

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended September 30, 2005

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-13105

ARCH COAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

43-0921172
(I.R.S. Employer Identification No.)

One CityPlace Drive, Suite 300, St. Louis, Missouri 63141
(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (314) 994-2700

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

At November 8, 2005, there were 64,688,882 shares of registrant's common stock outstanding.

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PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

ARCH COAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS)

	<u>September 30,</u> <u>2005</u> <u>(Unaudited)</u>	<u>December 31,</u> <u>2004</u>
Assets		
Current assets		
Cash and cash equivalents	\$ 227,428	\$ 323,167
Trade receivables	252,031	180,902
Other receivables	30,377	34,407
Inventories	142,012	119,893
Prepaid royalties	8,341	12,995
Deferred income taxes	9,778	33,933
Other	24,512	25,560
Total current assets	<u>694,479</u>	<u>730,857</u>
Property, plant and equipment, net	2,117,463	2,033,200
Other assets		
Prepaid royalties	103,741	87,285
Goodwill	40,032	37,381
Deferred income taxes	273,237	241,226
Other	116,950	126,586
Total other assets	<u>533,960</u>	<u>492,478</u>
Total assets	<u>\$ 3,345,902</u>	<u>\$ 3,256,535</u>
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable	\$ 183,526	\$ 148,014
Accrued expenses	213,009	217,216
Current portion of debt	3,124	9,824
Total current liabilities	<u>399,659</u>	<u>375,054</u>
Long-term debt	972,875	1,001,323
Accrued postretirement benefits other than pension	402,073	380,424
Asset retirement obligations	184,538	179,965
Accrued workers' compensation	74,698	82,446
Other noncurrent liabilities	144,055	157,497
Total liabilities	<u>2,177,898</u>	<u>2,176,709</u>
Stockholders' equity		
Preferred stock	29	29
Common stock	647	631
Paid-in capital	1,343,082	1,280,513
Retained deficit	(157,979)	(166,273)
Unearned compensation	(3,140)	(1,830)
Treasury stock, at cost	(1,190)	(5,047)
Accumulated other comprehensive loss	(13,445)	(28,197)
Total stockholders' equity	<u>1,168,004</u>	<u>1,079,826</u>
Total liabilities and stockholders' equity	<u>\$ 3,345,902</u>	<u>\$ 3,256,535</u>

See notes to condensed consolidated financial statements.

ARCH COAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE DATA)
(UNAUDITED)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Revenues				
Coal sales	\$ 654,716	\$ 527,776	\$ 1,888,978	\$ 1,354,043
Costs and expenses				
Cost of coal sales	546,725	448,638	1,608,439	1,161,259
Depreciation, depletion and amortization	57,842	43,491	160,887	115,677
Selling, general and administrative expenses	20,285	12,729	60,540	39,358
Other operating expenses	15,150	13,746	40,695	26,243
	<u>640,002</u>	<u>518,604</u>	<u>1,870,561</u>	<u>1,342,537</u>
Other operating income				
Income from equity investments	—	1,143	—	10,828
Gain on sale of units of Natural Resource Partners, LP	—	289	—	90,244
Other operating income	19,463	15,731	63,206	45,535
	<u>19,463</u>	<u>17,163</u>	<u>63,206</u>	<u>146,607</u>
Income from operations	34,177	26,335	81,623	158,113
Interest expense, net:				
Interest expense	(17,994)	(16,220)	(55,454)	(45,062)
Interest income	2,109	1,110	5,635	2,723
	<u>(15,885)</u>	<u>(15,110)</u>	<u>(49,819)</u>	<u>(42,339)</u>
Other non-operating income (expense):				
Expenses resulting from early debt extinguishment and termination of hedge accounting for interest rate swaps	(1,949)	(2,066)	(6,082)	(6,199)
Other	(1,567)	461	(1,497)	835
	<u>(3,516)</u>	<u>(1,605)</u>	<u>(7,579)</u>	<u>(5,364)</u>
Income before income taxes	14,776	9,620	24,225	110,410
(Benefit from) provision for income taxes	(4,150)	(1,155)	(4,750)	18,545
Net income	<u>18,926</u>	<u>10,775</u>	<u>28,975</u>	<u>91,865</u>
Preferred stock dividends	(1,797)	(1,797)	(5,391)	(5,391)
Net income available to common shareholders	<u>\$ 17,129</u>	<u>\$ 8,978</u>	<u>\$ 23,584</u>	<u>\$ 86,474</u>
Earnings per common share				
Basic earnings per common share	\$ 0.27	\$ 0.16	\$ 0.37	\$ 1.59
Diluted earnings per common share	\$ 0.26	\$ 0.16	\$ 0.37	\$ 1.48
Basic weighted average shares outstanding	63,858	54,874	63,382	54,431
Diluted weighted average shares outstanding	64,791	55,838	64,371	62,262
Dividends declared per share	<u>\$ 0.0800</u>	<u>\$ 0.0800</u>	<u>\$ 0.2400</u>	<u>\$ 0.2175</u>

See notes to condensed consolidated financial statements.

ARCH COAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
(UNAUDITED)

	Nine months Ended September 30,	
	2005	2004
Operating activities		
Net income	\$ 28,975	\$ 91,865
Adjustments to reconcile to cash provided by operating activities:		
Depreciation, depletion and amortization	160,887	115,677
Prepaid royalties expensed	12,143	10,923
Accretion on asset retirement obligations	11,392	9,198
Net gain on disposition of assets	(29,882)	(748)
Gain on sale of units of Natural Resource Partners, LP	—	(90,244)
Net distributions from equity investments	—	(10,828)
Income from equity investments	—	17,678
Other nonoperating expense	7,579	5,364
Changes in:		
Receivables	(66,799)	(73,997)
Inventories	(22,119)	(5,324)
Accounts payable and accrued expenses	30,965	(19,889)
Income taxes	(1,511)	(860)
Accrued postretirement benefits other than pension	21,649	13,950
Asset retirement obligations	(6,819)	(7,525)
Accrued workers' compensation benefits	(7,748)	(1,030)
Federal income tax receipts	14,701	—
Other	9,615	(14,404)
Cash provided by operating activities	<u>163,028</u>	<u>39,806</u>
Investing activities		
Payments for acquisitions, net of cash acquired	—	(381,905)
Capital expenditures	(248,906)	(243,566)
Proceeds from sale of units of Natural Resource Partners, LP	—	105,365
Proceeds from dispositions of capital assets	30,183	1,279
Additions to prepaid royalties	(23,945)	(27,171)
Cash used in investing activities	<u>(242,668)</u>	<u>(545,998)</u>
Financing activities		
Net proceeds from (payments on) revolver and lines of credit	(25,000)	250,426
Net payments on long-term debt	(9,125)	(6,300)
Deferred financing costs	(2,631)	(1,160)
Dividends paid	(20,681)	(17,249)
Proceeds from issuance of common stock	41,338	30,732
Cash provided by (used in) financing activities	<u>(16,099)</u>	<u>256,449</u>
Decrease in cash and cash equivalents	(95,739)	(249,743)
Cash and cash equivalents, beginning of period	323,167	254,541
Cash and cash equivalents, end of period	<u>\$ 227,428</u>	<u>\$ 4,798</u>

See notes to condensed consolidated financial statements.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2005
(UNAUDITED)

Note A – General

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial reporting and Securities and Exchange Commission regulations, but are subject to any year-end adjustments that may be necessary. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Results of operations for the period ended September 30, 2005 are not necessarily indicative of results to be expected for the year ending December 31, 2005. These financial statements should be read in conjunction with the audited financial statements and related notes thereto as of and for the year ended December 31, 2004 included in Arch Coal, Inc.'s Annual Report on Form 10-K as filed with the Securities and Exchange Commission.

Arch Coal, Inc. (the "Company") is engaged in the production of steam and metallurgical coal from surface and deep mines throughout the United States, for sale to utility, industrial and export markets. The Company's mines are primarily located in the Powder River Basin, Central Appalachia and Western Bituminous regions of the United States. All subsidiaries (except as noted below) are wholly owned. Intercompany transactions and accounts have been eliminated in consolidation.

The Company's Wyoming, Colorado and Utah coal operations are included in a joint venture named Arch Western Resources, LLC ("Arch Western"). Arch Western is 99% owned by the Company and 1% owned by BP Amoco. The Company also acts as the managing member of Arch Western.

On July 31, 2004, the Company acquired the remaining 35% of Canyon Fuel Company, LLC ("Canyon Fuel") that it did not already own. See Note C – "Business Combinations" for further discussion. Income from Canyon Fuel through July 31, 2004 is reflected in the Condensed Consolidated Statements of Operations as income from equity investments (see additional discussion in Note E – "Equity Investments").

Note B – Recent Accounting Pronouncements

On March 30, 2005, the Financial Accounting Standards Board ("FASB") ratified the consensus reached by the Emerging Issues Task Force ("EITF") on issue No. 04-6, *Accounting for Stripping Costs in the Mining Industry*. This issue applies to stripping costs incurred in the production phase of a mine for the removal of overburden or waste materials for the purpose of obtaining access to coal that will be extracted. Under the new rule, stripping costs incurred during the production phase of the mine are variable production costs that are included in the cost of inventory produced and extracted during the period the stripping costs are incurred. Historically, the Company has associated stripping costs at its surface mining operations with the cost of tons of coal uncovered and has classified tons uncovered but not yet extracted as coal inventory (pit inventory). Pit inventory, reported as coal inventory in Note H, was \$38.3 million at September 30, 2005. The guidance in this EITF consensus is effective for fiscal years beginning after December 15, 2005 for which the cumulative effect of adoption should be recognized as an adjustment to the beginning balance of retained earnings during the period. The Company expects to adopt the change as of January 1, 2006.

Note C – Business Combinations

Canyon Fuel 35% Acquisition

On July 31, 2004, the Company purchased the 35% interest in Canyon Fuel that it did not own from ITOCHU Corporation. The purchase price, including related costs and fees, of \$112.2 million was funded with cash of \$90.2 million and a five-year, \$22.0 million non-interest bearing note. Net of cash acquired, the fair value of the transaction totaled \$97.4 million. The Company owns substantially all of the ownership interests of Canyon Fuel and consolidates Canyon Fuel in its financial statements. Prior to July 31, 2004, the investment in Canyon Fuel was accounted for on the equity method. The results of operations of the Canyon Fuel mines are included in the Company's Western Bituminous segment.

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The purchase accounting allocation related to the acquisition has been recorded in the accompanying consolidated financial statements as of, and for the period subsequent to, July 31, 2004. The following table summarizes the fair values of the assets acquired and the liabilities assumed at the date of acquisition (dollars in thousands):

Accounts receivable	\$ 7,432
Materials and supplies	3,751
Coal inventory	7,434
Other current assets	6,466
Property, plant, equipment and mine development	125,881
Accounts payable and accrued expenses	(10,379)
Coal supply agreements	(33,378)
Other noncurrent assets and liabilities, net	(9,823)
Total purchase price, net of cash received of \$11.0 million	<u>\$ 97,384</u>

Amounts allocated to coal supply agreements noted in the table above represent the liability established for the net below-market coal supply agreements to be amortized over the remaining terms of the contracts. The liability is classified as an other noncurrent liability on the accompanying Condensed Consolidated Balance Sheet. The remaining amortization period on these acquired coal supply agreements ranges from three to 39 months.

Triton Acquisition

On August 20, 2004, the Company acquired (1) Vulcan Coal Holdings, L.L.C., which owns all of the common equity of Triton Coal Company, LLC ("Triton"), and (2) all of the preferred units of Triton, for a purchase price of \$382.1 million, including transaction costs and working capital adjustments. In 2003, Triton was the nation's sixth largest coal producer and operated two mines in the Powder River Basin: North Rochelle and Buckskin. Following the consummation of the transaction, the Company completed an agreement to sell Buckskin to Kiewit Mining Acquisition Company. The net sales price for this second transaction was \$73.1 million. The total purchase price, including related costs and fees, was funded with cash on hand, including the proceeds from the Buckskin sale, \$22.0 million in borrowings under the Company's existing revolving credit facility and a \$100.0 million term loan at its Arch Western Resources subsidiary. Upon acquisition, the Company integrated the North Rochelle mine with its existing Black Thunder mine in the Powder River Basin.

The purchase accounting allocations related to the acquisition have been recorded in the accompanying consolidated financial statements as of, and for the periods subsequent to August 20, 2004. The following table summarizes the fair values of the assets acquired and the liabilities assumed at the date of acquisition (dollars in thousands):

Accounts receivable	\$ 14,233
Materials and supplies	4,161
Coal inventory	4,875
Other current assets	2,200
Property, plant, equipment and mine development	325,194
Coal supply agreements	8,486
Goodwill	40,032
Accounts payable and accrued expenses	(72,326)
Other noncurrent assets and liabilities, net	(22,135)
Total purchase price, net of cash received of \$0.4 million	<u>\$ 304,720</u>

Amounts allocated to coal supply agreements noted in the table above represent the value attributed to the net above-market coal supply agreements to be amortized over the remaining terms of the contracts. The remaining amortization period on these acquired coal supply agreements ranges from three to 15 months.

Pro Forma Financial Information

If Triton and Canyon Fuel had been included in the Company's results of operations during the three months ended September 30, 2004, its unaudited pro forma revenues would have been \$570.9 million, unaudited pro forma net income available to common shareholders would have been \$2.4 million and unaudited pro forma basic and diluted earnings per share would both have been \$0.04. If Triton and Canyon Fuel had been included in the Company's results of operations during the nine months ended September 30, 2004, its unaudited pro forma revenues would have been \$1,605.8 million, unaudited pro forma net income available to common shareholders would have been

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\$73.6 million and unaudited pro forma basic and diluted earnings per share would have been \$1.35 and \$1.18, respectively.

Note D – Stock-Based Compensation

These interim financial statements include the disclosure requirements of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (“FAS 123”), as amended by Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure* (“FAS 148”). With respect to accounting for its stock options, as permitted under FAS 123, the Company has retained the intrinsic value method prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (“APB 25”), and related Interpretations. Had compensation expense for stock option grants been determined based on the fair value at the grant dates consistent with the method required by FAS 123, the Company’s net income available to common shareholders and earnings per common share would have been changed to the pro forma amounts as indicated in the following table:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Net income available to common shareholders, as reported	\$ 17,129	\$ 8,978	\$ 23,584	\$ 86,474
Add:				
Stock-based employee compensation included in reported net income, net of related tax effects	101	495	8,718	1,342
Deduct:				
Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(1,122)	(1,829)	(11,767)	(5,474)
Pro forma net income available to common shareholders	<u>\$ 16,108</u>	<u>\$ 7,644</u>	<u>\$ 20,535</u>	<u>\$ 82,342</u>
Earnings per share:				
Basic earnings per share — as reported	0.27	0.16	0.37	1.59
Basic earnings per share — pro forma	0.25	0.14	0.32	1.51
Diluted earnings per share — as reported	0.26	0.16	0.37	1.48
Diluted earnings per share — pro forma	0.25	0.14	0.32	1.41

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), “*Share-Based Payment*” (“FAS 123R”), which requires all public companies to measure compensation cost in the income statement for all share-based payments (including employee stock options) at fair value for interim and annual periods. On April 14, 2005, the Securities and Exchange Commission (“SEC”) delayed the implementation of FAS 123R from its original implementation date by six months for most registrants, requiring all public companies to adopt FAS 123R no later than the beginning of the first fiscal year beginning after June 15, 2005. As such, the Company intends to adopt FAS 123R on January 1, 2006 using the modified-prospective method. FAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. The Company does not expect a material impact on its results of operations after the date of adoption.

On January 14, 2004, the Company granted an award of 220,766 shares of performance-contingent phantom stock that vested in the event the Company’s stock price reached an average pre-established price over a period of 20 consecutive trading days within five years following the date of grant. On March 3, 2005, the price contingency discussed above was met, and the award was paid in a combination of Company stock (\$7.3 million) and cash (\$2.6 million). As such, the Company recognized a \$9.9 million charge as a component of selling, general and administrative expense (\$9.1 million) and cost of coal sales (\$0.8 million) in the accompanying Condensed Consolidated Statements of Operations in the first quarter of 2005.

In the third quarter 2005, the Company’s Board of Directors approved a performance-contingent phantom stock plan for 11 of its executives. The plan allows for participants to earn up to 252,600 units to be paid out in both cash and stock upon simultaneous attainment of certain levels of stock price and EBITDA, as defined by the company. No expense related to this grant has been recognized as the Company is unable to assess the probability of achieving the

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performance and market targets under APB25. The Company is continuing to determine the pro forma impact under FAS 123R, however, does not believe such impact will be material.

Note E – Equity Investments

At September 30, 2005, the Company no longer held equity investments. The Company purchased the remaining 35% interest in Canyon Fuel on July 31, 2004. Prior to July 31, 2004, the Company accounted for its investment in Canyon Fuel on the equity method. In addition, on March 10, 2004, the Company sold the majority of its interest in Natural Resource Partners, LP (“NRP”). Prior to March 10, 2004, the Company accounted for its investment in NRP on the equity method. Amounts recorded in the Condensed Consolidated Statements of Operations are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
(in thousands)				
Income from equity investments:				
Income from investment in Canyon Fuel	\$ —	\$ 1,143	\$ —	\$ 8,410
Income from NRP	—	—	—	2,418
Income from equity investments as reported in the Condensed Consolidated Statements of Operations	<u>\$ —</u>	<u>\$ 1,143</u>	<u>\$ —</u>	<u>\$ 10,828</u>

Investment in Canyon Fuel

The following table presents unaudited summarized financial information for Canyon Fuel:

Condensed Income Statement Information	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
(in thousands)				
Revenues	\$ —	\$ 20,186	\$ —	\$ 142,893
Total costs and expenses	—	18,791	—	133,546
Net income before cumulative effect of accounting change	<u>\$ —</u>	<u>\$ 1,395</u>	<u>\$ —</u>	<u>\$ 9,347</u>
65% of Canyon Fuel net income before cumulative effect of accounting change	\$ —	\$ 906	\$ —	\$ 6,075
Effect of purchase adjustments	—	237	—	2,335
Arch Coal’s income from its equity investment in Canyon Fuel	<u>\$ —</u>	<u>\$ 1,143</u>	<u>\$ —</u>	<u>\$ 8,410</u>

Through July 31, 2004, the Company’s income from its equity investment in Canyon Fuel represented 65% of Canyon Fuel’s net income after adjusting for the effect of purchase adjustments related to its investment in Canyon Fuel. The Company’s investment in Canyon Fuel reflected purchase adjustments primarily related to the reduction in amounts assigned to sales contracts, mineral reserves and other property, plant and equipment. The purchase adjustments were amortized consistent with the underlying assets of the joint venture.

Investment in NRP

During 2004, the Company sold its remaining limited partnership units of NRP in three separate transactions occurring in March, June and October. Specifically during the nine months ended September 30, 2004, the Company sold the majority of its remaining limited partnership units of NRP for proceeds of approximately \$105.4 million. The sale resulted in a gain of \$90.2 million.

Note F – Employee Benefit Plans**Defined Benefit Pension and Other Postretirement Benefit Plans**

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The Company has non-contributory defined benefit pension plans covering certain of its salaried and non-union hourly employees. Benefits are generally based on the employee's years of service and compensation. The Company funds the plans in an amount not less than the minimum statutory funding requirements nor more than the maximum amount that can be deducted for federal income tax purposes.

The Company also currently provides certain postretirement medical/life insurance coverage for eligible employees. Generally, covered employees who terminate employment after meeting eligibility requirements are eligible for postretirement coverage for themselves and their dependents. The salaried employee postretirement medical/life plans are contributory, with retiree contributions adjusted periodically, and contain other cost-sharing features such as deductibles and coinsurance. The postretirement medical plan for retirees who were members of the United Mine Workers of America ("UMWA") is not contributory. The Company's current funding policy is to fund the cost of all postretirement medical/life insurance benefits as they are paid.

Components of Net Periodic Benefit Cost

The following table details the components of pension and other postretirement benefit costs.

Three Months Ended September 30,	Pension benefits		Other postretirement benefits	
	2005	2004	2005	2004
	(in thousands)			
Service cost	\$ 2,304	\$ 2,396	\$ 1,364	\$ 1,089
Interest cost	2,416	3,009	7,967	7,461
Expected return on plan assets*	(3,334)	(3,698)	—	—
Other amortization and deferral	2,195	1,227	6,470	4,159
	<u>\$ 3,581</u>	<u>\$ 2,934</u>	<u>\$ 15,801</u>	<u>\$ 12,709</u>

Nine Months Ended September 30,	Pension benefits		Other postretirement benefits	
	2005	2004	2005	2004
	(in thousands)			
Service cost	\$ 8,303	\$ 6,311	\$ 3,906	\$ 2,989
Interest cost	9,112	8,616	23,663	22,185
Expected return on plan assets*	(11,579)	(10,672)	—	—
Other amortization and deferral	5,545	3,541	19,003	12,539
	<u>\$ 11,381</u>	<u>\$ 7,796</u>	<u>\$ 46,572</u>	<u>\$ 37,713</u>

* The Company does not fund its other postretirement liabilities.

Employer Contributions

The Company contributed 273,000 shares of treasury stock in August 2005. The Company has no minimum contribution required.

Note G – Other Comprehensive Income

Other comprehensive income items under FAS 130, *Reporting Comprehensive Income*, are transactions recorded in stockholders' equity during the year, excluding net income and transactions with stockholders. The following table presents comprehensive income:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
	(in thousands)			
Net income	\$ 18,926	\$ 10,775	\$ 28,975	\$ 91,865
Other comprehensive income, net of income taxes	6,211	1,904	14,752	7,594
Total comprehensive income	<u>\$ 25,137</u>	<u>\$ 12,679</u>	<u>\$ 43,727</u>	<u>\$ 99,459</u>

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Other comprehensive income for the three and nine months ended September 30, 2005 and 2004 consists primarily of the reclassification of previously deferred mark-to-market adjustments from other comprehensive income to net income and mark-to-market adjustments related to the Company's financial derivatives which still qualify as effective hedges.

Note H – Inventories

Inventories consist of the following:

	September 30, 2005	December 31, 2004
	(in thousands)	
Coal	\$ 80,308	\$ 76,009
Repair parts and supplies	61,704	43,884
	<u>\$ 142,012</u>	<u>\$ 119,893</u>

Note I – Debt

Debt consists of the following:

	September 30, 2005	December 31, 2004
	(in thousands)	
Indebtedness to banks under revolving credit agreement, expiring December 22, 2009	\$ —	\$ 25,000
6.75% senior notes (\$950.0 million face value) due July 1, 2013	960,589	961,613
Promissory note	15,405	17,523
Other	5	7,011
	<u>975,999</u>	<u>1,011,147</u>
Less current portion	3,124	9,824
Long-term debt	<u>\$ 972,875</u>	<u>\$ 1,001,323</u>

On December 22, 2004, the Company entered into a \$700.0 million revolving credit facility that matures on December 22, 2009. The rate of interest on borrowings under the credit facility is a floating rate based on LIBOR. The Company's credit facility is secured by substantially all of its assets as well as its ownership interests in substantially all of its subsidiaries, except its ownership interests in Arch Western and its subsidiaries. The credit facility replaced the Company's existing \$350.0 million revolving credit facility. At September 30, 2005, the Company had \$106.2 million in letters of credit outstanding, resulting in \$593.8 million of unused borrowings under the revolver. Financial covenant requirements may restrict the amount of unused capacity available to the Company for borrowings and letters of credit. As of September 30, 2005, the Company was not restricted by financial covenants.

On October 22, 2004, the Company issued \$250.0 million of 6.75% Senior Notes due 2013 at a price of 104.75% of par. Interest on the notes is payable on January 1 and July 1 of each year, beginning on January 1, 2005. The senior notes were issued under an indenture dated June 25, 2003, under which the Company previously issued \$700.0 million of 6.75% Senior Notes due 2013. The senior notes are guaranteed by Arch Western and certain of Arch Western's subsidiaries and are secured by a security interest in loans made to Arch Coal by Arch Western. The terms of the senior notes contain restrictive covenants that limit Arch Western's ability to, among other things, incur additional debt, sell or transfer assets, and make certain investments.

On July 31, 2004, the Company issued a five-year, \$22.0 million non-interest bearing note to help fund the Canyon Fuel acquisition. At its issuance, the note was discounted to its present value using a rate of 7.0%. The promissory note is payable in quarterly installments of \$1.0 million through July 2008 and \$1.5 million from October 2008 through July 2009.

