ contentions and, but for this Settlement Agreement, would dispute, in whole or in part, the Forest Service Proof of Claim;

WHEREAS, the Debtors and the Forest Service wish to resolve their differences with respect to the Forest Service Proof of Claim as provided herein;

WHEREAS, on March 21, 2016, the *Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Proposed by the Debtors* (the “Plan”) became effective in the Bankruptcy Case;

WHEREAS, Section 8.2 of the Plan provides that the Plan Administrator (as defined in the Plan) has the sole authority to settle claims and administer and adjust the claims register to reflect any such settlements, in each case, without notice to or approval by the Bankruptcy Court or any other party; and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters.

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. With respect to the Forest Service Sites, the United States on behalf of the Forest Service shall have an allowed claim of \$5,500,000.00 (the "Forest Service Allowed Claim"), to be paid as a Class 31F General Unsecured Claim under the Plan. The Forest Service Allowed Claim shall be allocated amongst the Forest Service Sites as follows:

- a. The SM 1&6 Site – 4.1%;
- b. The SM 5&5C Site – 9.6%;
- c. The SM 9 Site – 8.8%;
- d. The SM 9A&B Site – 4.8%;
- e. The SM18 Complex – 58.8%;
- f. The SM7&7A Site – 4.5%;
- g. The SM 8 Site – 4.9%;
- h. The SM 2&3 Site – 4.5%;

3. The Forest Service Allowed Claim shall receive the same treatment under the Plan, without discrimination, as all other allowed Class 31F General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed Class 31F General Unsecured Claims. In no event shall the Forest Service Allowed Claim be subordinated to any other allowed Class 31F General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

4. The Forest Service may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement, and any portion of the proceeds of any non-cash distributions it receives pursuant to this Settlement Agreement, into a special account(s) established by the Forest Service for the Forest Service's Sites within the Hazardous Substance Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the Forest Service Sites, or to be transferred to the Hazardous Substance Superfund.

5. Only the amount of cash received by the Forest Service pursuant to this Settlement Agreement for a site under paragraph 2, and not the total amount of the Forest Service Allowed Claim, shall be credited as a recovery by the Forest Service for such site, which credit shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

6. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System ("CDCS") number, to be provided

to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia.

7. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 8-10, the Forest Service covenants not to file a civil action or take administrative action against the Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Forest Service Sites.

8. The covenant set forth in Paragraph 7 extends only to the Debtors and the persons described in Paragraph 11 and does not extend to any other person. Except with respect to the foregoing sentence, nothing in this Settlement Agreement is intended as a covenant for any person or entity other than the Debtors and the United States. The Forest Service and the Debtors expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors for any matter arising at or relating in any manner to the Forest Service Sites. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

9. The covenant set forth in Paragraph 7 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to all matters other than those set forth in Paragraph 7. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a

requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to the Forest Service Sites for liability under federal or state law for acts by the Debtors, its successors, or assigns that arise after the Effective Date (as defined below).

10. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement, (ii) nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, in each case, other than with respect to the Forest Service Sites, and (iii) nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

11. Without in any way limiting the covenants set forth in Paragraph 7 (and the reservations thereto set forth in Paragraphs 8-10), and notwithstanding any other provision of this Settlement Agreement, such covenants shall also apply to the Debtors' officers, directors and employees, but only to the extent that the alleged liability of the officer, director, or employee of any Debtor is based solely on its status as and in its capacity as an officer, director, or employee of any Debtor.

12. The Debtors covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Forest Service Sites, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Forest Service Sites. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. Notwithstanding any other provision of this Settlement Agreement, the Debtors reserve, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Debtors pursuant to any of the reservations set forth in Paragraph 9, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtors' claims arises from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. Nothing contained herein shall be deemed an admission of liability on the part of the Debtors with respect to the Forest Service Proof of Claim.

15. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

16. This Settlement Agreement may not be amended except by a writing signed by all the parties or order of the Bankruptcy Court.

17. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

18. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the Eastern District of Kentucky) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.


19. This Settlement Agreement shall be filed with the Bankruptcy Court. The "Effective Date" means the date on which this Settlement Agreement is filed with the Bankruptcy Court. The parties hereto agree that, upon the Effective Date, the Debtors' claims, noticing and balloting agent is authorized to amend the Debtors' claims register accordingly.

The undersigned party hereby enters into this Settlement Agreement in *In re Shamrock Coal Company, Inc.*, Case No. 14-31883 – KRH (Bankr. E.D. Va.).


FOR THE UNITED STATES OF AMERICA:

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

By: 
ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: APR. 24, 2017

By: 
KARL J. FINGERHOOD
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

Tel: (202) 514-7519
Karl.fingerhood@usdoj.gov

The undersigned party hereby enters into this Settlement Agreement in *In re Shamrock Coal Company, Inc.*, Case No. 14-31883 – KRH (Bankr. E.D. Va.).

FOR THE DEBTORS:

Date:

By: _____
MICHELLE M. MCGREAL
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10029

Tel: (212) 450-3024

michelle.mcgreal@davispolk.com

The undersigned party hereby enters into this Settlement Agreement in *In re Shamrock Coal Company, Inc.*, Case No. 14-31883 – KRH (Bankr. E.D. Va.).

FOR THE DEBTORS:

Date: 3/29/17

By: 
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Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10029

Tel: (212) 450-3024

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