Note J – Contingencies

The Company is a party to numerous claims and lawsuits with respect to various matters. The Company provides for costs related to contingencies when a loss is probable and the amount is reasonably determinable. After conferring with counsel, it is the opinion of management that the ultimate resolution of these claims, to the extent not provided

for, will not have a material adverse effect on the consolidated financial position, results of operations or liquidity of the Company.

Note K – Transactions or Events Affecting Comparability of Reported Results

During the third quarter of 2005, the Company recognized a gain of \$9.0 million on the sale of surface land rights at its Central Appalachian operations in West Virginia. The gain is reported as other operating income in the accompanying Condensed Consolidated Statements of Operations.

During the third quarter, contingencies relating to the outcome of certain lawsuits were resolved. The Company recorded a charge of \$2.6 million during the third quarter to reflect its best estimate of the cost of the resolution of these lawsuits in cost of coal sales in the accompanying Condensed Consolidated Statements of Operations.

The change in market value of SO₂ and coal derivatives was expense of \$5.5 million and \$7.5 million for the three months and nine months ended September 30, 2005, respectively, recorded in other operating income in the accompanying Condensed Consolidated Statements of Operations.

During the second quarter of 2005, the Company participated in a settlement from its insurance broker related to certain types of commissions previously paid and recognized a gain of \$1.0 million. The gain is reflected in other operating income in the Condensed Consolidated Statements of Operations.

During the second quarter of 2005, the Company assigned its rights and obligations to an unused loadout facility to a third party resulting in a gain of \$1.7 million. Of the \$1.7 million gain recognized, \$1.2 million was recorded as an increase to other operating income in the Condensed Consolidated Statements of Operations while \$0.5 million was reflected as a reduction in cost of coal sales in the Condensed Consolidated Statements of Operations representing the elimination of the reclamation obligation associated with this facility.

During the second quarter of 2005, the State of Wyoming completed an audit related to severance taxes for the period of 1999 through 2001. The audit resulted in the Company being assessed additional taxes. The Company has recorded a liability of \$4.5 million on its books related to the audit of which \$2.6 million was recorded in cost of coal sales and interest associated with the assessment of \$1.4 million was recorded as interest expense in the second quarter in the Condensed Consolidated Statements of Operations.

During the first quarter of 2005, the Company assigned its rights and obligations on several parcels of land to a third party resulting in a gain of \$9.3 million. The gain is reflected in other operating income in the accompanying Condensed Consolidated Statements of Operations.

During the first quarter of 2005, the Company recognized a gain of \$9.5 million resulting from various equipment sales. The gain is reported as other operating income in the accompanying Condensed Consolidated Statements of Operations.

During the third quarter of 2004, the Company was notified by the IRS that it would receive additional black lung excise tax refunds and related interest from black lung claims that were originally denied by the IRS in 2002. The Company recognized a gain of \$2.8 million (\$2.1 million of principal and \$0.7 million of interest) related to the claims. The \$2.1 million principal amount was recorded as a reduction of cost of coal sales, while the \$0.7 million interest amount was recorded as interest income.

During the second quarter of 2004, the Office of Surface Mining completed an audit of certain of the Company's federal reclamation fee filings for the period from 1998 through 2003. The audit resulted in the Company being assessed additional fees of \$1.3 million and interest of \$0.2 million. The additional fees were recorded as a component of cost of coal sales in the accompanying Condensed Consolidated Statements of Operations, while the interest portion has been reflected as interest expense.

During the first quarter of 2004, Canyon Fuel, while accounted for under the equity method, began the process of temporarily idling its Skyline Mine, and incurred severance costs of \$3.2 million for the nine months ended September 30, 2004. The Company's share of these costs totals \$2.1 million, and is reflected in income from equity investments in the Condensed Consolidated Statements of Operations.

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On June 25, 2003, the Company repaid the \$675 million term loan of its Arch Western subsidiary with the proceeds from the offering of \$700.0 million in senior notes. The Company had designated certain interest rate swaps as hedges of the variable rate interest payments due under the Arch Western term loans. Pursuant to the requirements of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* ("FAS 133"), historical mark-to-market adjustments related to these swaps through June 25, 2003 were deferred as a component of Accumulated Other Comprehensive Loss. Subsequent to the repayment of the term loans, these deferred amounts will be amortized as additional expense over the contractual terms of the swap agreements. For the three months ending September 30, 2005 and 2004, the Company recognized \$1.9 million and \$2.1 million of expense for the three months ended September 30, 2005 and 2004, respectively, related to the amortization of previously deferred mark-to-market adjustments. For the nine months ending September 30, 2005 and 2004, the Company recognized \$6.1 million and \$6.2 million of expense, respectively, related to the amortization of previously deferred mark-to-market adjustments.

Note L — Earnings Per Share

The following tables set forth the computation of basic and diluted earnings per common share from continuing operations.

	Three Months Ended September 30, 2005		
	Numerator (Income)	Denominator (Shares)	Per Share Amount
Basic EPS:			
Net income	\$ 18,926	63,858	\$ 0.30
Preferred stock dividends	(1,797)		(0.03)
Basic income available to common shareholders	<u>\$ 17,129</u>		<u>\$ 0.27</u>
Effect of dilutive securities:			
Effect of common stock equivalents arising from stock options and restricted stock grants	—	933	
Diluted EPS:			
Diluted income available to common shareholders	<u>\$ 17,129</u>	<u>64,791</u>	<u>\$ 0.26</u>
	Three Months Ended September 30, 2004		
	Numerator (Income)	Denominator (Shares)	Per Share Amount
Basic EPS:			
Net income	\$ 10,775	54,874	\$ 0.19
Preferred stock dividends	(1,797)		(0.03)
Basic income available to common shareholders	<u>\$ 8,978</u>		<u>\$ 0.16</u>
Effect of dilutive securities:			
Effect of common stock equivalents arising from stock options and restricted stock grants	—	964	
Diluted EPS:			
Diluted income available to common shareholders	<u>\$ 8,978</u>	<u>55,838</u>	<u>\$ 0.16</u>

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	Nine Months Ended September 30, 2005		
	Numerator (Income)	Denominator (Shares)	Per Share Amount
Basic EPS:			
Net income	\$ 28,975	63,382	\$ 0.46
Preferred stock dividends	(5,391)		(0.09)
Basic income available to common shareholders	<u>\$ 23,584</u>		<u>\$ 0.37</u>
Effect of dilutive securities:			
Effect of common stock equivalents arising from stock options and restricted stock grants	—	989	
Diluted EPS:			
Diluted income available to common shareholders	<u>\$ 23,584</u>	<u>64,371</u>	<u>\$ 0.37</u>
	Nine Months Ended September 30, 2004		
	Numerator (Income)	Denominator (Shares)	Per Share Amount
Basic EPS:			
Net income	\$ 91,865	54,431	\$ 1.69
Preferred stock dividends	(5,391)		(0.10)
Basic income available to common shareholders	<u>\$ 86,474</u>		<u>\$ 1.59</u>
Effect of dilutive securities:			
Effect of common stock equivalents arising from stock options and restricted stock grants	—	935	
Effect of common stock equivalents arising from convertible preferred stock	5,391	6,896	
Diluted EPS:			
Diluted income available to common shareholders	<u>\$ 91,865</u>	<u>62,262</u>	<u>\$ 1.48</u>

Note M – Guarantees

The Company holds a 17.5% general partnership interest in Dominion Terminal Associates (“DTA”), which operates a ground storage-to-vessel coal transloading facility in Newport News, Virginia. DTA leases the facility from Peninsula Ports Authority of Virginia (“PPAV”) for amounts sufficient to meet debt-service requirements. Financing is provided through \$132.8 million of tax-exempt bonds issued by PPAV (of which the Company is responsible for 17.5%, or \$23.2 million) that mature July 1, 2016. Under the terms of a throughput and handling agreement with DTA, each partner is charged its share of cash operating and debt-service costs in exchange for the right to use its share of the facility’s loading capacity and is required to make periodic cash advances to DTA to fund such costs. On a cumulative basis, costs exceeded cash advances by \$14.8 million at September 30, 2005, which is included in other noncurrent liabilities. Future payments for fixed operating costs and debt service are estimated to approximate \$2.7 million annually through 2015 and \$26.0 million in 2016.

In connection with the Company’s acquisition of the coal operations of Atlantic Richfield Company (“ARCO”) and the simultaneous combination of the acquired ARCO operations and the Company’s Wyoming operations into the Arch Western joint venture, the Company agreed to indemnify another member of Arch Western against certain tax liabilities in the event that such liabilities arise as a result of certain actions taken prior to June 1, 2013, including the sale or other disposition of certain properties of Arch Western, the repurchase of certain equity interests in Arch Western by Arch Western or the reduction under certain circumstances of indebtedness incurred by Arch Western in connection with the acquisition. Depending on the time at which any such indemnification obligation were to arise, it could have a material adverse effect on the business, results of operations and financial condition of the Company.

Note N – Segment Information

The Company produces steam and metallurgical coal from surface and deep mines for sale to utility, industrial and export markets. The Company operates only in the United States, with mines in the major low-sulfur coal basins. The Company has three reportable business segments, which are based on the coal basins in which the Company operates. Coal quality, coal seam height, transportation methods and regulatory issues are generally consistent within

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a basin. Accordingly, market and contract pricing have developed by coal basin. The Company manages its coal sales by coal basin, not by individual mine complex. Mine operations are evaluated based on their per-ton operating costs (defined as including all mining costs but excluding pass-through transportation expenses). The Company's reportable segments are Powder River Basin (PRB), Central Appalachia (CAPP) and Western Bituminous (WBIT). The Company's operations in the Powder River Basin are located in Wyoming and include one operating surface mine and one idle surface mine. The Company's operations in Central Appalachia are located in southern West Virginia, eastern Kentucky, and Virginia and include 18 underground mines and nine surface mines. The Company's Western Bituminous operations are located in southern Wyoming, Colorado and Utah and include four underground mines.

Operating segment results for the three and nine months ending September 30, 2005 and 2004 are presented below. Results for the operating segments include all direct costs of mining. Corporate, Other and Eliminations includes corporate overhead, land management, other support functions, and the elimination of intercompany transactions.

Three months ending September 30, 2005

(Amounts in thousands, except per ton amounts)	<u>PRB</u>	<u>CAPP</u>	<u>WBIT</u>	<u>Corporate, Other and Eliminations</u>	<u>Consolidated</u>
Coal sales	\$ 189,112	\$ 358,610	\$ 106,994	\$ —	\$ 654,716
Income from operations	18,996	829	28,882	(14,530)	34,177
Total assets	1,213,821	2,202,946	1,716,482	(1,787,347)	3,345,902
Depreciation, depletion and amortization	27,230	18,383	11,855	374	57,842
Capital expenditures	13,330	68,793	23,295	4,130	109,548
Operating cost per ton	7.43	43.23	14.62	—	—

Three months ending September 30, 2004

(Amounts in thousands, except per ton amounts)	<u>PRB</u>	<u>CAPP</u>	<u>WBIT</u>	<u>Corporate, Other and Eliminations</u>	<u>Consolidated</u>
Coal sales	\$ 160,495	\$ 303,133	\$ 64,148	\$ —	\$ 527,776
Income from equity investments	—	—	1,143	—	1,143
Income from operations	12,149	20,038	5,889	(11,741)	26,335
Total assets	1,129,833	2,066,842	1,373,331	(1,631,879)	2,938,127
Depreciation, depletion and amortization	21,145	15,224	6,850	273	43,492
Capital expenditures	13,692	28,375	8,326	124,041	174,434
Operating cost per ton	6.46	35.45	15.30	—	—

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Nine months ending September 30, 2005

(Amounts in thousands, except per ton amounts)	PRB	CAPP	WBIT	Corporate, Other and Eliminations	Consolidated
Coal sales	\$ 559,901	\$ 1,019,340	\$ 309,737	\$ —	\$ 1,888,978
Income (loss) from operations	62,574	(1,611)	67,988	(47,328)	81,623
Depreciation, depletion and amortization	79,666	51,387	28,875	959	160,887
Capital expenditures	30,331	162,614	48,258	7,703	248,906
Operating cost per ton	7.09	42.74	14.68	—	—

Nine months ending September 30, 2004

(Amounts in thousands, except per ton amounts)	PRB	CAPP	WBIT	Corporate, Other and Eliminations	Consolidated
Coal sales	\$ 397,951	\$ 837,901	\$ 118,191	\$ —	\$ 1,354,043
Income from equity investments	—	—	8,410	2,418	10,828
Income from operations	42,910	39,818	17,346	58,039	158,113
Depreciation, depletion and amortization	52,651	47,090	14,783	1,153	115,677
Capital expenditures	41,275	62,541	11,356	128,394	243,566
Operating cost per ton	6.19	34.20	15.82	—	—

Reconciliation of segment income from operations to consolidated income before income taxes and cumulative effect of accounting change:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
	(in thousands)			
Income from operations	\$ 34,177	\$ 26,335	\$ 81,623	\$ 158,113
Interest expense	(17,994)	(16,220)	(55,454)	(45,062)
Interest income	2,109	1,110	5,635	2,723
Other non-operating expense	(3,516)	(1,605)	(7,579)	(5,364)
Income before income taxes	\$ 14,776	\$ 9,620	\$ 24,225	\$ 110,410

Note O – Subsequent Events

Asset dispositions — Magnum Coal Company

On October 11, 2005, the Company and affiliates of ArcLight Capital Partners, LLC signed a definitive agreement to contribute certain mining operations and properties to a new company to be called Magnum Coal Company (“Magnum”) that would mine and market low-sulfur coal in the Central Appalachian region. Arch will contribute four of its active Central Appalachian mining operations and a total of 455 million tons of reserves to Magnum. These mining properties together had sales of 9.7 million tons through September 30, 2005.

The Company and the affiliates of ArcLight Capital will receive approximately 37.5% and 62.5%, respectively, of the ownership interest in Magnum. The transaction is contingent upon conclusion of a number of agreements, and there is no assurance that the transaction will be completed.

West Elk mine evacuation

On October 27, 2005, the Company conducted a precautionary evacuation of its West Elk mine after elevated readings of combustion-related gases were detected in an area of the mine where mining activities were completed, but final longwall equipment removal had not yet occurred. A portion of the equipment had already been moved to

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another area of the mine where the Company intends to begin mining and the remainder is currently isolated from the affected area by permanent and temporary seals.

Once the mine is determined to be safe for re-entry, the longwall equipment can be moved and production can resume in the new area. While management does not anticipate an extended evacuation or significant impact on production or results of operations, we cannot currently estimate when production will resume.

Note P — Reclassifications

Certain amounts in the 2004 financial statements have been reclassified to conform to the classifications in the 2005 financial statements with no effect on previously reported net income or members' equity.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS

In this quarterly report, statements that are not reported financial results or other historical information are "forward-looking statements." Forward-looking statements give current expectations or forecasts of future events and are not guarantees of future performance. They are based on our management's expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements.

Forward-looking statements can be identified by the fact that they do not relate strictly to historic or current facts. They use words such as "anticipate," "estimate," "project," "intend," "plan," "believe" and other words and terms of similar meaning in connection with any discussion of future operating or financial performance. In particular, these include statements relating to:

- our expectation of continued growth in the demand for our coal by the domestic electric generation industry;
- our belief that legislation and regulations relating to the Clean Air Act and other proposed environmental initiatives and the relatively higher costs of competing fuels will increase demand for our compliance and low sulfur coal;
- our expectations regarding incentives to generators of electricity to minimize their fuel costs as a result of electric utility deregulation;
- our expectation that we will continue to have adequate liquidity from cash flow from operations;
- a variety of market, operational, geologic, permitting, labor, transportation and weather related factors;
- our expectations regarding any synergies to be derived from the Triton acquisition; and
- the other risks and uncertainties which are described below under "Contingencies" and "Certain Trends and Uncertainties," including, but not limited to, the following:
 - o Due to the significant amount of our debt, a downturn in economic or industry conditions could materially affect our ability to meet our future financial and liquidity obligations.
 - o A reduction in consumption by the domestic electric generation industry may cause our profitability to decline.
 - o Extensive environmental laws and regulations could cause the volume of our sales to decline.
 - o The coal industry is highly regulated, which restricts our ability to conduct mining operations and may cause our profitability to decline.
 - o We may not be able to obtain or renew our surety bonds on acceptable terms.
 - o Unanticipated mining conditions may cause profitability to fluctuate.
 - o Deregulation of the electric utility industry may cause customers to be more price-sensitive, resulting in a potential decline in our profitability.
 - o Our profitability may be adversely affected by the status of our long-term coal supply contracts.
 - o Decreases in purchases of coal by our largest customers could adversely affect our revenues.
 - o An unavailability of coal reserves would cause our profitability to decline.

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- o Disruption in, or increased costs of, transportation services could adversely affect our profitability.
- o Numerous uncertainties exist in estimating our economically recoverable coal reserves, and inaccuracies in our estimates could result in lower revenues, higher costs or decreased profitability.
- o Title defects or loss of leasehold interests in our properties could result in unanticipated costs or an inability to mine these properties.
- o All acquisitions involve a number of inherent risks, any of which could cause us not to realize the benefits anticipated to result.
- o Changes in our credit ratings could adversely affect our costs and expenses.
- o Some of our agreements impose significant potential indemnification obligations on us.
- o Our expenditures for postretirement medical and pension benefits have increased in recent periods and could further increase in the future.
- o Pending litigation involving third parties may impact our cash balance pension plan and the retirement account formula used in its administration.
- o Any inability to comply with restrictions imposed by our credit facilities and other debt arrangements could result in a default under these agreements.
- o Our estimated financial results may prove to be inaccurate.

We cannot guarantee that any forward-looking statements will be realized, although we believe that we have been prudent in our plans and assumptions. Achievement of future results is subject to risks, uncertainties and assumptions that may prove to be inaccurate. Should known or unknown risks or uncertainties materialize, or should underlying assumptions prove to be inaccurate, actual results could vary materially from those anticipated, estimated or projected.

We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. You are advised, however, to consider any additional disclosures that we may make on related subjects in future filings with the SEC. You should understand that it is not possible to predict or identify all factors that could cause our actual results to differ. Consequently, you should not consider any such list to be a complete set of all potential risks or uncertainties.

RESULTS OF OPERATIONS

Items Affecting Comparability of Reported Results

The comparison of our operating results for the quarter-to-date and year-to-date periods ending September 30, 2005 and 2004 are affected by the following items:

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(Dollar amounts in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Income from operations				
Gain on land, equipment and facility sales	\$ 9.8	\$ —	\$ 31.6	\$ —
Mark to market adjustments on SO2 and coal derivatives	(5.5)	—	(7.5)	—
Resolution of lawsuits	(2.6)	—	(2.6)	—
Insurance broker settlement	—	—	1.0	—
Wyoming severance tax assessment	—	—	(2.6)	—
Long-term incentive compensation expense	—	—	(9.9)	—
Gain on sale of NRP units	—	.3	—	90.2
Black lung excise tax refund	—	2.1	—	2.1
Severance costs	—	—	—	(2.1)
Reclamation fee assessment	—	—	—	(1.3)
Net impact on operating income	1.7	2.4	10.0	88.9
Other				
Net interest on tax assessments/refunds	—	0.7	(1.4)	0.5
Net impact on pre-tax income	\$ 1.7	\$ 3.1	\$ 8.6	\$ 89.4

Gain from land, equipment and facility sales

During the quarter and nine months ended September 30, 2005, we recognized gains of \$9.8 million and \$31.6 million, respectively, related to gains for land, equipment and facility sales. During the first quarter of 2005, we assigned our rights and obligations on several parcels of land to a third party resulting in a gain of \$9.3 million. During the first quarter of 2005, we recognized a gain of \$9.5 million resulting from various equipment sales. In the third quarter of 2005, we sold surface land resulting in a gain of \$9.0 million and gains on miscellaneous property of \$0.8 million. The gains are reflected in other operating income in the accompanying Condensed Consolidated Statements of Operations. During the second quarter of 2005, we assigned our rights and obligations to an unused loadout facility to a third party resulting in a gain of \$1.7 million. Of the \$1.7 million gain recognized, \$1.2 million was recorded as an increase to other revenues in the Condensed Consolidated Statements of Operations while \$0.5 million was reflected as a reduction in cost of coal sales in the Condensed Consolidated Statements of Operations representing the elimination of the reclamation obligation associated with this facility.

Mark to market adjustments on SO2 and coal derivatives

Amounts represent the amount recorded to reflect the change in fair market value during the period and are reflected in other operating income in the Condensed Consolidated Statements of Operations. These are discussed in more depth in the market risk disclosures included in “*Liquidity and Capital Resources*”.

Insurance broker settlement

During the second quarter of 2005, we participated in a settlement from our insurance broker related to certain types of commissions previously paid and recognized a gain of \$1.0 million. The gain is reflected in other operating income in the Condensed Consolidated Statements of Operations.

Wyoming severance tax assessment

During the second quarter of 2005, the State of Wyoming completed an audit related to severance taxes for the period of 1999 through 2001. The audit resulted in additional taxes being assessed against us. We are reviewing the assessment and as of September 30, 2005, we have recorded a liability of \$4.5 million on our books related to the audit. Of the \$4.5 million recognized, \$2.6 million was recorded during the second quarter of 2005 in cost of coal sales in the accompanying Condensed Consolidated Statements of Operations, while \$1.4 million, representing

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interest associated with the assessment, was recorded as interest expense in the second quarter of 2005 in the Condensed Consolidated Statements of Operations.

Long-term incentive compensation expense

During 2004, we granted an award of 220,766 shares of performance-contingent phantom stock that vested in the event the Company's stock price reached an average pre-established price over a period of 20 consecutive trading days within five years following the date of grant. During the first quarter of 2005, the price contingency discussed above was met, and the award was paid in a combination of Company stock and cash. As such, we recognized a \$9.9 million charge as a component of selling, general and administrative expense (\$9.1 million) and cost of coal sales (\$0.8 million) in the accompanying Condensed Consolidated Statements of Operations.

Gain on sale of NRP units

During the nine months ended September 30, 2004, we sold the majority of our remaining limited partnership units of Natural Resource Partners, LP ("NRP") for proceeds of approximately \$105.4 million. The sales resulted in a gain of \$90.2 million.

Black lung excise tax refund

During the third quarter of 2004, the Company was notified by the IRS that it would receive additional black lung excise tax refunds and related interest from black lung claims that were originally denied by the IRS in 2002. The Company recognized a gain of \$2.8 million (\$2.1 million of principal and \$0.7 million of interest) related to the claims. The \$2.1 million principal amount was recorded as a reduction of cost of coal sales, while the \$0.7 million interest amount was recorded as interest income.

Severance costs — Skyline Mine

During the first quarter of 2004, Canyon Fuel, our equity method investment, began the process of idling its Skyline Mine (the idling process was completed in May 2004), and incurred severance costs of \$3.2 million for the nine months ended September 30, 2004. Our 65% share of these costs totals \$2.1 million (which was prior to our purchase of the remaining 35% interest) for the nine months ended September 30, 2004, and is reflected in income from equity investments in the accompanying Condensed Consolidated Statements of Operations.

Reclamation fee assessment

During the nine months ended September 30, 2004, the Office of Surface Mining completed an audit of certain of our federal reclamation fee filings for the period from 1998 through 2003. The audit resulted in an assessment of additional fees of \$1.3 million and interest of \$0.2 million. The additional fees have been recorded as a component of cost of coal sales in the accompanying Condensed Consolidated Statements of Operations, while the interest portion has been reflected as interest expense.

Quarter Ended September 30, 2005 Compared to Quarter Ended September 30, 2004

Revenues

	Three Months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
Coal sales	\$ 654,716	\$ 527,776	\$ 126,940	24.1%
Tons sold	35,211	33,807	1,404	4.2%
Coal sales realization per ton sold	\$ 18.59	\$ 15.61	\$ 2.98	19.1%

Tons sold by operating segment

	Three Months Ended September 30, 2005		Three Months Ended September 30, 2004	
	tons	% of total	tons	% of total
	(Amounts in thousands)			
Powder River Basin	22,536	64.0%	22,646	67.0%
Central Appalachia	7,976	22.7%	7,616	22.5%
Western Bituminous Region	4,699	13.3%	3,545	10.5%
Total operating regions	<u>35,211</u>	<u>100.0%</u>	<u>33,807</u>	<u>100.0%</u>

Coal sales. The increase in coal sales resulted from the combination of higher pricing, increased volumes and the acquisitions of Triton in the Powder River Basin on August 20, 2004 and the remaining 35% interest in Canyon Fuel in the Western Bituminous region on July 31, 2004.

Volumes increased 32.6% at our Western Bituminous region in addition to a 4.7% increase in volumes in Central Appalachia. Despite the acquisition of Triton in the Powder River Basin on August 20, 2004, volumes at our Powder River Basin operations declined 0.5% primarily due to lower purchased coal volumes during the third quarter of 2005. The Western Bituminous region benefited from the Canyon Fuel acquisition that was completed in the third quarter of 2004. Volumes in Central Appalachia were higher during the current quarter primarily from increased brokered activity. Transportation issues also affected sales volume in third quarter of 2004.

Per ton realizations increased due primarily to higher contract prices in all three regions. In the Powder River Basin, per ton realization increased 18.4%, as a result of increased base pricing and higher SO2 quality premiums resulting from higher SO2 emission allowance prices. The Central Appalachia region experienced an increase of 13.0%, as both contract and spot market prices were higher than in the third quarter of 2004. Additionally, we received higher sales prices on our metallurgical coal sales in the third quarter of 2005 as compared to the third quarter of 2004. The Western Bituminous region's per ton realization increased 25.8%. In addition to higher contract pricing, per ton realizations in the Western Bituminous region were also affected by the acquisition of the remaining 35% interest in Canyon Fuel during the third quarter of 2004.

On a consolidated basis, the increase in per ton realizations was partially offset by the change in mix of sales volumes among our operating regions as noted in the table above. Central Appalachia has the highest average realization and Powder River Basin has the lowest average realization.

Costs and Expenses

	Three Months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
	(Amounts in thousands)			
Cost of coal sales	\$ 546,725	\$ 448,638	\$ 98,087	21.9%
Depreciation, depletion and amortization	57,842	43,491	14,351	33.0%
Selling, general and administrative expenses	20,285	12,729	7,556	59.4%
Other operating expenses	15,150	13,746	1,404	10.2%
	<u>\$ 640,002</u>	<u>\$ 518,604</u>	<u>\$ 121,398</u>	<u>23.4%</u>

Cost of coal sales. The increase in the cost of coal sales resulted from the combination of higher costs, increased volumes and the acquisitions of Triton in the Powder River Basin on August 20, 2004 and the remaining 35% interest in Canyon Fuel in the Western Bituminous region on July 31, 2004. Specific factors contributing to the increase are as follows (note that specifically the increases discussed below for diesel fuel, explosives, utilities, operating supplies and repairs and maintenance costs are partially due to the acquisitions of Triton and Canyon Fuel during the third quarter of 2004):

- Production taxes and coal royalties (which are incurred as a percentage of coal sales realization) increased \$25.2 million during the third quarter of 2005 compared to the same period in the prior year.
- Our Central Appalachia operations incurred higher costs related to additional processing necessary for coal sold in metallurgical markets as well as the move into less favorable geologic conditions at our Mingo Logan mine during the third quarter of 2005.
- The cost of purchased coal increased \$17.2 million, reflecting a combination of increased purchase volumes and higher spot market prices that were prevalent during the third quarter of 2005 compared to the same period in 2004. During the third quarter of 2005, we utilized purchased coal to fulfill steam coal sales commitments in order to direct more of our produced coal into the metallurgical markets.

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- Repairs and maintenance costs increased \$5.2 million compared to the same period in the prior year.
- Costs for diesel fuel, explosives and utilities increased \$6.5 million, \$2.9 million and \$1.7 million, respectively, compared to the same period in the prior year, resulting from increased volumes and cost.
- Costs for operating supplies increased \$8.2 million due partially to increased steel prices during the current quarter compared to the prior year's comparable quarter.

Depreciation, depletion and amortization. The increase in depreciation, depletion and amortization is due primarily to the property additions resulting from the acquisitions made during the third quarter of 2004.

Regional Analysis:

Our operating costs (reflected below on a per-ton basis) are defined as including all mining costs, which consist of all amounts classified as cost of coal sales (except pass-through transportation costs and sales contract amortization) and all depreciation, depletion and amortization attributable to mining operations.

	Three Months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
Powder River Basin	\$ 7.43	\$ 6.46	\$ 0.97	15.0%
Central Appalachia	\$ 43.23	\$ 35.45	\$ 7.78	21.9%
Western Bituminous Region	\$ 14.62	\$ 15.30	\$ (0.68)	(4.4)%

Powder River Basin — On a per-ton basis, operating costs increased in the Powder River Basin primarily due to higher diesel fuel costs (\$0.19 per ton), higher parts and supplies costs (\$0.11 per ton), higher depreciation, depletion and amortization costs (\$0.27 per ton) and increased production taxes and coal royalties (\$0.54 per ton). Additionally, average costs were higher due to the integration of the acquired North Rochelle mine into our Black Thunder mine in the third quarter of 2004. These costs would have been largely offset by increased productivity, had rail service not adversely impacted volumes during the quarter.

Central Appalachia — Operating cost per ton increased due to increased costs for coal purchases (\$3.22 per ton), increased labor costs (\$0.98 per ton), increased costs for operating supplies (\$0.10 per ton), increased diesel fuel (\$0.20 per ton) and production taxes and coal royalties (\$0.80 per ton) as well as the increased preparation costs for metallurgical coal discussed above. Additionally, our Mingo Logan mine has moved into less favorable geological conditions, compared to the comparable prior year quarter, resulting in higher costs.

Western Bituminous Region — Operating cost per ton decreased primarily as a result of the acquisition of the remaining 35% of Canyon Fuel during the third quarter of 2004. Canyon Fuel's mines in the aggregate have a lower operating cost per ton than the West Elk Mine, due to better geologic conditions.

Selling, general and administrative expenses. Selling, general and administrative expenses increased during the current quarter due primarily to increased contract services including legal and professional fees (\$1.6 million), employee severance expense associated with employees terminated during the quarter (\$1.3 million), executive deferred compensation expense (\$2.0 million) and higher expenses resulting from amounts expected to be earned under our annual incentive plans (\$0.6 million).

Other Operating Income

	Three Months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
				(Amounts in thousands)
Income from equity investments	\$ —	\$ 1,143	\$ (1,143)	(100.0)%
Gain on sale of Natural Resource Partners, LP	—	289	(289)	(100.0)%
Other operating income	19,463	15,731	3,732	23.7%
	<u>\$ 19,463</u>	<u>\$ 17,163</u>	<u>\$ 2,300</u>	13.4%

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Other operating income. The increase in other operating income is primarily the result of the gain on surface land of \$9.0 million discussed above. This is partially offset by reduced bookout income, related to the netting of coal sales and purchase contracts with the same counterparty, and due to the elimination of administrative fees from Canyon Fuel subsequent to our acquisition of the remaining 35% interest of this entity during the third quarter of 2004.

Interest Expense, Net

	Three Months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
Interest expense	\$ (17,994)	\$ (16,220)	\$ (1,774)	(10.9%)
Interest income	2,109	1,110	999	90.0%
	<u>\$ (15,885)</u>	<u>\$ (15,110)</u>	<u>\$ (775)</u>	5.1%

Interest expense. The increase in interest expense results from a higher amount of average borrowings during the third quarter of 2005 as compared to the same period in 2004.

Interest Income. The increase in interest income results primarily from interest on short-term investments.

Other Non-operating Income and Expense

	Three Months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
Expenses resulting from early debt extinguishment and termination of hedge accounting for interest rate swaps	\$ (1,949)	\$ (2,066)	\$ 117	5.7%
Other non-operating income (expense)	(1,567)	461	(2,028)	(439.9%)
	<u>\$ (3,516)</u>	<u>\$ (1,605)</u>	<u>\$ (1,911)</u>	<u>(119.1%)</u>

Amounts reported as non-operating consist of income or expense resulting from the Company's financing activities other than interest. As described above, the Company's results of operations for the quarters ended September 30, 2005 and 2004 include expenses of \$1.9 million and \$2.1 million, respectively, related to the termination of hedge accounting and resulting amortization of amounts that had previously been deferred. Other non-operating includes mark-to-market adjustments related to certain swap activity that does not qualify for hedge accounting under FAS 133.

Income taxes

	Three Months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
Benefit from income taxes	\$ (4,150)	\$ (1,155)	\$ 2,995	259.3%

The Company's effective tax rate is sensitive to changes in estimates of annual profitability and excess depletion.

Nine Months Ended September 30, 2005 Compared to Nine Months Ended September 30, 2004

Revenues

	Nine Months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
	(Amounts in thousands, except per ton data)			
Coal sales	\$ 1,888,978	\$ 1,354,043	\$ 534,935	39.5%
Tons sold	106,868	86,077	20,791	24.2%
Coal sales realization per ton sold	\$ 17.68	\$ 15.73	\$ 1.95	12.4%

Tons sold by operating segment

	Nine Months Ended September 30, 2005		Nine Months Ended September 30, 2004	
	tons	% of total	Tons	% of total
	(Amounts in thousands)			
Powder River Basin	69,582	65.1%	56,870	66.1%
Central Appalachia	23,110	21.6%	22,471	26.1%
Western Bituminous Region	14,176	13.3%	6,736	7.8%
Total operating regions	<u>106,868</u>	<u>100.0%</u>	<u>86,077</u>	<u>100.0%</u>

Coal sales. The increase in coal sales resulted from the combination of higher pricing, increased volumes and the acquisitions of Triton in the Powder River Basin on August 20, 2004 and the remaining 35% interest in Canyon Fuel in the Western Bituminous region on July 31, 2004.

Volumes increased dramatically during the first nine months of the year in 2005 compared to the same period in 2004 in the Powder River Basin (an increase of 22.4%) and at our Western Bituminous operations (an increase of 110.5%). Volumes in Central Appalachia increased by 2.8% compared to the same period in the prior year. Volumes in both the Powder River Basin and the Western Bituminous region benefited from the acquisitions that were completed in the third quarter of 2004.

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Regional Analysis:

Our operating costs (reflected below on a per-ton basis) are defined as including all mining costs, which consist of all amounts classified as cost of coal sales (except pass-through transportation costs and sales contract amortization) and all depreciation, depletion and amortization attributable to mining operations.

	Nine months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
Powder River Basin	\$ 7.09	\$ 6.19	\$ 0.90	14.5%
Central Appalachia	\$ 42.74	\$ 34.20	\$ 8.54	25.0%
Western Bituminous Region	\$ 14.68	\$ 15.82	\$ (1.14)	(7.2)%

Powder River Basin — On a per ton basis, operating costs increased in the Powder River Basin primarily due to higher diesel fuel costs (\$0.14 per ton), higher repairs and maintenance costs (\$0.08 per ton), higher depreciation, depletion and amortization costs (\$0.21 per ton), and increased production taxes (including the \$2.6 million severance tax accrual discussed above) and coal royalties (\$0.35 per ton). Additionally, average costs were higher due to the integration of the acquired North Rochelle mine into our Black Thunder mine in the third quarter of 2004. These costs would have been largely offset by increased productivity, had rail service not adversely impacted volumes during the quarter.

Central Appalachia — Operating cost per ton increased due to increased costs for coal purchases (\$4.40 per ton), increased labor costs (\$0.99 per ton), increased costs for operating supplies (\$0.33 per ton), increased diesel fuel (\$0.41 per ton) and production taxes and coal royalties (\$0.63 per ton) as well as the increased preparation costs for metallurgical coal discussed above. Additionally, the performance of our Mingo Logan mine has moved into less favorable geological conditions, compared to the comparable prior year period, resulting in higher costs.

Western Bituminous Region — Operating cost per ton decreased primarily due to increased production activity as a result of the acquisition of the remaining 35% of Canyon Fuel during the third quarter of 2004. Canyon Fuel's mines in the aggregate have a lower operating cost per ton than the West Elk Mine.

Selling, general and administrative expenses. Selling, general and administrative expenses increased during the period due primarily to \$9.5 million of expense that was recognized in the first quarter of 2005 for the performance-contingent phantom stock award that was paid to certain employees in March 2005. In addition, costs increased due to higher contract services including legal and professional fees (\$4.1 million), employee severance expense associated with several employees terminated during the third quarter of 2005 (\$1.3 million), and executive deferred compensation expense (\$3.5 million).

Other Operating Income

	Nine months Ended September 30,		Increase (Decrease)	
	2005	2004	\$	%
Income from equity investments	\$ —	\$ 10,828	\$ (10,828)	(100.0)%
Gain on sale of units of NRP	—	90,244	(90,244)	(100.0)%
Other operating income	63,206	45,535	17,671	38.8%
	<u>\$ 63,206</u>	<u>\$ 146,607</u>	<u>\$ (83,401)</u>	<u>(56.9)%</u>

Other operating income. The increase in other operating income is primarily due to a \$18.3 million gain resulting from land sales, a gain on the sale of a facility of which \$1.2 million was recorded in other operating income, a \$9.5 million gain resulting from various equipment sales and the settlement from an insurance broker resulting in a gain of \$1.0 million during the first nine months of 2005 and are described previously. This was partially offset by the elimination of administrative fees from Canyon Fuel subsequent to our acquisition of the remaining 35% interest during the third quarter of 2004 and reduced bookout income of \$6.8 million compared to the comparable period in the prior year.

Interest Expense, Net

	Nine months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
Interest expense	\$ (55,454)	\$ (45,062)	\$ (10,392)	(23.1)%
Interest income	5,635	2,723	2,912	106.9%
	<u>\$ (49,819)</u>	<u>\$ (42,339)</u>	<u>\$ (7,480)</u>	<u>(17.7)%</u>

Interest expense. The increase in interest expense results from a higher amount of average borrowings in the first nine months of 2005 as compared to the same period in 2004. In addition, we recognized \$1.4 million of interest expense associated with the severance tax assessed by the State of Wyoming described above during the nine months of 2005.

Interest Income. The increase in interest income results primarily from interest on short-term investments.

Other Non-operating Income and Expense

	Nine Months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
Expenses resulting from early debt extinguishment and termination of hedge accounting for interest rate swaps	\$ (6,082)	\$ (6,199)	\$ 117	1.9%
Other non-operating income (expense)	(1,497)	835	(2,332)	(279.3%)
	<u>\$ (7,579)</u>	<u>\$ (5,364)</u>	<u>\$ (2,215)</u>	<u>(41.3)%</u>

Amounts reported as non-operating consist of income or expense resulting from the Company's financing activities other than interest. As described above, the Company's results of operations for the nine months ended September 30, 2005 and 2004 include expenses of \$6.1 million and \$6.2 million, respectively, related to the termination of hedge accounting and resulting amortization of amounts that had previously been deferred. Other non-operating includes mark-to-market adjustments related to certain swap activity that does not qualify for hedge accounting under FAS 133.

Income taxes

	Nine Months Ended September 30,		Increase (Decrease) To Net Income	
	2005	2004	\$	%
	(Amounts in thousands)			
(Benefit from) provision for income taxes	\$ (4,750)	\$ 18,545	\$ 23,295	125.6%

The Company's effective tax rate is sensitive to changes in estimates of annual profitability and excess depletion. The decrease in the income tax provision in the nine months ended September 30, 2005 as compared to that recorded in the nine months ended September 30, 2004 is primarily the result of the taxable income from non-mining sources from the sale of the NRP units in the first quarter of 2004. The benefit for the nine months ended September 30, 2005 is the result of a revision to taxable income and effective rate estimates for the fiscal year ending December 31, 2005.

DISCLOSURE CONTROLS AND CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

An evaluation was performed under the supervision and with the participation of our management, including the CEO and CFO, of the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2005. Based on that evaluation, our management, including the CEO and CFO, concluded that the disclosure controls and procedures were effective as of such date. There have not been any changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2005 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

RECENT DEVELOPMENTS

OUTLOOK

Railroad Transportation Disruptions. During 2004 and again in the first nine months of 2005, rail service disruptions resulted in missed shipments in all of our operating regions. In the second and third quarters of 2005, the rail disruptions were most pronounced in the Powder River Basin of Wyoming, where shipments from our Black Thunder mine were reduced by a total of six to seven million tons and production was curtailed by approximately four to five million tons as a result.

The major maintenance repair work currently underway on the joint line rail system in the Powder River Basin is expected to negatively impact shipments from the region through the end of 2005, after which time we expect a gradual improvement.

Mingo Logan Operations. During the latter part of 2004 and the first nine months of 2005, our Mingo Logan mine in West Virginia was adversely affected by a combination of difficult geologic conditions in its previous longwall panel, a major longwall move and a slow startup of the new longwall panel after the move. The start-up process was impaired principally by a greater-than-expected influx of water, which in turn resulted in a series of equipment-related difficulties at the mine. These issues, along with less favorable geologic conditions than anticipated, reduced operating income at the Mingo Logan mine by \$30.0 million during the first nine months of 2005 compared to anticipated results. These operational challenges have been addressed and we expect the mine's recent improved performance to continue over the remainder of 2005.

West Elk mine evacuation. On October 27, 2005, the Company conducted a precautionary evacuation of its West Elk mine after elevated readings of combustion-related gases were detected in an area of the mine where mining activities were completed, but final longwall equipment removal had not yet occurred. A portion of the equipment had already been moved to another area of the mine where the Company intends to begin mining and the remainder is currently isolated from the affected area by permanent and temporary seals.

Once the mine is determined to be safe for re-entry, the longwall equipment can be moved and production can resume in the new area. While management does not anticipate an extended evacuation or significant impact on production or results of operations, we cannot currently estimate when production will resume.

Expenses Related to Interest Rate Swaps. We had designated certain interest rate swaps as hedges of the variable rate interest payments due under Arch Western's term loans. Pursuant to the requirements of FAS 133, historical mark-to-market adjustments related to these swaps through June 25, 2003 of \$27.0 million were deferred as a component of Accumulated Other Comprehensive Loss. Subsequent to the repayment of the term loans, these deferred amounts will be amortized as additional expense over the original contractual terms of the swap agreements. As of December 31, 2004, the remaining deferred amounts will be recognized as expense in the following periods: \$7.7 million in 2005 (\$6.1 million was recognized in the first nine months of 2005); \$4.8 million in 2006; and \$1.9 million in 2007.

Chief Objectives. We are focused on taking steps to increase shareholder returns by improving earnings, reducing costs, strengthening cash generation, and improving productivity at our large-scale mines, while building on our strategic position in each of the nation's three principal low-sulfur coal basins. We believe that success in the coal industry is largely dependent on leadership in three crucial areas of performance – safety, environmental stewardship and return on investment – and we are pursuing such leadership aggressively. We are also seeking to enhance our position as a preferred supplier to U.S. power producers by acting as a reliable and highly ethical partner. We plan to focus on organic growth by continuing to develop our existing reserve base, which is large and highly strategic. We also plan to evaluate acquisitions that represent a good fit with our existing operations.

LIQUIDITY AND CAPITAL RESOURCES

The following is a summary of cash provided by or used in each of the indicated types of activities during the nine months ended September 30, 2005 and 2004:

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	2005	2004
	(in thousands)	
Cash provided by (used in):		
Operating activities	\$ 163,028	\$ 39,806
Investing activities	(242,668)	(545,998)
Financing activities	(16,099)	256,449

Cash provided by operating activities increased in the nine months ended September 30, 2005 as compared to the same period in 2004 primarily as a result of improved performance at our operations in addition to a decreased investment in working capital. While trade accounts receivable and inventory represented the largest use of funds, increasing by more than \$88.9 million in the first nine months of 2005 compared to an increase of \$79.3 million in the first nine months of 2004, it was offset by an increase in accounts payable and accrued expenses of more than \$31.0 million in the first nine months of 2005 compared to a decrease of \$19.9 million in the prior year's comparable period. In addition, we received \$14.7 million during the second quarter of 2005 related to payment of receivables for settled audit years from the Internal Revenue Service.

Cash used in investing activities in the first nine months of 2005 reflects capital expenditures and advance royalty payments of \$248.9 million and \$23.9 million, respectively, offset partially by proceeds from the sales of land and equipment of \$30.2 million. Cash used in investing activities in the first nine months of 2004 is represented largely by payments for acquisitions, net of cash acquired, during the third quarter of 2004. We acquired the remaining 35% of our Canyon Fuel investment and the North Rochelle operations from Triton in July and August 2004, respectively. Capital expenditures and advance royalty payments during the third quarter of 2004 were \$243.6 million and \$27.2 million, respectively.

Capital expenditures are made to improve and replace existing mining equipment, expand existing mines, develop new mines and improve the overall efficiency of mining operations. We estimate that our capital expenditures will range from \$390 million to \$410 million in total for 2005. This estimate includes capital expenditures related to development work at certain of our mining operations, including the Mountain Laurel complex in West Virginia and the North Lease mine at the Skyline complex in Utah. Also, this estimate assumes no other acquisitions, significant expansions of our existing mining operations or additions to our reserve base. We anticipate that we will fund these capital expenditures with available cash, existing credit facilities and cash generated from operations.

Cash used in financing activities during the nine months ended September 30, 2005 consists primarily of net payments on our revolving credit facility of \$25.0 million, net payments on our long-term debt of \$9.1 million and dividend payments of \$20.7 million, offset partially by \$41.3 million in proceeds from the issuance of common stock under our employee stock incentive plan. Cash provided by financing activities during the nine months ended September 30, 2004 consists of borrowings under our revolving credit facility and term loan facility of \$250.4 million and proceeds from the issuance of common stock under our employee stock incentive plan of \$30.7 million, offset by payments on long-term debt of \$6.3 million and dividend payments of \$17.2 million.

Excluding any significant mineral reserve acquisitions, we generally satisfy our working capital requirements and fund capital expenditures and debt-service obligations with cash generated from operations. We believe that cash generated from operations and our borrowing capacity will be sufficient to meet working capital requirements, anticipated capital expenditures and scheduled debt payments for at least the next several years. Our ability to satisfy debt service obligations, to fund planned capital expenditures, to make acquisitions and to pay dividends will depend upon our future operating performance, which will be affected by prevailing economic conditions in the coal industry and financial, business and other factors, some of which are beyond our control.

At September 30, 2005, we had \$106.2 million in letters of credit outstanding, resulting in \$593.8 million of unused borrowings under the revolver. At September 30, 2005, financial covenant requirements do not restrict the amount of unused capacity available to us for borrowing and letters of credit.

Financial covenants contained in our revolving credit facility consist of a maximum leverage ratio, a maximum senior secured leverage ratio and a minimum interest coverage ratio. The leverage ratio requires that we not permit the ratio of total net debt (as defined in the facility) at the end of any calendar quarter to EBITDA (as defined in the facility) for the four quarters then ended to exceed a specified amount. The interest coverage ratio requires that we not permit the ratio of EBITDA (as defined) at the end of any calendar quarter to interest expense for the four quarters then ended to be less than a specified amount. The senior secured leverage ratio requires that we not permit the ratio of total net senior secured debt (as defined) at the end of any calendar quarter to EBITDA (as defined) for the four quarters then ended to exceed a specified amount. We were in compliance with all financial covenants at September 30, 2005.

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We periodically establish uncommitted lines of credit with banks. These agreements generally provide for short-term borrowings at market rates. At September 30, 2005, there were \$20.0 million of such agreements in effect, of which none were outstanding.

We are exposed to market risk associated with interest rates due to our existing level of indebtedness. At September 30, 2005, substantially all of our outstanding debt bore interest at fixed rates.

Additionally, we are exposed to market risk associated with interest rates resulting from our interest rate swap positions. Prior to the June 25, 2003 Arch Western Finance senior notes offering and subsequent repayment of Arch Western's term loans, we utilized interest rate swap agreements to convert the variable-rate interest payments due under the term loans and our revolving credit facility to fixed-rate payments.

At September 30, 2005, we had outstanding interest rate swaps with a total notional value of \$400.0 million consisting of offsetting positions of \$200.0 million each. Because of the offsetting nature of these positions, we are not exposed to significant market interest rate risk related to these swaps. Under these swaps, we pay a weighted average fixed rate 5.72% on \$200.0 million of notional value and receive a weighted average fixed rate of 2.71% on \$200.0 million of notional value. The remaining terms of these swap agreements at September 30, 2005 ranged from 2 to 22 months.

As of September 30, 2005, the fair value of our net interest rate swap position was a liability of \$5.7 million. This liability is included in other noncurrent liabilities in the accompanying Consolidated Balance Sheets.

We are exposed to price risk related to the value of SO₂ emission allowances that are a component of the quality adjustment provisions in many of our coal supply contracts. We recently entered into several put option and swap contracts to reduce volatility in the price of SO₂ emission allowances. These contracts serve to protect us from any possible downturn in the price of SO₂ emission allowances. The put option agreements grant us the right to sell a certain quantity of SO₂ emission allowances at a specified price on a specified date. The swap agreements essentially fix the price we receive for SO₂ emission allowances by allowing us to receive a fixed SO₂ allowance price and pay a floating SO₂ allowance price.

We are also exposed to commodity price risk related to our purchase of diesel fuel. We enter into forward purchase contracts and heating oil swaps to reduce volatility in the price of diesel fuel for our operations. The swap agreements essentially fix the price paid for diesel fuel by requiring us to pay a fixed heating oil price and receive a floating heating oil price. The changes in the floating heating oil price highly correlate to changes in diesel fuel prices, accordingly the derivatives qualify for hedge accounting and the asset of \$12.2 million representing the fair value of the derivatives is recorded through other comprehensive income.

The discussion below presents the sensitivity of the market value of our financial instruments to selected changes in market rates and prices. The range of changes reflects our view of changes that are reasonably possible over a one-year period. Market values are the present value of projected future cash flows based on the market rates and prices chosen. The major accounting policies for these instruments are described in Note 1 to our consolidated financial statements as of and for the year ended December 31, 2004 as filed on our Annual Report on Form 10-K with the Securities and Exchange Commission.

With respect to our SO₂ emission allowance put option and swap positions, as well as our heating oil swap positions, a change in price of the underlying products impacts our net financial instrument position. At September 30, 2005, a \$100 decrease in the price of SO₂ emission allowances would result in a \$2.6 million increase in the fair value of the financial position of our SO₂ emission allowance put option and swap agreements. At September 30, 2005, a \$.05 per gallon increase in the price of heating oil would result in a \$1.0 million increase in the fair value of the financial position of our heating oil swap agreements.

With respect to our interest rate swap positions noted above, due to the offsetting nature of these positions, a 100-basis point increase in market interest rates does not have a material impact on the fair value of our liability under our interest rate swap positions at September 30, 2005.

CONTINGENCIES

Reclamation

The federal Surface Mining Control and Reclamation Act of 1977 (“SMCRA”) and similar state statutes require that mine property be restored in accordance with specified standards and an approved reclamation plan. We accrue for the costs of reclamation in accordance with the provisions of FAS 143, which was adopted as of January 1, 2003. These costs relate to reclaiming the pit and support acreage at surface mines and sealing portals at deep mines. Other costs of reclamation common to surface and underground mining are related to reclaiming refuse and slurry ponds, eliminating sedimentation and drainage control structures, and dismantling or demolishing equipment or buildings used in mining operations. The establishment of the asset retirement obligation liability is based upon permit requirements and requires various estimates and assumptions, principally associated with costs and productivities.

We review our entire environmental liability periodically and make necessary adjustments, including permit changes and revisions to costs and productivities to reflect current experience. Our management believes it is making adequate provisions for all expected reclamation and other associated costs.

Legal Contingencies

Permit Litigation Matters. A group of local and national environmental organizations filed suit against the U.S. Army Corps of Engineers in the U.S. District Court in Huntington, West Virginia on October 23, 2003. In its complaint, *Ohio River Valley Environmental Coalition, et al v. Bulen, et al*, the plaintiffs allege that the Corps has violated its statutory duties arising under the Clean Water Act, the Administrative Procedure Act and the National Environmental Policy Act in issuing the Nationwide 21 (“NWP 21”) general permit. The plaintiffs allege that the procedural requirements of the three federal statutes identified in their complaint have been violated, and that the Corps may not utilize the mechanism of a nationwide permit to authorize valley fills. If the plaintiffs prevail in this litigation, it may delay our receipt of these permits.

On July 8, 2004, the District court entered a final order enjoining the Corps from authorizing new valley fills using the mechanism of its nationwide permit. The Court also ordered the Corps to suspend current authorizations issued for fills that had not yet commenced construction on the date of the order. The district court modified its earlier decision on August 13 when it directed the Corps to suspend all permits for fills that had not commenced construction as of July 8, 2004.

Three permits issued at two of the Company’s operating subsidiaries were affected by the Court’s July 8 order. Although the two operating subsidiaries were prohibited from constructing the fills previously authorized, the Court’s order does allow them to permit the fill construction using the mechanism of an individual section 404 Clean Water Act permit. We do not believe that obtaining an individual permit will adversely impact either of the operating subsidiaries.

The Corps and five intervening trade associations, three of which Arch is a member, filed an appeal with the U.S. Court of Appeals for the Fourth Circuit in this matter on September 16, 2004. The matter has been briefed and was argued before the Fourth Circuit on Sept 19, 2005. No decision is expected until early 2006.

West Virginia Flooding Litigation. We and three of our subsidiaries have been served, among others, in seventeen separate complaints filed and served in Wyoming, McDowell, Fayette, Kanawha, Raleigh, Boone and Mercer Counties, West Virginia. These cases collectively include approximately 3,100 plaintiffs who are seeking to recover from more than 180 defendants for property damage and personal injuries arising out of flooding that occurred in southern West Virginia on or about July 8, 2001. The plaintiffs have sued coal, timber, oil and gas, and land companies under the theory that mining, construction of haul roads and removal of timber caused natural surface waters to be diverted in an unnatural way, thereby causing damage to the plaintiffs. The West Virginia Supreme Court has ruled that these cases, along with thirty-seven other flood damages cases not involving our subsidiaries, be handled pursuant to the Court’s Mass Litigation rules. As a result of this ruling, the cases have been transferred to the Circuit Court of Raleigh County in West Virginia to be handled by a panel consisting of three circuit court judges, which certified certain legal issues back to the West Virginia Supreme Court. The West Virginia Supreme Court responded to the questions certified, and discovery is underway.

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While the outcome of this litigation is subject to uncertainties, based on our preliminary evaluation of the issues and the potential impact on us, we believe this matter will be resolved without a material adverse effect on our financial condition or results of operations or liquidity.

Ark Land Company v. Crown Industries. In response to a declaratory judgment action filed by Ark Land Company, a subsidiary of ours, in Mingo County, West Virginia, against Crown Industries involving the interpretation of a severance deed under which Ark Land controls the coal and mining rights on property in Mingo County, West Virginia, Crown Industries filed a counterclaim against Ark Land and a third party complaint against us and two of our other subsidiaries seeking damages for trespass, nuisance and property damage arising out of the exercise of rights under the severance deed on the property by our subsidiaries. The defendant alleged that our subsidiaries had insufficient rights to haul certain foreign coals across the property without payment of certain wheelage or other fees to the defendant. In addition, the defendant alleged that we and our subsidiaries violated West Virginia's Standards for Management of Waste Oil and the West Virginia Surface Coal Mining and Reclamation Act. This case went to trial on October 4, 2005. Crown Industries' counterclaim against Ark Land was dismissed along with its cross claim against one of the Company's subsidiaries and its claims for trespass, nuisance and wheelage. On October 12, 2005, the jury entered a verdict in favor of Crown Industries on its remaining claims, assessing damages against the Company and its subsidiary in the amount of \$2.5 million. The jury found in favor of the Company and its subsidiary on their indemnity claim against the subsidiary's contractor, and awarded the Company and its subsidiary \$1.3 million on that claim. Crown Industries also was awarded its reasonable attorneys' fees, which remain to be determined. The Company is evaluating appealing the judgment to the West Virginia Supreme Court.

Shonk Land Company v. Ark Land Company. Shonk Land Company leases certain West Virginia real estate to our subsidiary Ark Land Company in exchange for royalties on coal mined from it. Shonk Land Company filed a lawsuit in the Circuit Court for Kanawha County, WV, claiming, among other things, that Ark Land Company misrepresented certain facts involving a lease amendment and that it miscalculated and underpaid royalties under the lease. Shonk Land Company seeks damages of approximately \$14.5 million. Ark Land disputes its claims and filed a counterclaim for overpayment of royalties in the approximate amount of \$260,000. The court directed the parties to arbitrate their dispute in accordance with the terms of their lease. The arbitration began on October 31, 2005, and we are awaiting the outcome.

While the outcome of this litigation is subject to uncertainties, based on our evaluation of the issues and the potential impact on it, we believe this matter will be resolved without a material adverse effect on our financial condition or results of operations.

We are a party to numerous other claims and lawsuits with respect to various matters. We provide for costs related to contingencies, including environmental matters, when a loss is probable and the amount is reasonably determinable. After conferring with counsel, it is the opinion of management that the ultimate resolution of these claims, to the extent not previously provided for, will not have a material adverse effect on our consolidated financial condition, results of operations or liquidity.

Certain Trends and Uncertainties

Substantial Leverage — Covenants

As of September 30, 2005, we had outstanding consolidated indebtedness of \$976.0 million, representing approximately 46% of our capital employed. Despite making substantial progress in reducing debt, we continue to have significant debt service obligations, and the terms of our credit agreements limit our flexibility and result in a number of limitations on us. We also have significant lease and royalty obligations. Our ability to satisfy debt service, lease and royalty obligations and to effect any refinancing of our indebtedness will depend upon future operating performance, which will be affected by prevailing economic conditions in the markets that we serve as well as financial, business and other factors, many of which are beyond our control. We may be unable to generate sufficient cash flow from operations and future borrowings, or other financings may be unavailable in an amount sufficient to enable us to fund our debt service, lease and royalty payment obligations or our other liquidity needs.

Our relative amount of debt and the terms of our credit agreements could have material consequences to our business, including, but not limited to: (i) making it more difficult to satisfy debt covenants and debt service, lease payment and other obligations; (ii) making it more difficult to pay quarterly dividends as we have in the past; (iii) increasing our vulnerability to general adverse economic and industry conditions; (iv) limiting our ability to obtain

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additional financing to fund future acquisitions, working capital, capital expenditures or other general corporate requirements; (v) reducing the availability of cash flows from operations to fund acquisitions, working capital, capital expenditures or other general corporate purposes; (vi) limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; or (vii) placing us at a competitive disadvantage when compared to competitors with less relative amounts of debt.

The agreements governing our outstanding debt impose a number of restrictions on us. For example, the terms of our credit facilities and leases contain financial and other covenants that create limitations on our ability to, among other things, borrow the full amount under our credit facilities, effect acquisitions or dispositions and incur additional debt, and require us to, among other things, maintain various financial ratios and comply with various other financial covenants. Our ability to comply with these restrictions may be affected by events beyond our control and, as a result, we may be unable to comply with these restrictions. A failure to comply with these restrictions could adversely affect our ability to borrow under our credit facilities or result in an event of default under these agreements. In the event of a default, our lenders could terminate their commitments to us and declare all amounts borrowed, together with accrued interest and fees, immediately due and payable. If this were to occur, we might not be able to pay these amounts, or we might be forced to seek an amendment to our debt agreements which could make the terms of these agreements more onerous for us.

Any material downgrade in our credit ratings could adversely affect our ability to borrow and result in more restrictive borrowing terms, including increased borrowing costs, more restrictive covenants and the extension of less open credit. This in turn could affect our internal cost of capital estimates and therefore operational decisions.

Profitability

Our mining operations are inherently subject to changing conditions that can affect levels of production and production costs at particular mines for varying lengths of time and can result in decreases in our profitability. We are exposed to commodity price risk related to our purchase of diesel fuel, explosives and steel. In addition, weather conditions, equipment replacement or repair, fires, variations in thickness of the layer, or seam, of coal, amounts of overburden, rock and other natural materials and other geological conditions have had, and can be expected in the future to have, a significant impact on our operating results. Prolonged disruption of production at any of our principal mines, particularly our Black Thunder mine, would result in a decrease in our revenues and profitability, which could be material. Other factors affecting the production and sale of our coal that could result in decreases in our profitability include:

- continued high pricing environment for our raw materials, including, among other things, diesel fuel, explosives and steel;
- disruption or increases in the cost of transportation services;
- changes in laws or regulations, including permitting requirements;
- litigation;
- work stoppages or other labor difficulties;
- labor shortages;
- mine worker vacation schedules and related maintenance activities; and
- changes in coal market and general economic conditions.

Environmental and Regulatory Factors

The coal mining industry is subject to regulation by federal, state and local authorities on matters such as:

- the discharge of materials into the environment;
- employee health and safety;

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- mine permits and other licensing requirements;
- reclamation and restoration of mining properties after mining is completed;
- management of materials generated by mining operations;
- surface subsidence from underground mining;
- water pollution;
- legislatively mandated benefits for current and retired coal miners;
- air quality standards;
- protection of wetlands;
- endangered plant and wildlife protection;
- limitations on land use;
- storage of petroleum products and substances that are regarded as hazardous under applicable laws; and
- management of electrical equipment containing polychlorinated biphenyls, or PCBs.

In addition, the electric generating industry, which is the most significant end-user of coal, is subject to extensive regulation regarding the environmental impact of its power generation activities, which could affect demand for our coal. The possibility exists that new legislation or regulations may be adopted or that the enforcement of existing laws could become more stringent, either of which may have a significant impact on our mining operations or our customers' ability to use coal and may require us or our customers to significantly change operations or to incur substantial costs.

While it is not possible to quantify the expenditures we incur to maintain compliance with all applicable federal and state laws, those costs have been and are expected to continue to be significant. We post performance bonds pursuant to federal and state mining laws and regulations for the estimated costs of reclamation and mine closing, including the cost of treating mine water discharge when necessary. Compliance with these laws has substantially increased the cost of coal mining for all domestic coal producers.

Clean Air Act. The federal Clean Air Act and similar state and local laws, which regulate emissions into the air, affect coal mining and processing operations primarily through permitting and emissions control requirements. The Clean Air Act also indirectly affects coal mining operations by extensively regulating the emissions from coal-fired industrial boilers and power plants, which are the largest end-users of our coal. These regulations can take a variety of forms, as explained below.

The Clean Air Act imposes obligations on the Environmental Protection Agency, or EPA, and the states to implement regulatory programs that will lead to the attainment and maintenance of EPA-promulgated ambient air quality standards. EPA has promulgated ambient air quality standards for a number of air pollutants, including standards for sulfur dioxide, particulate matter, nitrogen oxides and ozone, which are associated with the combustion of coal. Owners of coal-fired power plants and industrial boilers have been required to expend considerable resources in an effort to comply with these ambient air standards. In particular, coal-fired power plants will be affected by state regulations designed to achieve attainment of the ambient air quality standard for ozone, which may require significant expenditures for additional emissions control equipment needed to meet the current national ambient air standard for ozone. Ozone is produced by the combination of two precursor pollutants: volatile organic compounds and nitrogen oxides. Nitrogen oxides are a by-product of coal combustion. Accordingly, emissions control requirements for new and expanded coal-fired power plants and industrial boilers will continue to become more demanding in the years ahead.

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In July 1997, the EPA adopted more stringent ambient air quality standards for ozone and fine particulate matter (PM_{2.5}, which can be formed in the air from gaseous emissions of sulfur dioxide and nitrogen oxides – both of which are associated with coal combustion). In a February 2001 decision, the U.S. Supreme Court largely upheld the EPA's position, although it remanded the EPA's ozone implementation policy for further consideration. On remand, the Court of Appeals for the D.C. Circuit affirmed the EPA's adoption of these more stringent ambient air quality standards. As a result of the finalization of these standards, states that are not in attainment for these standards will have to revise their State Implementation Plans to include provisions for the control of ozone precursors and/or particulate matter. In April 2004, the EPA issued final nonattainment designations for the eight-hour ozone standard, and, in December 2004, issued the final nonattainment standard for PM_{2.5}. States will have to revise their State Implementation Plans to require electric power generators to further reduce nitrogen oxide and particulate matter emissions, particularly in designated nonattainment areas. The potential need to achieve such emissions reductions could result in reduced coal consumption by electric power generators. Thus, future regulations regarding ozone, particulate matter and other pollutants could restrict the market for coal and our development of new mines. This in turn may result in decreased production and a corresponding decrease in our revenues. Although the future scope of these ozone and particulate matter regulations cannot be predicted, future regulations regarding these and other ambient air standards could restrict the market for coal and the development of new mines.

The EPA has also initiated a regional haze program designed to protect and to improve visibility at and around National Parks, National Wilderness Areas and International Parks, particularly those located in the southwest and southeast United States. This program restricts the construction of new coal-fired power plants whose operation may impair visibility at and around federally protected areas. In June 2005, EPA finalized amendments to the regional haze rules which will require certain existing coal-fired power plants to install Best Available Retrofit Technology (BART) limit haze-causing emissions, such as sulfur dioxide, nitrogen oxides and particulate matter. By imposing limitations upon the placement and construction of new coal-fired power plants and BART requirements on existing coal-fired power plants, the EPA's regional haze program could affect the future market for coal.

New regulations concerning the routine maintenance provisions of the New Source Review program were published in October 2003. Fourteen states, the District of Columbia and a number of municipalities filed lawsuits challenging these regulations, and in December 2003 the Court stayed the effectiveness of these rules. In July 2004 EPA granted a petition to reconsider the legal basis for the routine maintenance provisions and the litigation was suspended while the rule was being reconsidered. In June 2005 EPA issued its final response, which does not change the rule. In light of EPA's final action the litigation may proceed.

In January 2004, the EPA Administrator announced that EPA would be taking new enforcement actions against utilities for violations of the existing New Source Review requirements, and shortly thereafter, EPA issued enforcement notices to several electric utility companies. Additionally, the U.S. Department of Justice, on behalf of the EPA, has filed lawsuits against several investor-owned electric utilities for alleged violations of the Clean Air Act. The EPA claims that these utilities have failed to obtain permits required under the Clean Air Act for alleged major modifications to their power plants. We supply coal to some of the currently affected utilities, and it is possible that other of our customers will be sued. These lawsuits could require the utilities to pay penalties and install pollution control equipment or undertake other emission reduction measures, which could adversely impact their demand for coal.

In March 2005, the EPA issued two new rules that will impact coal-fired power plants. These are (i) the Clean Air Interstate Rule (CAIR), which permanently caps emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) in the eastern United States; and (ii) the Clean Air Mercury Rule (CAMR) to permanently cap and reduce mercury emissions from coal-fired power plants. Both rules provide power plant operators a market-based system ("cap and trade program") in which plants that exceed federal requirements can sell pollution credits to plant operators who need more time to comply with the stricter rules. CAIR requires reductions of SO₂ and/or NO_x emissions across 28 eastern states and the District of Columbia and, when fully implemented in 2015, CAIR will reduce SO₂ emissions in these states by over 70 percent and NO_x emissions by over 60 percent from 2003 levels. Under the new mercury emissions rule, mercury emissions from coal-fired power plants will not be regulated as a Hazardous Air Pollutant, which would require installation of Maximum Available Control Technology (MACT). Instead, using the cap and trade system, these plants will have until 2010 to cut mercury emission levels to 38 tons a year from 48 tons and until 2018 to bring that level down to 15 tons, a 69 percent reduction. Utility analysts have estimated meeting the goals for SO₂ and NO_x will cost power generators approximately \$50 billion to install the required filtration systems, or "scrubbers," on their smokestacks, but these controls are expected to also reduce the mercury emissions to the targeted levels. Both the CAIR and the CAMR are the subject of ongoing litigation challenging key provisions,

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and in the case of the CAMR, there is an effort in Congress to overturn the rule in favor of the MACT approach. If CAIR and CAMR survive the legal challenges, or if a MACT requirement is imposed for mercury emissions, the additional costs that may be associated with operating coal-fired power generation facilities due to the implementation of these new rules may render coal a less attractive fuel source.

Other Clean Air Act programs are also applicable to power plants that use our coal. For example, the acid rain control provisions of Title IV of the Clean Air Act require a reduction of sulfur dioxide emissions from power plants. Because sulfur is a natural component of coal, required sulfur dioxide reductions can affect coal mining operations. Title IV imposes a two phase approach to the implementation of required sulfur dioxide emissions reductions. Phase I, which became effective in 1995, regulated the sulfur dioxide emissions levels from 261 generating units at 110 power plants and targeted the highest sulfur dioxide emitters. Phase II, implemented January 1, 2000, made the regulations more stringent and extended them to additional power plants, including all power plants of greater than 25 megawatt capacity. Affected electric utilities can comply with these requirements by:

- burning lower sulfur coal, either exclusively or mixed with higher sulfur coal;
- installing pollution control devices such as scrubbers, which reduce the emissions from high sulfur coal;
- reducing electricity generating levels; or
- purchasing or trading emissions credits.

Specific emissions sources receive these credits, which electric utilities and industrial concerns can trade or sell to allow other units to emit higher levels of sulfur dioxide. Each credit allows its holder to emit one ton of sulfur dioxide.

Mine Health and Safety Laws. Stringent safety and health standards have been imposed by federal legislation since the adoption of the Mine Safety and Health Act of 1969. The Mine Safety and Health Act of 1977, which significantly expanded the enforcement of health and safety standards of the Mine Safety and Health Act of 1969, imposes comprehensive safety and health standards on all mining operations. In addition, as part of the Mine Safety and Health Acts of 1969 and 1977, the Black Lung Act requires payments of benefits by all businesses conducting current mining operations to coal miners with black lung and to some survivors of a miner who dies from this disease.

Surface Mining Control and Reclamation Act. SMCRA establishes operational, reclamation and closure standards for all aspects of surface mining as well as many aspects of deep mining. SMCRA requires that comprehensive environmental protection and reclamation standards be met during the course of and upon completion of mining activities. In conjunction with mining the property, we are contractually obligated under the terms of our leases to comply with all laws, including SMCRA and equivalent state and local laws. These obligations include reclaiming and restoring the mined areas by grading, shaping, preparing the soil for seeding and by seeding with grasses or planting trees for use as pasture or timberland, as specified in the approved reclamation plan.

SMCRA also requires us to submit a bond or otherwise financially secure the performance of our reclamation obligations. The earliest a reclamation bond can be completely released is five years after reclamation has been achieved. Federal law and some states impose on mine operators the responsibility for repairing the property or compensating the property owners for damage occurring on the surface of the property as a result of mine subsidence, a consequence of longwall mining and possibly other mining operations. In addition, the Abandoned Mine Lands Act, which is part of SMCRA, imposes a tax on all current mining operations, the proceeds of which are used to restore mines closed before 1977. The maximum tax is \$0.35 per ton of coal produced from surface mines and \$0.15 per ton of coal produced from underground mines.

We also lease some of our coal reserves to third party operators. Under SMCRA, responsibility for unabated violations, unpaid civil penalties and unpaid reclamation fees of independent mine lessees and other third parties could potentially be imputed to other companies that are deemed, according to the regulations, to have “owned” or “controlled” the mine operator. Sanctions against the “owner” or “controller” are quite severe and can include civil penalties, reclamation fees and reclamation costs. We are not aware of any currently pending or asserted claims against us asserting that we “own” or “control” any of our lessees’ operations.

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Framework Convention on Global Climate Change. The United States and more than 160 other nations are signatories to the 1992 Framework Convention on Global Climate Change, commonly known as the Kyoto Protocol, that is intended to limit or capture emissions of greenhouse gases such as carbon dioxide and methane. The U.S. Senate has neither ratified the treaty commitments, which would mandate a reduction in U.S. greenhouse gas emissions, nor enacted any law specifically controlling greenhouse gas emissions and the Bush Administration has withdrawn support for this treaty. Nonetheless, future regulation of greenhouse gases could occur either pursuant to future U.S. treaty obligations, statutory or regulatory changes under the Clean Air Act, or pursuant to laws and regulations enacted by various states. Efforts to control greenhouse gas emissions could result in reduced demand for coal if electric power generators switch to lower carbon sources of fuel.

West Virginia Antidegradation Policy. In January 2002, a number of environmental groups and individuals filed suit in the U.S. District Court for the Southern District of West Virginia to challenge the EPA's approval of West Virginia's antidegradation implementation policy. Under the federal Clean Water Act, state regulatory authorities must conduct an antidegradation review before approving permits for the discharge of pollutants to waters that have been designated as high quality by the state. Antidegradation review involves public and intergovernmental scrutiny of permits and requires permittees to demonstrate that the proposed activities are justified in order to accommodate significant economic or social development in the area where the waters are located. In August 2003, the Southern District of West Virginia vacated the EPA's approval of West Virginia's anti-degradation procedures, and remanded the matter to the EPA. On March 29, 2004, EPA Regions III sent a letter to the WVDEP that approved portions of the state's anti-degradation program, denied approval of portions pending further study, and recommended removal of certain language on the state's regulations. Depending upon the outcome of the DEP review, the issuance or re-issuance of Clean Water Act permits to us may be delayed or denied, and may increase the costs, time and difficulty associated with obtaining and complying with Clean Water Act permits for surface mining operations.

Comprehensive Environmental Response, Compensation and Liability Act. CERCLA and similar state laws affect coal mining operations by, among other things, imposing cleanup requirements for threatened or actual releases of hazardous substances that may endanger public health or welfare or the environment. Under CERCLA and similar state laws, joint and several liability may be imposed on waste generators, site owners and lessees and others regardless of fault or the legality of the original disposal activity. Although the EPA excludes most wastes generated by coal mining and processing operations from the hazardous waste laws, such wastes can, in certain circumstances, constitute hazardous substances for the purposes of CERCLA. In addition, the disposal, release or spilling of some products used by coal companies in operations, such as chemicals, could implicate the liability provisions of the statute. Thus, coal mines that we currently own or have previously owned or operated, and sites to which we sent waste materials, may be subject to liability under CERCLA and similar state laws. In particular, we may be liable under CERCLA or similar state laws for the cleanup of hazardous substance contamination at sites where we own surface rights.

Mining Permits and Approvals. Mining companies must obtain numerous permits that strictly regulate environmental and health and safety matters in connection with coal mining, some of which have significant bonding requirements. In connection with obtaining these permits and approvals, we may be required to prepare and present to federal, state or local authorities data pertaining to the effect or impact that any proposed production of coal may have upon the environment. The requirements imposed by any of these authorities may be costly and time consuming and may delay commencement or continuation of mining operations. Regulations also provide that a mining permit can be refused or revoked if an officer, director or a shareholder with a 10% or greater interest in the entity is affiliated with another entity that has outstanding permit violations. Thus, past or ongoing violations of federal and state mining laws could provide a basis to revoke existing permits and to deny the issuance of additional permits.

Regulatory authorities exercise considerable discretion in the timing of permit issuance. Also, private individuals and the public at large possess rights to comment on and otherwise engage in the permitting process, including through intervention in the courts. Accordingly, the permits we need for our mining operations may not be issued, or, if issued, may not be issued in a timely fashion, or may involve requirements that may be changed or interpreted in a manner that restricts our ability to conduct our mining operations or to do so profitably.

In order to obtain mining permits and approvals from state regulatory authorities, mine operators, including us, must submit a reclamation plan for restoring, upon the completion of mining operations, the mined property to its prior condition, productive use or other permitted condition. Typically we submit the necessary permit applications several months before we plan to begin mining a new area. In our experience, permits generally are approved several months after a completed application is submitted. In the past, we have generally obtained our mining permits without

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significant delay. However, we cannot be sure that we will not experience difficulty in obtaining mining permits in the future.

Future legislation and administrative regulations may emphasize the protection of the environment and, as a consequence, the activities of mine operators, including us, may be more closely regulated. Legislation and regulations, as well as future interpretations of existing laws, may also require substantial increases in equipment expenditures and operating costs, as well as delays, interruptions or the termination of operations. We cannot predict the possible effect of such regulatory changes.

Under some circumstances, substantial fines and penalties, including revocation or suspension of mining permits, may be imposed under the laws described above. Monetary sanctions and, under some circumstances, criminal sanctions may be imposed for failure to comply with these laws.

Surety Bonds. Federal and state laws require us to obtain surety bonds to guarantee performance or payment of certain long-term obligations including mine closure and reclamation costs, federal and state workers' compensation benefits, coal leases and other miscellaneous obligations. It has become increasingly difficult for us to secure new surety bonds or retain existing bonds without the posting of collateral. In addition, surety bond costs have increased and the market terms of such bonds have generally become more unfavorable. We may be unable to maintain our surety bonds or acquire new bonds in the future due to lack of availability, higher expense, unfavorable market terms, or an inability to post sufficient collateral. Our failure to maintain, or inability to acquire, surety bonds that are required by state and federal law would have a material adverse impact on us.

Endangered Species. The federal Endangered Species Act and counterpart state legislation protects species threatened with possible extinction. Protection of endangered species may have the effect of prohibiting or delaying us from obtaining mining permits and may include restrictions on timber harvesting, road building and other mining or agricultural activities in areas containing the affected species. A number of species indigenous to our properties are protected under the Endangered Species Act. Based on the species that have been identified to date and the current application of applicable laws and regulations, however, we do not believe there are any species protected under the Endangered Species Act that would materially and adversely affect our ability to mine coal from our properties in accordance with current mining plans.

Other Environmental Laws Affecting Us. We are required to comply with numerous other federal, state and local environmental laws in addition to those previously discussed. These additional laws include, for example, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Toxic Substance Control Act and the Emergency Planning and Community Right-to-Know Act. We believe that we are in substantial compliance with all applicable environmental laws.

Competition

The coal industry is intensely competitive, primarily as a result of the existence of numerous producers in the coal-producing regions in which we operate, and some of our competitors may have greater financial resources. We compete with several major coal producers in the Central Appalachian and Powder River Basin areas. We also compete with a number of smaller producers in those and other market regions.

Electric Industry Factors

Demand for coal and the prices that we will be able to obtain for our coal are closely linked to coal consumption patterns of the domestic electric generation industry, which has accounted for approximately 90% of domestic coal consumption in recent years. These coal consumption patterns are influenced by factors beyond our control, including the demand for electricity (which is dependent to a significant extent on summer and winter temperatures and the strength of the economy); government regulation; technological developments and the location, availability, quality and price of competing sources of coal; other fuels such as natural gas, oil and nuclear; and alternative energy sources such as hydroelectric power. Demand for our low-sulfur coal and the prices that we will be able to obtain for it will also be affected by the price and availability of high-sulfur coal, which can be marketed in tandem with emissions allowances in order to meet federal Clean Air Act requirements. Any reduction in the demand for our coal by the domestic electric generation industry may cause a decline in profitability.

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Electric utility deregulation is expected to provide incentives to generators of electricity to minimize their fuel costs and is believed to have caused electric generators to be more aggressive in negotiating prices with coal suppliers. Deregulation may have an adverse effect on our profitability to the extent it causes our customers to be more cost-sensitive.

In addition, our ability to receive payment for coal sold and delivered depends on the creditworthiness of our customers. In general, the creditworthiness of our customers has deteriorated over the past several years. If such trends continue, our acceptable customer base may be limited.

Terms of Long-Term Coal Supply Contracts

During 2004, sales of coal under long-term contracts, which are contracts with a term greater than 12 months, accounted for 70% of our total revenues. The prices for coal shipped under these contracts may be below the current market price for similar type coal at any given time. For the nine months ended September 30, 2005, the weighted average price of coal sold under our long-term contracts was \$17.85 per ton. As a consequence of the substantial volume of our sales which are subject to these long-term agreements, we have less coal available with which to capitalize on increases in coal prices. In addition, because long-term contracts may allow the customer to elect volume flexibility, our ability to realize the higher prices that may be available on the spot market may be restricted when customers elect to purchase higher volumes under such contracts. Our exposure to market-based pricing may also be increased should customers elect to purchase fewer tons. In addition, the increasingly short terms of sales contracts and the consequent absence of price adjustment provisions in such contracts make it more likely that we will not be able to recover inflation related increases in mining costs during the contract term.

Reserve Degradation and Depletion

Our profitability depends substantially on our ability to mine coal reserves that have the geological characteristics that enable them to be mined at competitive costs. Replacement reserves may not be available when required or, if available, may not be capable of being mined at costs comparable to those characteristics of the depleting mines. We have in the past acquired and will in the future acquire coal reserves for our mine portfolio from third parties. We may not be able to accurately assess the geological characteristics of any reserves that we acquire, which may adversely affect our profitability and financial condition. Exhaustion of reserves at particular mines can also have an adverse effect on operating results that is disproportionate to the percentage of overall production represented by such mines. Mingo Logan's Mountaineer Mine is estimated to exhaust its longwall mineable reserves in mid-2007, although we expect to make up the lost production with our planned opening of our Mountain Laurel complex in Logan County, West Virginia, which should ramp up to full production by the second half of 2007. The Mountaineer Mine generated \$30.5 million and \$26.1 million of our total operating income in the years ended 2004 and 2003, respectively.

Potential Fluctuations in Operating Results — Factors Routinely Affecting Results of Operations

Our mining operations are inherently subject to changing conditions that can affect levels of production and production costs at particular mines for varying lengths of time and can result in decreases in profitability. Weather conditions, equipment replacement or repair, fuel and supply prices, insurance costs, fires, variations in coal seam thickness, amounts of overburden rock and other natural materials, and other geological conditions have had, and can be expected in the future to have, a significant impact on operating results. A prolonged disruption of production at any of our principal mines, particularly the Mingo Logan operation in West Virginia or Black Thunder mine in Wyoming, would result in a decrease, which could be material, in our revenues and profitability.

The geological characteristics of Central Appalachia coal reserves, such as depth of overburden and coal seam thickness, make them complex and costly to mine. As mines become depleted, replacement reserves may not be available when required or, if available, may not be capable of being mined at costs comparable to those characteristic of the depleting mines. In addition, as compared to mines in the Powder River Basin, permitting and licensing and other environmental and regulatory requirements are more costly and time-consuming to satisfy. These factors could materially adversely affect the mining operations and cost structures of, and customers' ability to use coal produced by, operators in Central Appalachia, including us.

Other factors affecting the production and sale of our coal that could result in decreases in profitability include: (i) expiration or termination of, or sales price redeterminations or suspension of deliveries under, coal supply

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agreements; (ii) disruption or increases in the cost of transportation services; (iii) changes in laws or regulations, including permitting requirements; (iv) litigation; (v) work stoppages or other labor difficulties; (vi) mine worker vacation schedules and related maintenance activities; and (vii) changes in coal market and general economic conditions.

Transportation

The coal industry depends on rail, trucking and barge transportation to deliver shipments of coal to customers, and transportation costs are a significant component of the total cost of supplying coal. Disruption or insufficient availability of these transportation services could temporarily impair our ability to supply coal to customers and thus adversely affect our business and the results of our operations. As described in the “Management’s Discussion and Analysis of Financial Condition-Outlook” section of this Form 10-Q, we have experienced disruptions in rail service in the past few months. In addition, increases in transportation costs associated with our coal, or increases in our transportation costs relative to transportation costs for coal produced by our competitors or of other fuels, could adversely affect our business and results of operations.

Reserves – Title; Leasehold Interests

We base our reserve information on geological data assembled and analyzed by our staff, which includes various engineers and geologists, and periodically reviewed by outside firms. The reserve estimates are annually updated to reflect production of coal from the reserves and new drilling or other data received. There are numerous uncertainties inherent in estimating quantities of recoverable reserves, including many factors beyond our control. Estimates of economically recoverable coal reserves and net cash flows necessarily depend upon a number of variable factors and assumptions, such as geological and mining conditions which may not be fully identified by available exploration data or may differ from experience in current operations, historical production from the area compared with production from other producing areas, the assumed effects of regulation by governmental agencies, and assumptions concerning coal prices, operating costs, severance and excise taxes, development costs, and reclamation costs, all of which may cause estimates to vary considerably from actual results.

For these reasons, estimates of the economically recoverable quantities attributable to any particular group of properties, classifications of such reserves based on risk of recovery and estimates of net cash flows expected therefrom, prepared by different engineers or by the same engineers at different times, may vary substantially. Actual coal tonnage recovered from identified reserve areas or properties, and revenues and expenditures with respect to our reserves, may vary from estimates, and such variances may be material. These estimates thus may not accurately reflect our actual reserves.

Most of our mining operations are conducted on properties we lease. The loss of any lease could adversely affect our ability to develop the associated reserves. Because title to most of our leased properties and mineral rights is not usually verified until we have made a commitment to develop a property, which may not occur until after we have obtained necessary permits and completed exploration of the property, our right to mine certain of our reserves may be adversely affected if defects in title or boundaries exist. In order to obtain leases or mining contracts to conduct mining operations on property where these defects exist, we have had to, and may in the future have to, incur unanticipated costs. In addition, we may not be able to successfully negotiate new leases or mining contracts for properties containing additional reserves or maintain our leasehold interests in properties on which mining operations are not commenced during the term of the lease.

Acquisitions

We continually seek to expand our operations and coal reserves in the regions in which we operate through acquisitions of businesses and assets, including leases of coal reserves. Acquisition transactions involve inherent risks, such as:

- uncertainties in assessing the value, strengths, weaknesses, contingent and other liabilities and potential profitability of acquisition or other transaction candidates;
- the potential loss of key personnel of an acquired business;

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- the ability to achieve identified operating and financial synergies anticipated to result from an acquisition or other transaction;
- problems that could arise from the integration of the acquired business;
- unanticipated changes in business, industry or general economic conditions that affect the assumptions underlying the acquisition or other transaction rationale; and
- unexpected development costs, such as those related to the development of the Little Thunder reserves, that adversely affect our profitability.

Any one or more of these factors could cause us not to realize the benefits anticipated to result from the acquisition of businesses or assets.

Post Retirement Benefits

We estimate our future postretirement medical and pension benefit obligations based on various assumptions, including:

- actuarial estimates;
- assumed discount rates;
- estimates of mine lives;
- expected returns on pension plan assets; and
- changes in health care costs.

Based on changes in our assumptions, our annual postretirement health and pension benefit costs have increased. If our assumptions relating to these benefits change in the future, our costs could further increase, which would reduce our profitability. In addition, future regulatory and accounting changes relating to these benefits could result in increased obligations or additional costs, which could also have a material adverse effect on our financial results.

On January 1, 1998, we replaced our existing pension plans with a new cash balance pension plan. The accrued benefits of active participants under the former plans were vested as of that date and the participant's cash balance account was credited with the present value of the participant's earned pension benefit, payable at normal retirement age. On February 12, 2004, in an unrelated case involving International Business Machines Corporation ("IBM"), the United States District Court for the Southern District of Illinois affirmed its earlier ruling that the cash balance formula used in IBM's conversion to a cash balance plan violated the age discrimination provisions under ERISA. IBM has announced that it will appeal the decision to the Seventh Circuit Court of Appeals. The Illinois District Court's decision conflicts with the decisions of two other district courts and with proposed regulations for cash balance plans issued by Treasury and the IRS in December 2002. In addition, on February 2, 2004, the Treasury Department proposed legislation that would clarify that cash balance plans do not violate the age discrimination rules that apply to pension plans as long as they treat older workers at least as well as younger workers. The retirement account formula used for our pension plan may not meet the standard ultimately set forth in the IBM Court's decision. Consequently, the IBM decision may have an impact on our and other companies' cash balance pension plans. The effect of the IBM decision on our cash balance plan or our financial position has not been determined at this time.

Certain Contractual Arrangements

Our affiliate, Arch Western Resources, LLC, is the owner of our reserves and mining facilities in the Powder River Basin and Western Bituminous regions of the United States. The agreement under which Arch Western was formed provides that a subsidiary of ours, as the managing member of Arch Western, generally has exclusive power and authority to conduct, manage and control the business of Arch Western. However, consent of BP p.l.c., the other member of Arch Western, would generally be required in the event that Arch Western proposes to make a distribution, incur indebtedness, sell properties or merge or consolidate with any other entity if, at such time, Arch

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Western has a debt rating less favorable than specified ratings with Moody's Investors Service or Standard & Poor's or fails to meet specified indebtedness and interest ratios.

In connection with our June 1, 1998 acquisition of Atlantic Richfield Company's ("ARCO") coal operations, we entered into an agreement under which we agreed to indemnify ARCO against specified tax liabilities in the event that these liabilities arise as a result of certain actions taken prior to June 1, 2013, including the sale or other disposition of certain properties of Arch Western, the repurchase of certain equity interests in Arch Western by Arch Western, or the reduction under certain circumstances of indebtedness incurred by Arch Western in connection with the acquisition. ARCO was acquired by BP p.l.c. in 2000. Depending on the time at which any such indemnification obligation was to arise, it could impact our profitability for the period in which it arises.

Our Amended and Restated Certificate of Incorporation requires the affirmative vote of the holders of at least two-thirds of outstanding common stock voting thereon to approve a merger or consolidation and certain other fundamental actions involving or affecting control of us. Our Bylaws require the affirmative vote of at least two-thirds of the members of our Board of Directors in order to declare dividends and to authorize certain other actions.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The information required by this Item is contained under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report and is incorporated herein by reference.

ITEM 4. CONTROLS AND PROCEDURES

The information required by this Item is contained under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report and is incorporated herein by reference.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The information required by this Item is contained in the “Contingencies – Legal Contingencies” section of “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this report and is incorporated herein by reference.

ITEM 2. CHANGES IN SECURITIES, USE OF PROCEEDS AND ISSUER PURCHASES OF EQUITY SECURITIES

Nothing to report under this item.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Nothing to report under this item.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Nothing to report under this item.

ITEM 5. OTHER INFORMATION

Nothing to report under this item.

ITEM 6. EXHIBITS

- 2.1 Master Contribution Agreement among Arch Coal, Inc., ArcLight Energy Partners Fund I, L.P., Timothy Elliott and Magnum Coal Company, dated October 7, 2005.*
- 3.1 Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.1 to the Company’s Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2000)
- 3.2 Amended and Restated Bylaws of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.2 to the Company’s Annual Report on Form 10-K for the Year Ended December 31, 2000)
- 3.3 Certificate of Designations Establishing the Designations, Powers, Preferences, Rights, Qualifications, Limitations and Restrictions of the Company’s 5% Perpetual Cumulative Convertible Preferred Stock (incorporated herein by reference to Exhibit 3 to current report on Form 8-A filed on March 5, 2003)
- 31.1 Certification of Principal Executive Officer Pursuant to § 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to § 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Principal Executive Officer Pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Principal Financial Officer Pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002.

* Arch Coal, Inc. agrees to furnish supplementally a copy of any omitted exhibit or schedule to the Commission upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ARCH COAL, INC.
(Registrant)

Date: November 9, 2005

/s/ John W. Lorson

John W. Lorson
Controller
(Chief Accounting Officer)

Dated as of October 7, 2005

Arch Coal, Inc.

ArcLight Energy Partners Fund I, L.P.

Timothy Elliott

Magnum Coal Company

MASTER CONTRIBUTION AGREEMENT

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Appendix A

Schedules

Exhibits

MASTER CONTRIBUTION AGREEMENT

THIS MASTER CONTRIBUTION AGREEMENT (this "**Agreement**") is made and entered into on the 7th day of October, 2005, by and among Arch Coal, Inc., a Delaware corporation ("**Arch**"), ArcLight Energy Partners Fund I, L.P., a Delaware limited partnership ("**ArcLight**"), Mr. Timothy Elliott, ("**Elliott**" and, together with ArcLight, the "**Trout Contributors**"), and Magnum Coal Company, a Delaware corporation (the "**Company**").

RECITALS

WHEREAS, the Company has been formed pursuant to the General Corporation Law of the State of Delaware for the purpose of, among other things, acquiring, owning and operating certain assets of Arch and of the Trout Contributors used in the business of owning and managing coal properties;

WHEREAS, in furtherance of accomplishing the objectives and purposes set forth in the preceding recital, the following actions will be taken on or prior to the Closing Date (together with all related actions, the "**Arch Reorganization Transactions**"):

1. Arch will form Robin Land (as defined below), to which Arch will cause to be contributed the Robin Properties (as defined below) in exchange for all the membership interests in Robin Land.
2. Arch will form TC Sales (as defined below), to which Arch will cause to be assigned the TC Sales Agreements (as defined below) in exchange for all the membership interests in TC Sales.
3. Arch will form each of the Arch Holding Companies as parents of each of Apogee Coal Company, Inc., Catenary Coal Company, and Hobet Mining, Inc., respectively.
4. Arch will cause Catenary Coal Company, Inc. to convert to Catenary Coal Company, LLC.
5. Arch will cause Apogee Coal Company, Inc. to convert to Apogee Coal Company, LLC.
6. Arch will cause Hobet Mining, Inc. to convert to Hobet Mining, LLC.
7. Arch will cause Hobet Mining, Inc. and Apogee Coal Company, Inc. to establish a Voluntary Employee Beneficiary Association pursuant to Section 501(c)(9) of the Code (as defined below) ("**VEBA**") for each of Hobet Mining, Inc. (the "**Hobet VEBA**") and Apogee Coal Company, Inc. (the "**Apogee VEBA**"), respectively, and to immediately contribute \$36,900,000 to the Hobet VEBA and \$179,000,000 to the Apogee VEBA, respectively, for the purpose of providing certain benefits (the "**FAS 106 Benefits**") to the Benefits Covered Employees (as defined below), in accordance with the applicable Trust Agreements with PNC Bank, N.A.

WHEREAS, in furtherance of accomplishing the objectives and purposes set forth in the first recital, the following actions will be taken on or prior to the Closing Date (together with all related actions, the "**Trout Reorganization Transactions**"):

1. The Trout Contributors will form Trout II (as defined below), to which the Trout Contributors will cause to be contributed all of the membership interests in Dakota (as defined below), Viper LLC, and Day LLC, each a West Virginia limited liability company, in exchange for all the membership interests in Trout II.
2. Infinity (as defined below) shall acquire from Elliott all of the membership interests in the following entities: Highwall Mining LLC, IO Coal LLC, Thunderhill Coal LLC, Speed Mining LLC, Pond Fork Processing LLC, Coal Clean, LLC and Weatherby LLC, each a West Virginia limited liability company.
3. The ArcLight Subordinated Notes will be converted to equity in Trout I and Trout Coal Holdings II, LLC, a Delaware limited liability company.
4. Glock Mining LLC will be dissolved.

WHEREAS, subject to the conditions contemplated in this Agreement, on the Closing Date, each of the following shall occur:

1. (a) Arch will contribute to the Company all of its right, title and interest in, to and under the membership interests of TC Sales and Robin Land and cause each of the Arch Holding Companies to contribute to the Company all of their respective right, title and interest in, to and under the membership interests of Catenary, Apogee and Hobet, all in exchange for shares of common stock of the Company issued to Arch and the Arch Holding Companies, in the aggregate, (in such amounts as determined by Arch prior to the Closing), representing 37.5% of the issued and outstanding shares of common stock of the Company immediately following such contribution and (b) the Trout Contributors will contribute to the Company all of their respective right, title and interest in, to and under the membership interests of Trout and Trout II in exchange for shares of common stock of the Company in the aggregate, representing 62.5% of the issued and outstanding shares of common stock of the Company.
2. As consideration for services in connection with the consummation of the IPO (as defined below) and for future services to the Company and its Subsidiaries, the Company will issue to certain employees shares of common stock of the Company with an aggregate value up to \$3,500,000 million immediately following such contribution.

NOW, THEREFORE, in consideration of their mutual undertakings and agreements hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement undertake and agree as follows:

ARTICLE I
Definitions; Interpretation; Schedules

1.1 Definitions.

The following capitalized terms have the meanings given below:

“A.T. Massey Coal Company Case” means the case of A.T. Massey Coal Company, et al. v. JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, et al., pending in the USDC, D. Maryland., Civil No.: RDB 03-3389.

“Actions or Proceedings” means any action, suit, proceeding, arbitration or Governmental or Regulatory Authority investigation or audit.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified (and for this purpose, the term **“control”** means the power to direct the management and policies of such Person (directly or indirectly), whether through ownership of voting securities, by Contract or otherwise (and the terms **“controlling”** and **“controlled”** have meanings correlative to the foregoing).

“Agreement” has the meaning assigned to such term in the preamble.

“Allegheny” means Allegheny Land Company, a Delaware corporation.

“Apogee” means Apogee Coal Company, LLC, a Delaware limited liability company and its predecessor, Apogee Coal Company, Inc., a Delaware corporation.

“Apogee Properties” means the properties identified as being owned, leased or subleased by any Arch Company on the map attached hereto as Exhibit A and the facilities located thereon and the equipment the book value of which is in excess of \$100,000 identified as being owned, leased or subleased by Apogee on Schedule 1.1(a).

“Apogee VEBA” has the meaning assigned to such term in the preamble.

“Arch” has the meaning assigned to such term in the preamble.

“Arch Benefit Plan” has the meaning assigned to such term in Section 4.2.14.

“Arch Coal Sales” means Arch Coal Sales Company, Inc., a Delaware corporation.

“Arch Companies” means Catenary, Hobet, Apogee, Robin Land and TC Sales.

“Arch Credit Agreement” means the credit agreement between Arch, PNC Bank, National Association, as administrative agent, Citicorp USA, Inc., JPMorgan Chase Bank, N.A. and Wachovia Bank, National Association, as co-syndication agents, and Fleet National Bank as

documentation agent and various lenders, dated December 22, 2004 in relation to a \$700 million revolving credit facility.

“Arch Equity Interests” means 100% of the membership interests of each of Robin Land, TC Sales, Catenary, Apogee and Hobet.

“Arch ERISA Entities” has the meaning assigned to such term in Section 4.2.14.

“Arch Guarantees” has the meaning assigned to such term in Section 8.1.

“Arch Holding Companies” means each of the holding companies that will be formed prior to the Closing as parent companies of Apogee Coal Company, Inc., Catenary Coal Company, and Hobet Mining, Inc., each of which will be a Delaware corporation and a direct or indirect wholly-owned Subsidiary of Arch.

“Arch Material Adverse Effect” means a material adverse effect on the performance, operations, business, property, assets, liabilities, or condition (financial or otherwise) of the Arch Companies taken as a whole; **provided** that the term “Arch Material Adverse Effect” shall exclude any effect (a) resulting from changes in general United States economic and political conditions (including changes in commodity prices, interest rates and/or currency exchange rates), or applicable Law and generally accepted accounting principles that do not disproportionately affect the Arch Companies, or (b) resulting from changes affecting companies in the United States coal mining industry generally, in each case, that do not disproportionately affect the Arch Companies.

“Arch Mine Properties” means the mines located on the Apogee Properties, the Catenary Properties and the Hobet Properties.

“Arch Reorganization Transactions” has the meaning assigned to such term in the preamble to this Agreement.

“Arch Taxes” has the meaning assigned to such term in Section 11.2.

“Arch Unaudited Financial Statements” has the meaning assigned to such term set forth in Section 4.2.8 (b).

“Arch VEBA Contributions” means the aggregate contributions made by Hobet Mining, Inc. and Apogee Coal Company, or their successor entities, to the Hobet VEBA and the Apogee VEBA, respectively.

“ArcLight” has the meaning assigned to such term in the preamble.

“ArcLight Subordinated Notes” means (a) the Third Amended and Restated Subordinated Promissory Note, dated September 29, 2005, issued by Trout to ArcLight, in a principal amount of \$83,035,646.69 and (b) the Subordinated Promissory Note dated July 3, 2003 in a principal amount of \$14,092,437.00 issued by Trout II in favor of ArcLight.

“Ark Land” means Ark Land Company, a Delaware corporation.

“Assets and Properties” of any Person, means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto, owned, leased or subleased by such Person, including without limitation cash, cash equivalents, Investment Assets, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, Licenses, real estate, equipment, inventory, goods and Intellectual Property.

“Audited Financial Statement Date” means, as to any Person, the last day of the most recent fiscal year of such for which audited financial statements are delivered pursuant to this Agreement.

“Benefits Covered Employee” means any former employee of one of Arch of Kentucky, Arch of Alabama, Sharples Coal Company, Zapata Coal Company, Arch of Illinois, Arch on the Green, Old Hickory Coal Company or Dal-Tex Coal Company who (1) by virtue of their employment by one of the foregoing entities under the NBCWA or its predecessor agreements is, or becomes entitled to receive retiree medical benefits, or (2) is a former salaried employee of one of the foregoing entities who is currently receiving retiree medical benefits by virtue of that employment.

“Blue Creek Lease” means the Lease Agreement and Option to Purchase to be entered into between Ark Land and Robin Land, in substantially the forms attached as Exhibits B and C.

“Bonds” means all cash (or cash equivalent) and surety bonds posted by or for the benefit of any of the Arch Companies to secure the performance of their respective reclamation or other obligations pursuant to, in connection with or as a condition of the licenses held by any of them.

“Books and Records” means, with respect to each Arch Company or Trout Company, as applicable, all files, documents, instruments, papers, books and records pertaining thereto, including without limitation financial statements, Tax Returns and related work papers and letters from accountants, budgets, pricing guidelines, ledgers, journals, deeds, title policies, minute books, stock certificates and books, stock transfer ledgers, Contracts, Licenses, customer lists, computer files and programs, retrieval programs, operating data and plans and environmental studies and plans.

“Capital Lease” means, as applied to any Person, any lease of property, whether real, personal or mixed by that Person as lessee which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Cash Balance” has the meaning assigned to such term in Section 6.2(k).

“Catenary” means Catenary Coal Company, LLC, a Delaware limited liability company and its predecessor, Catenary Coal Company, a Delaware corporation.

“Catenary Properties” means the properties identified as being owned, leased or subleased by any Arch Company on the map attached hereto as Exhibit D and the facilities

located thereon and the equipment the book value of which is in excess of \$100,000 identified as being owned, leased or subleased by Catenary on Schedule 1.1(b).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the rules and regulations promulgated thereunder.

“CERCLIS” means the Comprehensive Environmental Response and Liability Information System, as provided for by 40 C.F.R. §300.5.

“Closing” has the meaning assigned to such term in Section 5.1.

“Closing Date” means the date on which all of the conditions set forth in Article V shall have been completed.

“Coal Act” means the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq.

“Coal Act Benefits” means any and all liabilities of the Company with respect to the Benefits Covered Employees under the Coal Act.

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Common Stock” has the meaning assigned to such term in Section 4.1.

“Company” has the meaning assigned to such term in the preamble.

“Company Material Adverse Effect” means a material adverse effect on the performance, operations, business, property, assets, liabilities, or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole; **provided** that the term “Company Material Adverse Effect” shall exclude any effect (a) resulting from changes in general United States economic and political conditions (including changes in commodity prices, interest rates and/or currency exchange rates), or applicable Law and generally accepted accounting principles that do not disproportionately affect the Company and its Subsidiaries, or (b) resulting from changes affecting companies in the United States coal mining industry generally, in each case, that do not disproportionately affect the Company and its Subsidiaries.

“Confidentiality Agreement” means the Agreement of Confidentiality entered into on the 21st day of January, 2005 by and between Arch and ArcLight Capital Holdings, LLC.

“Contract” means any agreement, lease, sublease, license, deed of trust, evidence of Indebtedness, mortgage, indenture, security agreement or other contract (whether written or oral).

“Contributors” means Arch and the Trout Contributors.

“Conveyed Equity Interests” means the Arch Equity Interests and the Trout Equity Interests.

“Conveying Documents” means every deed, bill of sale, security or other conveyance document executed in connection with the transactions contemplated by this Agreement.

“Covered Employee” has the meaning assigned to such term in Section 6.3.

“Dakota” means Dakota LLC, a West Virginia limited liability company.

“Dakota Debt” has the meaning assigned to such term in Section 2.1.

“Damages” has the meaning assigned to such term in Section 10.3.

“Elliott” has the meaning assigned to such term in the preamble.

“Employee Benefits” means the Coal Act Benefits and the Workers’ Compensation Benefits.

“Environmental Claim” means, with respect to any Person, any written notice, claim, demand or other communication (collectively, a **“claim”**) by any other Person alleging or asserting such Person’s liability for investigatory costs, cleanup costs, Governmental or Regulatory Authority response costs, damages to natural resources or other property, personal injuries, fines or penalties arising out of, based on or resulting from (a) the presence, or Release into the environment, of any Hazardous Material at any location, whether or not owned by such Person, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. The term “Environmental Claim” shall include, without limitation, any claim by any Governmental or Regulatory Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Law” means any Law or Order relating to the regulation or protection of human health, safety or the environment (including Surface Mining Control and Reclamation Act of 1977, as amended (or any comparable state statute)) or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment (including, without limitation, ambient air, soil, surface water, ground water, wetlands, land or subsurface strata), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means each member of a controlled group (as defined in ERISA Section 4001(a)(14)(A)) of which an entity is a member and which is under common control (within the meaning of ERISA Section 4001(a)(14)(B) and the regulations thereunder) with such entity.

“Execution Date” means the date by which the last party hereto has executed this Agreement.

“Executive Officer” means, as to any Person, any authorized officer of such Person.

“GAAP” means generally accepted accounting principles in effect in the United States from time to time including, where appropriate, generally accepted auditing standards, including, without limitation, the pronouncements and interpretations of appropriate accountancy administrative bodies, applied on a consistent basis both as to classification of item and amounts.

“Governmental or Regulatory Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision.

“Hazardous Material” means (A) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); (B) any chemicals or other materials or substances which are now included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar import under any Environmental Law; and (C) any other chemical or other material or substance, exposure to which is now limited or regulated by any Governmental or Regulatory Authority under any Environmental Law.

“Hobet” means Hobet Mining, LLC, a Delaware limited liability company and its predecessor, Hobet Mining, Inc. a West Virginia corporation.

“Hobet Properties” means the properties identified as being owned, leased or subleased by any Arch Company on the map attached hereto as Exhibit E and the facilities located thereon and the equipment the book value of which is in excess of \$100,000 identified as being owned, leased or subleased by Hobet on Schedule 1.1(c)

“Hobet VEBA” has the meaning assigned to that term in the preamble.

“HSR Act” means Section 7A of the Clayton Act (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended) and the rules and regulations promulgated thereunder.

“Income Taxes” means any Taxes imposed upon or measured by net income or gross income (excluding any Tax based solely on gross receipts) including any interest, penalty or additions thereto.

“Indebtedness” means and includes, as to any Person, without duplication, (a) obligations for borrowed money which has been incurred in connection with the acquisition of property or assets or for the deferred payment of the cost of construction or improvement thereof or for the deferred purchase price of property (other than current accounts payable), (b)

obligations secured by a Lien or other charge upon property or assets of such Person, (c) obligations for the deferred purchase price of property created or arising under any conditional sale or other title retention agreement with respect to property acquired notwithstanding the fact that the rights and remedies of the seller, bank or lessor under such agreement in the event of default are limited to repossession or sale of the property (d) obligations (other than obligations under any lease which is not a Capital Lease in accordance with GAAP and obligations in an amount equal to the demand component of any contract providing for usual and customary, utility services, including gas, water, electricity and wastewater treatment services) to purchase any property or services made regardless of whether such property is delivered or such services are performed, except that no obligation shall constitute Indebtedness solely because the contract provides for liquidated damages or reimbursement of expenses following cancellation, (e) all Indebtedness of any other Person guaranteed by such Person, (f) all Capital Leases entered into or assumed, (g) obligations in respect of letters of credit but, only to the extent that, the letter of credit does not support an obligation already included in Indebtedness or which would constitute a current account payable of such Person, (h) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property) and (i) all obligations in respect of any hedging agreement.

“Indemnified Party” has the meaning assigned to such term in Section 10.3 (i).

“Indemnifying Party” has the meaning assigned to such term in Section 10.3(h).

“Infinity” means Infinity Coal Sales LLC, a West Virginia limited liability company.

“Intellectual Property” means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights.

“Investment Assets” means, as to any Person, all debentures, notes and other evidences of Indebtedness, stocks, securities (including rights to purchase and securities convertible into or exchangeable for other securities), interests in joint ventures and general and limited partnerships, mortgage loans and other investment or portfolio assets owned of record or beneficially by such Person and issued by any Person other than such Person (other than trade receivables generated in the ordinary course of business of such Person).

“IPO” means the initial public offering of the shares of Common Stock of the Company as contemplated in the Registration Statement referred to in Section 5.4(d).

“Jupiter” means Jupiter Holdings LLC, a West Virginia limited liability company.

“Knowledge” or **“Known”** means (a) as to Arch, the actual knowledge of any of the individuals listed on Schedule 1.1(d) and what such individual would reasonably be expected to have known after reasonable inquiry within the scope of such individual’s job responsibilities, (b) as to ArcLight, the actual knowledge of any of the individuals listed on Schedule 1.1(e) and what such individual would reasonably be expected to have known after reasonable inquiry within the scope of such individual’s job responsibilities and (c) as to Elliott, the actual knowledge of Elliott and what Elliott would reasonably be expected to have known after reasonable inquiry within the scope of his job responsibilities.

“Laws” means any and all laws, statutes, ordinances, rules or regulations promulgated by a Governmental or Regulatory Authority.

“Liabilities” means all Indebtedness, obligations and other liabilities of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“Licenses” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

“Lien” means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

“Little Creek” means Little Creek LLC, a West Virginia limited liability company.

“Loss” or **“Losses”** means any and all damages, fines, fees, penalties, deficiencies, losses and expenses (including without limitation interest (at the rate of interest per annum publicly announced from time to time by Citibank, N.A. as its prime rate in effect at its principal office in New York City plus one percent from the date the Loss occurred through the date of payment in full thereof), court costs, reasonable fees of attorneys, accountants and other experts or other expenses of litigation or other proceedings or of any claim, default or assessment).

“Master Coal Sales and Services Agreement” means the Master Coal Sales and Services Agreement to be entered into between Arch Coal Sales and TC Sales, in form and substance mutually acceptable to Arch and the Company.

“Material Books and Records” means the Books and Records identified on Schedule 1.1(f).

“Mine Properties” means the Arch Mine Properties and the Trout Mine Properties.

“Multiemployer Plan” means multiemployer pension or benefit plans within the meaning of Section 3(37) of ERISA or Sections 9702(a)(3)(C) or 9712(a)(2)(C) of the Code.

“**NBCWA**” means the National Bituminous Coal Wage Agreement of 2002, any amendments thereto, and all documents incorporated by reference therein.

“**NPL**” means the National Priorities List under CERCLA.

“**Option**” means with respect to any Person means any security, right, subscription, warrant, option, “phantom” stock right or other Contract that gives the right to (i) purchase or otherwise receive or be issued any membership interests of such Person or any security of any kind convertible into or exchangeable or exercisable for any membership interests of such Person or (ii) receive or exercise any benefits or rights similar to any rights enjoyed by or accruing to the holder of membership interests of such Person, including any rights to participate in the equity or income of such Person or to participate in or direct the election of any directors or officers of such Person or the manner in which any membership interests of such Person are voted.

“**Order**” means any writ, judgment, decree, cessation order, notice of violation requiring steps to abate a violation, injunction or similar order of any Governmental or Regulatory Authority.

“**Panther**” means Panther LLC, a West Virginia limited liability company.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Permit Assignment and Assumption Agreements**” means one or more Permit Assignment and Assumption Agreements in substantially the form of Exhibit G.

“**Permitted Lien**” means (a) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (b) pledges and deposits made in the ordinary course of business in connection with workman’s compensation, unemployment insurance and social security benefits, (c) deposits made in the ordinary course of business securing the performance of bids, trade contracts, leases, statutory obligations, surety, customs and appeal bonds and other obligations of like nature incurred as or incidental to and in the ordinary course of business, (d) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a Liability that is not yet due or delinquent, (e) any imperfection of title or similar Lien, (f) any terms and conditions included in any Contracts relating to the applicable Assets and Properties, (g) easements, zoning restrictions, rights-of-way, encroachments and similar encumbrances on real property imposed by law or arising in the ordinary course of business or which are necessary or desirable in connection with the business or the development thereof and (h) any Lien that would be apparent from a physical inspection of the applicable Assets and Properties; **provided** (i) that the term “Permitted Lien” shall not include any Lien securing Indebtedness and (ii) in the case of Liens described in clauses (e), (f), (g) and (h) above, such Liens individually or in the aggregate with other such Liens do not materially impair the value of the Assets and Properties subject to such Lien or the use of such Assets and Properties in the conduct of the business of any of the Arch Companies or the Trout Companies as the case may be.

“ Person ” means any natural person, corporation, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

“ Plan ” means any employment, bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, sick pay, workmen’s compensation or other insurance, severance, separation, fringe benefit or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, including, but not limited to, any “employee benefit plan” within the meaning of Section 3(3) of ERISA.

“ Prospectus ” means the prospectus included in the Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all amendments (including post-effective amendments) and including all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

“ Registration Rights Agreement ” means the Registration Rights Agreement to be entered into among the Company, Arch and the Trout Contributor, in form and substance mutually acceptable to the parties hereto.

“ Registration Statement ” has the meaning assigned to such term in Section 5.4(d).

“ Release ” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

“ Remington ” means Remington LLC, a West Virginia limited liability company.

“ Remington Holdings ” means Remington Holdings LLC, a West Virginia limited liability company.

“ Retention Agreements ” means the retention agreements relating to those employees of Hobet, Apogee and Catenary, a list of whom has been previously provided to the Company by Arch, that remain employees immediately after giving effect to the Closing and under which the aggregate liability to all such employees does not exceed \$2,197,871.

“ Robin Land ” means Robin Land Company, LLC, a Delaware limited liability company that will be formed prior to Closing.

“ Robin Properties ” means those properties described on Schedule 1.1(g).

“ Securities Act ” means the Securities Act of 1933, as amended.

“ Securities Exchange Act ” means the Securities Exchange Act of 1934, as amended.

“ Shared Expenses ” means the fees and expenses (if any) of Skadden, Arps, Slate, Meagher & Flom LLP, Latham & Watkins, Ernst & Young, Weir, Russell Reynolds Associates, Global Resources, Lehman Brothers Inc., Citigroup Global Markets Inc. and such other expenses as may be agreed from time to time by the Trout Contributors and Arch.

“ Specified Arch Affiliates ” means Ark Land, Allegheny, Arch Coal Sales and the Arch Holding Companies.

“ Subsidiary ” means, with respect to any Person (the **“ Parent ”**) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with generally accepted accounting principles in the United States as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, **“ Subsidiary ”** includes direct and indirect Subsidiaries.

“ Tax Benefit ” has the meaning assigned to such term set forth in Section 11.2(e).

“ Tax Return ” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

“ Taxes ” means all taxes, including all charges, fees, duties, levies or other assessments in the nature of taxes, imposed by any federal, state, local or foreign law or Governmental or Regulatory Authority, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, inheritance, corporation, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp, goods and services, ad valorem, utility, utility users and other taxes, and shall include interest, penalties or additions to tax (whether or not disputed) attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns.

“ TC Sales ” means TC Sales Company, LLC, a Delaware limited liability company that will be formed prior to Closing.

“ TC Sales Agreements ” means those agreements described on Schedule 1.1(h).

“ Transaction Documents ” has the meaning assigned to such term in Section 5.4(e).

“Transition Services Agreement” means the Transition Services Agreement to be entered into between Arch and the Company covering such matters as described in the term sheet attached as Exhibit H.

“Trout I” means Trout Coal Holdings, LLC, a Delaware limited liability company.

“Trout II” means New Trout Coal Holdings II, LLC, a Delaware limited liability company that will be formed prior to Closing.

“Trout Benefit Plan” has the meaning assigned to such term in Section 4.3.14.

“Trout Companies” means Trout I, Trout II, Brook Trout, Remington Holdings and each of the Subsidiaries of Trout II, Brook Trout and Remington Holdings.

“Trout Contributors” has the meaning assigned to such term in the preamble.

“Trout Debt” has the meaning assigned to such term in Section 2.1.

“Trout Equity Interests” has the meaning assigned to such term in Section 2.1.

“Trout ERISA Entities” has the meaning assigned to such term in Section 4.3.14.

“Trout Material Adverse Effect” means a material adverse effect on the performance, operations, business, property, assets, liabilities, or condition (financial or otherwise) of the Trout Companies taken as a whole; **provided** however that the term “Trout Material Adverse Effect” shall exclude any effect (i) resulting from changes in general United States economic and political conditions (including changes in commodity prices, interest rates and/or currency exchange rates), or applicable Law and generally accepted accounting principles that do not disproportionately affect the Trout Companies, or (ii) resulting from changes affecting companies in the United States coal mining industry generally, in each case, that do not disproportionately affect the Trout Companies.

“Trout Mine Properties” means the mines located on the Trout Properties.

“Trout Properties” means the properties identified as being owned, leased or subleased by any Trout Company on the maps attached hereto as Exhibits I and J and the facilities located thereon and the equipment the book value of which is in excess of \$100,000 identified as being owned, leased or subleased by any Trout Company on Schedule 1.1(i).

“Trout Reorganization Transactions” has the meaning assigned to such term in the preamble to this Agreement.

“Trout Taxes” has the meaning assigned to such term in Section 11.2.

“Trout Unaudited Financial Statements” has the meaning assigned to such term in Section 4.3.8 (b).

“Unaudited Financial Statement Date” means, as to any Person, June 30, 2005.

“Underlying Assets” means, as to the Arch Equity Interests, the Assets and Properties of each of the Arch Companies, and, as to the Trout Equity Interests, the Assets and Properties of each of the Trout Companies.

“Warranty Breach” has the meaning assigned to such term in Section 10.3.

“Weir” means Weir International Mining Consultants, Inc.

“Wildcat” means Wildcat LLC, a West Virginia limited liability company.

“Workers’ Compensation Benefits” has the meaning assigned to such term in Section 10.3(h).

1.2 Interpretation.

In this Agreement:

(a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

(c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(d) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(e) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as, from time to time, amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein);

(f) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns;

(g) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(h) all references herein to Sections and Schedules shall be construed to refer to sections of, and Schedules to, this Agreement unless otherwise indicated; and

(i) the headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

1.3 Schedules and Exhibits.

The Schedules and Exhibits listed in Appendix A are attached hereto. Each of such Schedules and Exhibits constitutes an integral part of this Agreement and is incorporated by reference herein and any reference to this "Agreement" shall include such Schedules and Exhibits.

ARTICLE II Contributions; Closing

Upon the terms and subject to the conditions of this Agreement, on the Closing Date, each Contributor agrees to sell, convey, transfer or deliver (or cause the sale, transfer, conveyance or delivery) to the Company, free and clear of all Liens, as follows

2.1 Contribution by Trout Contributors to the Company of Trout Equity Interests.

Each Trout Contributor hereby agrees to contribute, transfer and assign to the Company all of its right, title and interest in and to (a) all the membership interests, and all rights relating thereto, in Trout I (collectively for both Trout Contributors, the "**Trout I Equity Interests**") and (b) all the membership interests, and all rights relating thereto, in Trout II (collectively for both Trout Contributors, the "**Trout II Equity Interests**" and, together with the Trout I Equity Interests, the "**Trout Equity Interests**"), and the Company hereby agrees to accept the Trout Equity Interests, as a capital contribution and in exchange for an assumption by the Company of the debt currently held by Trout I as more particularly described in Schedule 2.1 (the "**Trout Debt**") and the debt currently held by Dakota as more particularly described in Schedule 2.1 (the "**Dakota Debt**"), in exchange for (i) in the case of ArcLight, shares of common stock of the Company, representing 60.9% of the issued and outstanding shares of common stock of the Company immediately following such contribution and (ii) in the case of Elliott, shares of common stock of the Company, representing 1.6% of the issued and outstanding shares of common stock of the Company immediately following such contribution.

2.2 Contribution by Arch to the Company of Arch Equity Interests.

Arch hereby agrees to contribute, transfer and assign, and cause the Arch Holding Companies to contribute, transfer and assign, to the Company all of its or their respective right, title and interest in, to and under the membership interests, and all rights relating thereto, of TC Sales, Robin Land, Catenary Coal Company, LLC, Apogee Coal Company, LLC and Hobet Mining, LLC and the Company hereby agrees to accept such membership interests and rights relating thereto, as a capital contribution in exchange, in the aggregate, for shares of common stock of the Company issued to Arch and the Arch Holding Companies (in such amounts as determined by Arch prior to the Closing), representing 37.5% of the issued and outstanding shares of common stock of the Company immediately following such contribution.

ARTICLE III
Assumptions of Certain Liabilities

Upon the terms and subject to the conditions of this Agreement, the Company agrees on the Closing Date to assume the following obligations:

3.1 Assumption by the Company of the Trout Debt.

The Company hereby agrees to assume and agrees to duly and timely pay, perform and discharge the Trout Debt, to the full extent that Trout I and Dakota had been heretofore or would have been in the future obligated to pay, perform and discharge the Trout Debt were it not for the execution and delivery of this Agreement; **provided** however that said assumption and agreement to duly and timely pay, perform and discharge the Trout Debt shall not (a) increase the obligation of the Company with respect to the Trout Debt beyond that of Trout I and Dakota as of the Closing Date, (b) waive any valid defense that was available to Trout I or Dakota with respect to the Trout Debt or (c) increase any rights or remedies of any third party with respect to the Trout Debt.

ARTICLE IV
Representations and Warranties; Limitations

4.1 Company Representations.

The Company represents and warrants to the Contributors:

(a) On or prior to the Closing, the authorized capital stock of the Company will consist of at least 20,000 shares of common stock, par value \$0.01 per share (the "**Common Stock**") and 5,000 shares of preferred stock, par value \$0.01 per share.

(b) All the outstanding shares of capital stock of the Company have been duly and validly issued and are fully paid and non-assessable, and were issued in accordance with the registration or qualification requirements of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom. Upon issuance, sale and delivery and upon receipt by the Company of the Conveyed Equity Interests as contemplated by this Agreement, the shares of Common Stock to be issued to the Contributors pursuant to Sections 2.1 and 2.2 will be duly authorized, validly issued, fully paid and non-assessable shares of Common Stock of the Company, free of all preemptive or similar rights.

(c) On the Closing Date, except as described on Schedule 4.1(c), there will be no shares of Common Stock or any other equity security of the Company issuable upon conversion or exchange of any security of the Company outstanding nor will there be any rights, options or warrants outstanding or other agreements to acquire shares of Common Stock nor will the Company be contractually obligated to purchase, redeem or otherwise

acquire any of its outstanding shares. No stockholder of the Company is entitled to any preemptive or similar rights to subscribe for shares of capital stock of the Company.

(d) The Company is a corporation duly organized, validly existing and in good standing under the Law of the State of Delaware. The Company has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified could not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(e) The execution and delivery by the Company of this Agreement, and the performance by the Company of its obligations hereunder, have been duly and validly authorized and no other action on the part of the Company is necessary.

(f) This Agreement has been duly and validly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(g) Except as set forth in Schedule 4.1(g), no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority or any other Person on the part of the Company is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(h) The execution and delivery by the Company of this Agreement do not, and the performance by it of its obligations under this Agreement and the consummation of the transactions contemplated hereby, will not:

(i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or bylaws of the Company;

(ii) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to it or its Assets and Properties to the extent that such conflict, violation or breach would reasonably be expected, individually or in the aggregate, to result in a Company Material Adverse Effect; or

(iii) (A) conflict with or result in a violation or breach of, (B) constitute (with or without notice or lapse of time or both) a default under, (C) require the Company to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (D) result in or

give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (E) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or (F) result in the creation or imposition of any Lien upon the Company or any of its Assets and Properties under, any Contract or License to which the Company is a party or by which any of its Assets and Properties is bound, that in the case of clauses (A), (B) and (C) would reasonably be expected, individually or in the aggregate, to result in a Company Material Adverse Effect.

4.2 Arch Representations.

Arch represents and warrants to the Trout Contributors and the Company:

Capacity; Organization

4.2.1 (a) Arch is a corporation duly incorporated, validly existing and in good standing under the Law of the State of Delaware. Arch has the requisite corporate power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, and (a) on the Execution Date, to perform its obligations hereunder and to consummate the transactions contemplated hereby other than those contemplated to occur on the Closing Date and (b) on the Closing Date, to perform its obligations hereunder and under each of the other Transaction Documents to which it is or will be a party and to consummate the transactions contemplated hereby and thereby contemplated to occur on or prior to the Closing Date.

(b) On the Closing Date, each of the Arch Companies will be a limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization.

(c) Each of the Arch Companies is duly qualified to do business as a foreign limited liability company, as applicable, and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified could not, individually or in the aggregate, have an Arch Material Adverse Effect. (i) On or prior to the Execution Date, Arch has delivered to the Trout Contributors true and complete copies of the certificate of incorporation and bylaws of Apogee, Hobet and Catenary as in effect on the date of execution of this Agreement and (ii) on or prior to the Closing Date, Arch will have delivered the certificate of formation and limited liability company agreement or similar agreement of each Arch Company as in effect on the Closing Date.

Authority

4.2.2 (a) The execution and delivery by Arch of this Agreement and each of the other Transaction Documents to which it is or will be a party, and the performance by Arch of its obligations hereunder and thereunder, have

been duly and validly authorized and no other action on the part of it is necessary.

(b) This Agreement has been, and at Closing, each of the other Transaction Documents to which it will be a party will have been, duly and validly executed and delivered by Arch, and upon the execution and delivery by Arch of each, this Agreement, and each of the other Transaction Documents to which it will be a party will constitute, a legal, valid and binding obligation of Arch, enforceable against Arch in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

Membership Interests

4.2.3 The membership interests of each Arch Company is or at the time of the Closing will be duly authorized, validly issued and outstanding. Arch or the Arch Holding Companies owns or at the time of the Closing will own all right, title and interest in the membership interests in the Arch Companies, in each case beneficially and of record, free and clear of all Liens. Upon the delivery to the Company in the State of New York of a certificate or certificates at the Closing representing the membership interests comprising the Arch Equity Interests, such certificate or certificates either (a) indorsed to the Company or in blank by an effective indorsement or (b) registered in the name of the Company, Arch will transfer or cause to be transferred to the Company good and valid title thereto, free and clear of all Liens and, assuming the Company has no notice of any adverse claim with respect to the certificate or certificates, the Company will acquire such certificate or certificates (and the membership interests represented thereby) free of any adverse claims under Section 8-303 of the Uniform Commercial Code as in effect on the date thereof in the State of New York.

Coal Mining Interests and Real Property

4.2.4 (a) At the time of Closing, one or more of the Arch Companies will have sole right, title and interest in leases or subleases or good and marketable title to fee simple ownership rights in all of the Apogee Properties, Catenary Properties and Hobet Properties to the extent identified on the maps referred to in the definitions of Apogee Properties, Catenary Properties and Hobet Properties, respectively, in each case free from any Liens, other than Permitted Liens, and other than Assets and Properties that are disposed of in compliance with Section 6.2(d)(ix). Attached to as Exhibits A, D and E are true and complete copies of the maps for each of the Apogee Properties, Catenary Properties and Hobet

Properties. Schedule 4.2.4(a) contains a true and complete list of (i) each parcel of real property shown on such maps that will be owned by an Arch Company as of Closing, (ii) each parcel of real property shown on such maps that will be leased or subleased by one of the Arch Companies (as lessor or lessee or sublessor or sublessee) at the time of Closing, including the names of the relevant lessor and lessee or sublessor or sublessee, and the date of the lease or sublease and (iii) all Liens other than (A) Permitted Liens relating to or affecting any parcel of real property referred to in clause (i) or (ii) and (B) any leases or subleases listed under subsection (ii) of Schedule 4.2.4(a). Except for the real property leased to others referred to in clause (ii), at the time of Closing each Arch Company will be in possession of each parcel of real property that will be owned, leased or subleased by it, together with all buildings, structures, facilities, fixtures and other improvements thereon. At the time of Closing, each Arch Company will have adequate rights of ingress and egress with respect to each such parcel and all buildings, structures, facilities, fixtures and other improvements thereon.

(b) Except as set forth in Schedule 4.2.4(b), at the time of Closing the ownership or leasehold rights described in paragraph (a) above will afford the Arch Companies the right to extract and sell coal from the Arch Mine Properties (with respect to leased or subleased property, as to coal covered by such leases or subleases) in a manner consistent with how the Arch Mine Properties are currently being operated and as they were operated during the period covered by the Arch Unaudited Financial Statements. As of Closing, the real property described in said Schedule includes all real estate ownership and leasehold rights necessary to fully pursue all mining and reclamation activities authorized under the Licenses currently held by the Arch Companies.

(c) Each lease or sublease referred to in clause (ii) of paragraph (a) above is a legal, valid and binding agreement, enforceable in accordance with its terms, of an Arch Company and, to the Knowledge of Arch, of each other Person that is a party thereto (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and except as set forth in Schedule 4.2.4(c)(1), there is no, and none of Arch, any Arch Company or any of the Specified Arch Affiliates has received notice of any, default (or any condition or event which, after notice or lapse of time or both, would constitute a default) or termination thereunder or in respect thereof. No Arch Company owes any brokerage commissions with respect to any such leased space. The amounts of prepaid royalties and rentals available for recoupment as of June 30, 2005 are listed by lease on Schedule 4.2.4(c)(2).

(d) Arch has delivered to the Trout Contributors prior to the execution of this Agreement true and complete copies in all material respects of (i) all deeds and similar documents, and all amendments thereof, with respect to the real property shown on Schedule 4.2.4(a)(i), and (ii) all leases and subleases (including any amendments and renewal letters) and, to the extent reasonably available, all other documents referred to in clause (i) of this paragraph (d) with respect to the real property shown on Schedule 4.2.4(a)(ii).

(e) Except as disclosed in Schedule 4.2.4(e), no tenant or other party in possession of any of the real properties owned by the Arch Companies, has any right to purchase, or holds any right of first refusal to purchase, such properties.

(f) Except with respect to the real property leased to others set forth in subsection (ii) of Schedule 4.2.4(a), and except as disclosed in Schedule 4.2.4(f), the improvements on the real property identified in subsections (i) and (ii) of Schedule 4.2.4(a) are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are adequate and suitable for the purposes for which they are presently being used and there are no condemnation or appropriation proceedings pending or, to the Knowledge of Arch, threatened against any of such real property or the improvements thereon.

No Conflicts

4.2.5 The execution and delivery by Arch of this Agreement do not, and the performance by Arch of its obligations under this Agreement and the consummation of the transactions contemplated hereby, will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or bylaws of Arch or any of the Arch Holding Companies;

(b) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed in Schedule 4.2.5(b), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Arch or any Arch Company or any of their respective Assets and Properties to the extent that such conflict, violation or breach would reasonably be expected, individually or in the aggregate, to result in an Arch Material Adverse Effect; or

(c) except as set forth on Schedule 4.2.5(c), (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require Arch or any Arch Company to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or

give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (v) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or (vi) result in the creation or imposition of any Lien upon any Arch Company or any of its Assets and Properties under, any material Contract to which an Arch Company is a party or by which any of their respective material Assets and Properties are bound, that in the case of clauses (i), (ii) and (iii) would reasonably be expected, individually or in the aggregate, to result in an Arch Material Adverse Effect.

Governmental Approvals and Filings

4.2.6 Except as disclosed in Schedule 4.2.6, no consent, approval, authorization, order or action of, filing or registration with or notice under Law or with to any Governmental or Regulatory Authority or any other Person on the part of Arch or any Arch Company is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

Books and Records

4.2.7 (a) The Books and Records relating to the Arch Companies are complete and correct in all material respects and have been maintained in accordance with Law, sound business practices and applicable accounting rules.

(b) On the Closing Date, no Arch Company will have any of its Material Books and Records recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of such Arch Company.

Financial Statements

4.2.8 Prior to the execution of this Agreement, Arch has delivered to the Trout Contributors complete copies of the following financial statements:

(a) the actual audited Arch Coal, Inc. Contributed Properties Financial Statements for each of the fiscal years ended December 31, 2002, December 31, 2003 and December 31, 2004, together with a true and complete copy of the report on such audited information by Ernst & Young LLP, and

(b) the actual unaudited Arch Coal, Inc. Contributed Properties Financial Statements for the six month period ended (i) June 30, 2004 and (ii) June

30, 2005 (such financial statements in clause (ii) shall be referred to as the “*Arch Unaudited Financial Statements*”); and

Such financial statements (i) were prepared in accordance with GAAP, consistently applied (except as clearly set forth in the notes thereto); and (ii) fairly present, in all material respects, the financial condition, results of operations and cash flows, and changes in financial position of the Arch Companies as of the dates indicated and for the periods then ended (except, in the case of the unaudited financial statements, for normal year-end adjustments consistent with past practice and which are not, in the aggregate, material).

Absence of Changes

- 4.2.9 Since the date of the Audited Financial Statement Date there has not been any Arch Material Adverse Effect. Without limiting the foregoing, except as disclosed in Schedule 4.2.9 and except for the execution and delivery of this Agreement and the Arch Reorganization Transactions, there has not occurred between the Unaudited Financial Statement Date and the Execution Date:
- (a) (i) any increase of more than \$5,000,000 in the aggregate salaries, wages or other compensation of officers, employees or consultants of the Arch Companies; (ii) any adoption, entering into or becoming bound by any Plan, employment-related Contract or collective bargaining agreement, or amendment, modification or termination (partial or complete) of any Plan, employment-related Contract or collective bargaining agreement, except to the extent required by applicable Law; or (iii) any entering into an agreement or making of a representation to employees of the Arch Companies or any request or demand by employees of the Arch Companies to provide future increases in benefit levels (or create new benefits) with respect to any Plan, under circumstances which make it reasonable to expect that such increases would be granted or such benefits created;
 - (b) any declaration, setting aside or payment of any dividend or other distribution in respect of the equity interests of any Arch Company, or any direct or indirect redemption, purchase or other acquisition by any Arch Company of any such equity interests or of any Option with respect to any Arch Company;
 - (c) any authorization, issuance, sale or other disposition by any Arch Company of any equity interests of or Option with respect to any Arch Company, or any modification or amendment of any right of any holder of any outstanding equity interests of or Option with respect to any Arch Company;

- (d) (i) any incurrence by the Arch Companies of Indebtedness in an aggregate amount exceeding \$8,000,000 (net of any amounts discharged during such period), or (ii) any voluntary purchase, cancellation, prepayment or complete or partial discharge in advance of a scheduled payment date with respect to, or waiver of any right of any Arch Company under, any Indebtedness of or owing to any Arch Company;
- (e) any physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the plant, real or personal property or equipment of any Arch Company in an aggregate amount exceeding \$5,000,000;
- (f) any material change in (i) any pricing, investment, accounting, financial reporting, inventory, credit, allowance or Tax practice or policy of any Arch Company, (ii) any method of calculating any bad debt, contingency or other reserve of any Arch Company for accounting, financial reporting or Tax purposes, or any change in the fiscal year of any Arch Company;
- (g) any write-off or write-down of or any determination to write off or write down any of the Assets and Properties of any Arch Company in an aggregate amount exceeding \$5,000,000 other than depreciation in the ordinary course of business of such Arch Company);
- (h) any acquisition or disposition of, or incurrence of a Lien other than a Permitted Lien) on, any Assets and Properties of any Arch Company, other than in the ordinary course of business consistent with past practice;
- (i) any (i) amendment of the operating agreement of any Arch Company, (ii) recapitalization, reorganization, liquidation or dissolution of any Arch Company or (iii) merger or other business combination involving any Arch Company and any other Person;
- (j) other than in the ordinary course of business consistent with past practice, any entering into, amendment, modification, termination (partial or complete) or granting of a waiver under or giving any consent with respect to (i) any Contract that is required to be disclosed in the Schedule 4.2.18(a) or (ii) any License held by any Arch Company;
- (k) capital expenditures or commitments for additions to property, plant or equipment of the Arch Companies constituting capital assets in an aggregate amount exceeding \$10,000,000;
- (l) any commencement or termination by any Arch Company of any line of business;
- (m) any transaction by any Arch Company with Arch, and officer, director or Affiliate (other than any Arch Company) of Arch (i) outside the

ordinary course of business consistent with past practice or (ii) other than on an arm's length basis;

(n) any transaction by any Arch Company involving (i) the sale, lease, transfer or other disposal of any of its Assets and Properties, except for inventory sold in the ordinary course of business, or (ii) the waiver or release of any right of substantial value;

(o) any change in the relations with any Arch Company's employees, agents, customers or suppliers or with any Governmental or Regulatory Authority or any self-regulatory organizations that would be reasonably likely, individually or in the aggregate, to result in an Arch Material Adverse Effect;

(p) any institution, settlement or agreement to settle any Action or Proceeding involving any Arch Company or any of their respective Assets and Properties, business or operations outside of the ordinary course of business consistent with past practice;

(q) (i) any failure by any Arch Company to replenish its respective inventories and supplies in a normal and customary manner consistent with its prior practice and prudent business practices prevailing in the industry, (ii) any purchase commitment in excess of the normal, ordinary and usual requirements of its business or at any price in excess of the current market price or on terms more onerous than those usual and customary in the industry, or (iii) any change in its selling, pricing, advertising or personnel practices inconsistent with its prior practice and prudent business practices prevailing in the industry;

(r) any change in the banking or safe deposit arrangements of any Arch Company;

(s) any labor union organizing activity, any actual or threatened employee strikes, work stoppages, slow-downs or lock-outs, or any material change in any Arch Company's relations with such Arch Company's employees, customers, agents or suppliers or with any Governmental or Regulatory Authority;

(t) any transfer or granting of rights under, or entering into any settlement regarding the breach or infringement of any License or Intellectual Property rights or modified any existing rights with respect thereto;

(u) additional contingent liabilities in an aggregate of \$5,000,000 or more;

(v) additional bonding obligations in the aggregate of \$5,000,000;

- (w) any entering into of a Contract to do or engage in any of the foregoing after the Execution Date;
- (x) any other transaction involving or development affecting any Arch Company outside the ordinary course of business consistent with past practice;
- (y) any material change in the working capital balance of the Arch Companies in the aggregate; or
- (z) any notice from Ernst & Young of (A) any material deficiencies in the design or operation of internal controls that could materially adversely affect the ability of Arch to record, process, summarize and report financial data, or any material weaknesses in internal controls or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of Arch.

No Undisclosed Liabilities

4.2.10 To Arch's Knowledge, except as reflected or reserved against in either the balance sheet included in the audited financial statements or the Arch Unaudited Financial Statements or in the notes thereto or as disclosed in Schedule 4.2.10, there are no Liabilities of any Arch Company required by GAAP to be reflected on its balance sheet, other than Liabilities (a) incurred in the ordinary course of business consistent with past practice and (b) which, in the aggregate, would not reasonably be expected to have an Arch Material Adverse Effect. As of the Closing, the Arch Companies will have been fully released from any and all Liabilities of any kind under or in respect of the Arch Credit Agreement, and none of the Assets and Properties of the Arch Companies will be subject to any Liens securing the Liabilities under the Arch Credit Agreement.

Taxes

4.2.11 Except as disclosed in Schedule 4.2.11 (with paragraph references corresponding to those set forth below):

- (a) Each Arch Company has filed all Tax Returns required to be filed by it, and it duly paid in full all Taxes owed by it (whether or not shown on such Tax Returns). All such Tax Returns were complete and correct in all material respects.
- (b) Each Arch Company has complied in all material respects with all applicable Laws relating to the withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1446, 3121 and 3406 of the Code or similar provisions under any state or foreign laws), has withheld and timely and properly paid over to the relevant Governmental or Regulatory Authority all amounts required to be

withheld under such laws, and has timely filed all Tax Returns with respect to such withholding.

(c) No election has been filed by or on behalf of any Arch Company to be treated as an association taxable as a corporation for federal income tax purposes (or any similar state, local or foreign tax purposes).

(d) No Arch Company is a party to or bound by, or has any obligation under, any Tax sharing agreement, Tax indemnification agreement or similar contract or arrangement, or has any liability or obligation to any Person as a result of, or pursuant to, any such agreement, contract or arrangement.

(e) There are no outstanding requests, agreements, consents or waivers to extend the statute of limitations applicable to the assessment of any Taxes or deficiencies against any Arch Company or against any consolidated, combined or unitary tax group of which it is or has been a member.

(f) There are no Liens for Taxes (other than Permitted Liens) with respect to any of the Assets or Properties of any Arch Company.

Legal Proceedings

4.2.12 (a) There are no Actions or Proceedings pending or, to the Knowledge of Arch, threatened against, or which directly involves, Arch or any Arch Company or any of their respective Assets and Properties, business or operations that (i) could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement, (ii) except as disclosed in Schedule 4.2.12, otherwise result in a diminution of \$5,000,000 or more in the individual or aggregate value of the Assets and Properties of the Arch Companies, or (iii) if determined adversely to Arch or any Arch Company, could reasonably be expected to result in (A) any injunction or other equitable relief against any Arch Company that would interfere in any material respect with such Arch Company's business or operations or (B) except as disclosed in Schedule 4.2.12, Losses by any Arch Company, individually or in the aggregate with Losses in respect of such Actions or Proceedings, exceeding \$5,000,000.

(b) There are no Orders to which any Arch Company or any of the Assets or Properties owned or used by any Arch Company, is subject.

Compliance With Laws

4.2.13 Except as disclosed in Schedule 4.2.13:

(a) each Arch Company is, and at all times since December 31, 2001 has been, in compliance with all existing Laws and Orders now or hereafter applicable to their Assets and Properties, business or operations in all material respects and none of Arch, any Arch Company or any of the Specified Arch Affiliates is or has at any time within the last four years been, or has received any notice that it is or has at any time within the last four years been, in violation of or in default under, in any material respect, any Law or Order applicable to any Arch Company or any of their respective Assets and Properties, business or operations;

(b) neither the ownership nor use of each Arch Company's Assets and Properties nor the conduct of its business conflicts with any material right of any other Person or violates, or without the giving of notice or the passage of time, or both, will violate, conflict with, or result in a default under any Lien, License, Contract, Law or Order to which such Arch Company is a party or by which it may be bound or affected, except to the extent that such conflict or violation could not reasonably be expected, individually or in the aggregate with other conflicts or violations, to result in an Arch Material Adverse Effect, or any terms or provisions of such Arch Company's limited liability company agreement or certificate of incorporation and bylaws, as the case may be, as presently in effect.

Benefit Plans; ERISA

4.2.14 (a) Except for the Plans identified in Schedule 4.2.14(a) (such plans being set forth thereon hereafter collectively referred to for purposes of this Section 4.2.14(a) as the "**Arch Benefit Plans**"), neither the Arch Companies, their predecessors nor their respective ERISA Affiliates (collectively, the "**Arch ERISA Entities**") (i) currently sponsor, maintain or contribute to any Plan, and (ii) have at any time within four years prior to the Execution Date, sponsored, maintained or contributed to any employee pension benefit plan as defined in ERISA Section 3(2).

(b) Arch has previously disclosed to the Trout Contributors in writing a true and complete list of all employees and retirees of the Arch Companies who are receiving benefits under the Arch Benefit Plans as of July 27, 2005. Except as disclosed in Schedule 4.2.14(b) with regard to each of the Arch Benefit Plans other than Multiemployer Plans, insofar as any of the following may adversely affect the Arch Companies or the Company, (i) the Arch ERISA Entities have in all respects performed all obligations, whether arising by operation of law or by contract, required to be performed by them in connection with the Arch Benefit Plans and Arch has no Knowledge of any default or violation by any of the parties to the Arch Benefit Plans; (ii) all reports and disclosures relating to the Arch Benefit Plans required to be filed with or furnished to governmental agencies, Arch Benefit Plan participants or Arch Benefit Plan beneficiaries have been filed or furnished in accordance with the applicable legal

requirements in a timely manner and each Arch Benefit Plan has been administered in accordance with its governing document; (iii) each of the Arch Benefit Plans which is intended to be qualified under Section 401 of the Code is identified as such on Schedule 4.2.14(a) and each Arch Benefit Plan which is so identified satisfies the requirements of Section 401 of the Code, has received a favorable determination letter from the Internal Revenue Service regarding such qualified status (or a request for such a determination has been timely filed with the Internal Revenue Service) and has not, since receiving the most recent favorable determination letter, been amended or, to the Knowledge of Arch, operated in a way which would adversely affect such qualified status; (iv) there are no actions, suits or claims pending (other than routine claims for benefits) or, to the Knowledge of Arch, threatened against any of the Arch Benefit Plans; (v) all contributions required to be made to the Arch Benefit Plans pursuant to their terms and provisions have been made; (vi) each of the Arch Benefit Plans which is subject to Title IV of ERISA is identified as such in Schedule 4.2.14(a) and with respect to each such Arch Benefit Plan, there has been no event or condition which represents the material risk of Arch Benefit Plan termination, no accumulated funding deficiency, whether or not waived, within the meaning of Section 302 of ERISA or Section 412 of the Code has been incurred, no reportable event within the meaning of Section 4043 of ERISA has occurred, no notice of intent to terminate such plan has been given under Section 4041 of ERISA, the PBGC has not instituted any proceeding under Section 4042 of ERISA to terminate such Arch Benefit Plans, there has been no termination or partial termination of such plan within the meaning of Section 411(d)(3) of the Code and no liability to the PBGC has been incurred (and to the extent this clause (vi) applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is expressly made not only with respect to the Arch Benefit Plans currently maintained but also with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which contributions were made (or were required to be made) during the preceding four-year period); (vii) none of the Arch Benefit Plans nor any trust created thereunder or with respect thereto has engaged in any “prohibited transaction” or “party in interest transaction” as such terms are defined in Section 4975 of the Code and Section 406 of ERISA which could subject the Arch Companies or the Company to a tax or penalty on prohibited transaction or party in interest transactions pursuant to Section 4975 of the Code or Section 502(i) of ERISA; (viii) none of the Arch Companies or the Specified Arch Affiliates have received any written notice of any matter pending (other than routine qualification determination filings) with respect to any of the Arch Benefit Plans before the Internal Revenue Service, the Department of Labor or the PBGC.

(c) The only Multiemployer Plans to which the Arch ERISA Entities contribute to or have contributed to during the last four calendar years (or is or have been obligated to contribute to) are: United Mine Workers of

America 1974 Pension Plan; United Mine Workers of America 1950 Pension Plan; United Mine Workers of America 1993 Benefit Plan and Trust; United Mine Workers of America Combined Benefit Fund; and the United Mine Workers of America 1992 Benefit Plan. With respect to each such Multiemployer Plan: (i) no event has occurred that would give rise to any withdrawal liability on the part of the Arch ERISA Entities; (ii) none of Arch ERISA Entities (or their predecessors) has received any written notice that such Multiemployer Plan is in “reorganization” (within the meaning of Section 4241 of ERISA), that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, or that the Multiemployer Plan is or may become “insolvent” (within the meaning of Section 4241 of ERISA); (iii) none of the Arch ERISA Entities (or their predecessors) has received any written notice that a Multiemployer Plan is a party to any pending merger or asset or liability transfer under Part 2 of Subtitle E of Title IV of ERISA and (iv) none of the Arch ERISA Entities (or their predecessors) has received any written notice that the PBGC has instituted proceedings against the Multiemployer Plan.

(d) None of the Arch ERISA Entities has been notified of the assessment of, nor have the Arch ERISA Entities incurred, withdrawal liability under Subtitle E of Title IV of ERISA or termination liability under Subtitle D of Title IV of ERISA.

(e) The Arch ERISA Entities have complied in all material respects with the applicable requirements of Section 4980B of the Code, Sections 601-609 of ERISA, or any local Law of similar effect.

(f) None of the Arch Companies, their predecessors, or any related person to either within the meaning of Section 9701(c) of the Code has any current or past unpaid liability under Section 9704 or Section 9712 of the Code.

(g) Except as set forth in Schedule 4.2.14(g), neither the Arch Companies, their predecessors nor any related person to the Arch Companies or their predecessors within the meaning of Section 9701(c) of the Code currently have any liability for premiums or benefits under either Sections 9704, 9711 or 9712 of the Code.

(h) Except as set forth in Schedule 4.2.14(h), each of the Arch Benefit Plans is, and its administration and operation is and has been since inception, in all material respects in compliance with, and no Arch ERISA Entity has received any claim or notice that any such Arch Benefit Plan is not in compliance with, all applicable Laws or Orders and prohibited transactions exemptions, including the requirements of ERISA, the Code, the Age Discrimination in Employment Act, the Equal Pay Act and Title VII of the Civil Rights Act of 1964, and the terms of such Arch Benefit

Plan or any related trust agreement, insurance contract or other funding instrument. No event has occurred, and there exists no condition or set of circumstances in connection with any Arch Benefit Plan, under which the Company or any Arch Company, directly or indirectly (through any indemnification agreement or otherwise), could reasonably be expected to be subject to any risk of material liability under Section 409 of ERISA.

(i) Each Arch Benefit Plan that is intended to afford any Tax benefit to any Arch Company or any other Person complies with the requirements of the applicable provisions of the Code or other Laws required in order to provide such Tax benefit to such Arch Company or such Person.

(A) As of the Execution Date, all contributions and other payments required to be made by Arch ERISA Entity or any other Person to any Arch Benefit Plan with respect to any period ending before or at or including the Execution Date have been made or reserves adequate for such contributions or other payments have been or will be set aside therefor in accordance with GAAP; and (B) as of the Closing Date, all contributions and other payments required to be made by Arch ERISA Entity or any other Person to any Arch Benefit Plan with respect to any period ending before or at or including the Closing Date will have been made or reserves adequate for such contributions or other payments have been or will be set aside therefor in accordance with GAAP. There are no material outstanding liabilities of any Arch Benefit Plan other than liabilities for benefits to be paid, in the ordinary course, to participants of such Arch Benefit Plan and their beneficiaries in accordance with the terms of such Arch Benefit Plan.

(j) Neither the execution of this Agreement nor the completion of the transaction contemplated by this Agreement will (i) except as set forth in Schedule 4.2.14(j), result in or cause the establishment, payment, acceleration, vesting, an increase in or funding of a benefit under any Arch Benefit Plan, (ii) result in a violation of the fiduciary duties of Section 404 of ERISA, the prohibited transaction rules of Section 406 of ERISA or Section 4975 of the Code, or (iii) result in a payment that will be nondeductible to the Company or any Arch Company or subject to Tax under Code Section 280G or 4999.

(k) Except as set forth in Schedule 4.2.14(k) or for the Arch Benefit Plans required to be maintained pursuant to the NBCWA, the Coal Act or the memorandum of understanding between the United Mine Workers of America and Apogee covering the Guyan mine, each Arch Company has the right to modify or terminate non-pension benefits to employees, former employees, directors or other Persons (other than benefits required to be provided under Section 601 et seq. of ERISA) under any Arch Benefit Plan without incurring any additional benefit cost.

(l) Complete and correct copies of the following documents have been furnished to the Company and the Trout Contributors prior to the execution of this Agreement:

- (i) the Arch Benefit Plans and any related trust (or other third party funding vehicle) agreements, including, all amendments thereto;
- (ii) current summary plan descriptions of each Arch Benefit Plan subject to ERISA, and any similar descriptions of all other Arch Benefit Plans;
- (iii) the most recent Form 5500 and Schedules thereto for each Arch Benefit Plan subject to ERISA reporting requirements (excluding multiemployer plans);
- (iv) the most recent actuarial report, if required under ERISA or the Code, with respect to each Arch Benefit Plan; and
- (v) the most recent determination letter received from the Internal Revenue Service with respect to each Arch Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(m) Except as set forth in Schedule 4.2.14(m), no “leased employees,” as that term is defined in Section 414(n) of the Code, perform services for the Arch ERISA Entities. None of the Arch ERISA Entities has used the services of such leased employees or independent contractors in such a way that they may have become eligible to participate in the Arch Benefit Plans or to an extent that would reasonably be expected to result in the disqualification of any Arch Benefit Plan or the imposition of penalties or excise taxes with respect to the Arch Benefit Plans by the Internal Revenue Service, the Department of Labor, the PBGC or any other Governmental or Regulatory Authority.

(n) Except as set forth on Schedule 4.2.14(n), none of the Arch ERISA Entities has any formal plan or commitment, whether legally binding or not, to create any additional benefit plan or modify or change any existing Arch Benefit Plan that would affect any current or former employee of the Arch Companies (or their predecessors).

(o) Except as set forth in Schedule 4.2.14(o), no Arch Benefit Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with respect to current or former employees of the Arch Companies (or their predecessors) beyond their retirement or other termination of service, other than (i) coverage mandated solely by applicable Law, (ii) death benefits or retirement benefits under any “employee pension benefit plan” as defined in Section 3(2) of ERISA, (iii)

deferred compensation benefits accrued as liabilities on the books of the Arch Companies, or (iv) benefits the full costs of which are borne by the current or former employee or his or her beneficiary.

(p) Except with respect to changes required by applicable Law, there has been no adoption of, amendment to, written interpretation or announcement (whether or not written) relating to, or change in employee participation or coverage under, any Arch Benefit Plan that would increase materially the expense of maintaining such Arch Benefit Plan above the level of the expense incurred in respect thereof shown on the actual audited Arch Coal, Inc. Contributed Properties Financial Statements for the fiscal year ended December 31, 2004.

(q) To the Knowledge of Arch, no representations or communications, oral or written, with respect to the participation, eligibility for benefits, vesting, benefit accrual or coverage under any Arch Benefit Plan have been made that are not in accordance with the terms and conditions of the Arch Benefit Plans.

(r) As of the Closing Date, Arch will have provided duly executed copies of the trust documents and any amendments thereto relating to the Hobet VEBA and the Apogee VEBA, and satisfactory evidence that the contributions required by this Agreement to have been made to each of them have been made.

Working Capital

4.2.15 As of the Closing, the working capital balance of the Arch Companies in the aggregate will not be materially different from the working capital balance reflected in the Arch Unaudited Financial Statements.

Tangible Personal Property; Investment Assets

4.2.16 (a) At the time of Closing, each Arch Company will be in possession of and, except for such spare parts as are held on consignment and such equipment as is leased by such Arch Company (in each case as set forth in Schedule 4.2.16(a)(1), will own and have good title to all tangible personal property primarily used in or reasonably necessary for the conduct of its business as being operated and as was operated during the period covered by the Arch Unaudited Financial Statements for such Arch Company (including all surplus equipment has been customarily used as spare parts or for maintenance purposes by such Arch Company), including all tangible personal property reflected on the balance sheet included in the Arch Unaudited Financial Statements and tangible personal property acquired since the Unaudited Financial Statement Date other than property disposed of since such date in the ordinary course of business consistent with past practice. All such tangible personal property will be free and

clear of all Liens, other than Permitted Liens and Liens disclosed on Schedule 4.2.16(a)(2) at the time of Closing, and is in good working order and condition, ordinary wear and tear excepted. Except as set forth in Schedule 4.2.16(a)(3), no material tangible personal property, whether owned, leased, held on consignment or otherwise, located on the real property site (whether owned, leased or subleased) of any of the Arch Companies on the date on which the Trout Contributors or their representatives visited such real property site in connection with their due diligence in connection with the transactions contemplated by this Agreement, has been relocated or moved off of the property of the Arch Companies, it being understood that relocation or movement of such personal property to any real property site (whether owned, leased or subleased) of any Arch Company (even if not the real property site upon which such personal property was originally located) shall not constitute a breach of this representation.

(b) No Arch Company owns any Investment Assets.

Intellectual Property Rights

4.2.17 The Arch Companies do not own any material Intellectual Property.

Contracts

4.2.18 (a) Schedule 4.2.18(a) (with paragraph references corresponding to those set forth below), contains a true and complete list of each of the following Contracts (copies, true and complete in all material respects, or, if none, reasonably complete and accurate written descriptions of which, together with all amendments and supplements thereto and all waivers of any terms thereof, have been delivered to the Trout Contributors prior to the execution of this Agreement), which are currently in force and to which any Arch Company is a party or by which any of their respective Assets and Properties is bound:

(i) (A) all Contracts (excluding Arch Benefit Plans) providing for a commitment of employment or consultation services for a specified or unspecified term or otherwise relating to employment or the termination of employment, the name, position and rate of compensation of each Person party to such a Contract and the expiration date of each such Contract; and (B) any written representations, commitments, promises, communications or courses of conduct (excluding Arch Benefit Plans and any such Contracts referred to in clause (A)) involving an obligation of any Arch Company to make payments in any year, other than with respect to salary or incentive compensation payments in the ordinary course of business, to any employee exceeding \$100,000 or any group of employees exceeding \$5,000,000 in the aggregate;

- (ii) all Contracts with any Person containing any provision or covenant prohibiting or limiting the ability of any Arch Company to engage in any business activity or compete with any Person or prohibiting or limiting the ability of any Person to compete with any Arch Company;
- (iii) all partnership, joint venture, shareholders' or other similar Contracts with any Person;
- (iv) all Contracts relating to Indebtedness of any Arch Company in excess of \$5,000,000;
- (v) all Contracts with distributors, service providers, dealers, manufacturer's representatives, sales agencies or franchisees that involve aggregate annual payments in excess of \$5,000,000;
- (vi) all Contracts relating to (A) the future disposition or acquisition of any Assets and Properties, other than dispositions or acquisitions in the ordinary course of business consistent with past practice or in connection with the Arch Reorganization Transactions, and (B) any merger or other business combination other than the Arch Reorganization Transactions;
- (vii) all Contracts between or among any Arch Company, on the one hand, and Arch or any officer, director or Affiliate (other than any Arch Company) of Arch on the other hand;
- (viii) all collective bargaining or similar labor Contracts;
- (ix) all Contracts that (A) limit or contain restrictions on the ability of any Arch Company to declare or pay dividends on, to make any other distribution in respect of or to issue or purchase, redeem or otherwise acquire its membership interests, to incur Indebtedness, to incur or suffer to exist any Lien, to purchase or sell any Assets and Properties, to change the lines of business in which it participates or engages or to engage in any business combination or (B) require any Arch Company to maintain specified financial ratios or levels of net worth or other indicia of financial condition;
- (x) (A) as of the Execution Date, all coal sales and transportation agreements that will be assigned to TC Sales or will be subject to the Master Coal Sales and Services Agreement; and (B) as of the Closing Date, all coal sales and transportation agreements to which an Arch Company is a party as of such date or which is subject to the Master Coal Sales and Services Agreement; and
- (xi) all other Contracts (other than Arch Benefit Plans, leases listed on subsection (ii) of Schedule 4.2.4(a) and the items set forth

on Schedule 4.2.16(a)(1) and insurance policies listed in Schedule 4.2.20) that (A) involve the payment or potential payment, pursuant to the terms of any such Contract, by or to any Arch Company of more than \$5,000,000 annually and (B) cannot be terminated within 90 days after giving notice of termination without resulting in any material cost or penalty to any Arch Company.

(b) Each Contract required to be disclosed in Schedule 4.2.18(a) is in full force and effect and constitutes a legal, valid and binding agreement of such Arch Company, enforceable in accordance with its terms enforceable against each in accordance with its terms, (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and to the Knowledge of Arch, constitutes a legal, valid and binding agreement, enforceable in accordance with its terms of each other party thereto; and except as disclosed in Schedule 4.2.18(b), none of Arch, any Arch Company, any of the Specified Arch Affiliates or, to the Knowledge of Arch, no other party to such Contract is, or has received notice that it is, in violation or breach of or default under any such Contract (or with notice or lapse of time or both, would be in violation or breach of or default under any such Contract) in any material respect.

Licenses

4.2.19 Schedule 4.2.19(1) contains a true and complete, in all material respects, list of all Licenses used in and material to the business or operations of any Arch Company (and all pending applications for any such Licenses), setting forth the grantor, the grantee, the function and the expiration and renewal date of, and the amount of bond posted with respect to, each. Prior to the execution of this Agreement, Arch has made available for review to the Trout Contributors true and complete, in all material respects, copies of all such Licenses. Except as disclosed in Schedule 4.2.19(2):

(a) each License required to be obtained for the current stage of development of the Arch Mine Properties has been duly obtained and validly issued, is in full force and effect, is final and not subject to appeal and held in the name of an Arch Company and is free from conditions or requirements the compliance with which would, individually or in the aggregate, reasonably be expected to have an Arch Material Adverse Effect;

(b) each License relating to the Arch Mine Properties will be issued in the name of an Arch Company on the Closing Date;

(c) each applicable Arch Company is in compliance with each such License, except to the extent that noncompliance could not be reasonably likely, individually or in the aggregate, to have an Arch Material Adverse Effect;

(d) none of Arch, any of the Arch Companies, or any of the Specified Arch Affiliates has received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default) under any such License;

(e) (i) as of the Execution Date, Arch has no actual knowledge of any specific reason that any Licenses that have been applied for but not obtained by the Execution Date, and are required to be obtained within next six months and (ii) as of the Closing Date, except as set forth on Schedule 4.2.19(e)(ii) Arch has no actual knowledge of any specific reason that any Licenses that have been applied for but not obtained by the Closing Date, and are required to be obtained within the six months thereafter, will not be obtained in due course (for purposes of this clause (e), “**actual knowledge**” means the actual knowledge of those individuals included in the definition of Knowledge); and

(f) none of the Arch Companies or, to the Knowledge of Arch, any of the Specified Arch Affiliates, or any corporation, partnership, limited liability company or other entity “owned or controlled” by any of them, has been notified by the Federal Office of Surface Mining or the agency of any state administering the Surface Mining Control and Reclamation Act of 1977, as amended (or any comparable state statute) that it is (a) ineligible to receive additional surface mining permits or other Licenses or (b) under investigation to determine whether its eligibility to receive such permits or other Licenses should be revoked, *i.e.*, “permit blocked.” As used in this Section 4.33, “owned or controlled” shall be defined as set forth in 30 C.F.R Section 773.5 (2000).

Insurance

4.2.20 Arch has previously provided to the Trout Contributors a true and complete (in all material respects) list (including the names and addresses of the insurers, the names of the Persons to whom such policies have been issued, the expiration dates thereof, whether it is a “claims made” or an “occurrence” policy and the type of insurance) of all liability, property, workers’ compensation and other insurance policies currently in effect that insure the business, operations or employees of any Arch Company and that (i) have been issued to Arch, any Arch Company or any Specified Arch Affiliate or (ii) to the Knowledge of Arch, have been issued to any other Person for the benefit of any Arch Company. Each such policy is valid and binding and in full force and effect, no premiums due thereunder have not been paid and neither Arch, nor to the Knowledge of Arch, any

other Person to whom such policy has been issued, has received any notice of cancellation or termination in respect of any such policy or is in default thereunder. Schedule 4.2.20(2) describes all claims made in the last five years in respect of general liability, automobile, mandolidis and property insurance described above.

Affiliate Transactions

4.2.21 Except as disclosed in Schedule 4.2.21(1): (i) there are no intercompany Liabilities between any Arch Company, on the one hand, and Arch or any officer, director or Affiliate (other than any Arch Company) of Arch or any other Arch Company, on the other, (ii) none of Arch nor any officer, director or Affiliate of Arch provides or causes to be provided any assets, services or facilities to any Arch Company, (iii) no Arch Company provides or causes to be provided any assets, services or facilities to Arch or any such officer, director or Affiliate thereof and (iv) no Arch Company beneficially owns, directly or indirectly, any Investment Assets issued by Arch or any such officer, director or Affiliate. Except as disclosed in Schedule 4.2.21(2), each of the Liabilities and transactions listed in Schedule 4.2.21(1) was incurred or engaged in, as the case may be, on an arm's-length basis. Except as disclosed in Schedule 4.2.21(3), since the date of the audited balance sheet provided pursuant to Section 4.2.8, all settlements of intercompany Liabilities between any Arch Company, on the one hand, and Arch or any such officer, director or Affiliate thereof, on the other, have been made, and all allocations of intercompany expenses have been applied, in the ordinary course of business consistent with past practice.

Employees; Labor Relations

4.2.22 (a) Except for the hourly employees of Hobet and Apogee, who are represented by the United Mine Workers of America and subject to the NBCWA of 2002 or the memorandum of understanding between the United Mine Workers of America and Apogee covering the Guyan mine, no employee of any Arch Company is presently a member of a collective bargaining unit and, to the Knowledge of Arch, there are no threatened or contemplated attempts to organize for collective bargaining purposes any of the employees of any Arch Company. Except as set forth on Schedule 4.2.22(a), during the last 12 months, (i) no unfair labor practice complaint or sex, age, race or other discrimination claim has been brought against any Arch Company before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental or Regulatory Authority and (ii) there has been no work stoppage, strike or other concerted action by employees of any Arch Company.

(b) No Person who is not treated as an employee of any Arch Company but who provides or performs services to or on behalf of any

Arch Company is (i) a leased employee within the meaning of Section 414(n) of the Code, (ii) employed by a professional employer organization or employee leasing organization, or (iii) required to be treated as a common law employee of any Arch Company under the Code, ERISA or any other applicable Law.

Environmental Matters

4.2.23 To Arch's Knowledge, except as set forth in Schedule 4.2.23, each Arch Company currently holds or at the time of the Closing will hold all Licenses that are necessary under applicable Environmental Laws for the current use, occupancy, or operations of such Arch Company as such operations are currently conducted, except where the failure to have any License could not reasonably be expected to result in an Arch Material Adverse Effect. To Arch's Knowledge, each Arch Company is in compliance, in all material respects, with the terms and conditions of all such Licenses.

In addition, except as set forth in Schedule 4.2.23 (with paragraph references corresponding to those set forth below) and except for such matters as could not, individually or in the aggregate, be reasonably likely to result in an Arch Material Adverse Effect, to Arch's Knowledge:

(a) Within the past four years, (i) no Order has been issued, (ii) no Environmental Claim has been filed, (iii) no penalty has been assessed, (iii) to the Knowledge of Arch, no investigation or review is pending or threatened by any Governmental or Regulatory Authority with respect to any alleged failure by any Arch Company to have any License required under applicable Environmental Laws in connection with the conduct of the business or operations of any Arch Company or with respect to any generation, treatment, storage, recycling, transportation, discharge, disposal or Release of any Hazardous Material generated by any Arch Company, (iv) none of Arch, any Arch Company or any Specified Arch Affiliate has received written notice of any such investigation or review, and (v) to the Knowledge of Arch, there are no facts or circumstances in existence which could reasonably be expected to form the basis for any such Order, Environmental Claim, penalty or investigation.

(b) No Arch Company currently owns, operates or leases a treatment, storage or disposal facility requiring a permit under the Resource Conservation and Recovery Act, as amended, or under any other comparable state or local Law; and, without limiting the foregoing, (i) no Arch Company is aware of the existence of, or currently uses, any underground storage tanks located on any property owned, leased or used by an Arch Company; and (ii) in the past four years, there have been no Releases of Hazardous Materials in a reportable quantity under, or in violation of, any Environmental Law into the environment or under any

real property now owned, leased or used by any Arch Company which would be reasonably likely individually or in the aggregate to result in an Arch Material Adverse Effect.

(c) No Arch Company currently transports or arranges for the transportation of any Hazardous Material to any location that any Arch Company has Knowledge is (i) listed on the NPL under CERCLA, (ii) listed for possible inclusion on the NPL by the Environmental Protection Agency in CERCLIS or on any similar state or local list or (iii) the subject of enforcement actions by federal, state or local Governmental or Regulatory Authorities that may lead to Environmental Claims against any Arch Company.

(d) No site or facility currently owned, operated or leased by any Arch Company is listed or to the Knowledge of Arch, proposed for listing on the NPL, CERCLIS or any similar state or local list of sites requiring investigation or clean-up.

(f) No Liens have arisen under or pursuant to any Environmental Law on any site or facility currently owned, operated or leased by any Arch Company, and no federal, state or local Governmental or Regulatory Authority action has been taken in the past four years or, to the Knowledge of Arch, is in process that could subject any such site or facility to such Liens, and no Arch Company would be required to place any notice or restriction relating to the presence of Hazardous Materials at any site or facility owned by it in any deed to the real property on which such site or facility is located.

(g) There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted outside the ordinary course of business consistent with past practice in the past four years that are in the possession of, any Arch Company in relation to any site or facility now or previously owned, operated or leased by any Arch Company which have not been delivered to the Trout Contributors prior to the execution of this Agreement.

(h) Each of the Arch Companies (i) has carried out all reclamation with respect to their coal mining and processing operations required to date by law and (ii) in the past four years, has received no notice asserting or claiming the existence of seepage, leaks, breakthroughs or other events that could result in harm to health, safety or the environment with respect to any surface impoundment or sealed deep mine.

Substantial Customers; Material Suppliers

4.2.24 (a) Schedule 4.2.24(a) lists the five largest customers of each Arch Company, on the basis of revenues for goods sold or services provided for

the most recently completed fiscal year. No such customer has ceased or materially reduced its purchases from or use of the services of the Arch Companies since the Unaudited Financial Statement Date, or to the Knowledge of Arch, has threatened to cease or materially reduce such purchases or use after the Execution Date. To the Knowledge of Arch, no such customer is currently in, or threatened with, bankruptcy or insolvency.

(b) Schedule 4.2.24(b)(1) lists the material suppliers of tires, explosives and diesel. Such items are supplied to Arch, which then supplies them to the Arch Companies. Except as disclosed in Schedule 4.2.24(b)(2), no such supplier has ceased or materially reduced its supplies to Arch since the Unaudited Financial Statement Date, or to the Knowledge of Arch, has threatened to cease or materially reduce such supply after the Execution Date. Except as disclosed in Schedule 4.2.24(b)(3), to the Knowledge of Arch, no such supplier is currently in, or threatened with, bankruptcy or insolvency.

Bank and Brokerage Accounts

4.2.25 Schedule 4.2.25 sets forth a true and complete list of the names and locations of all banks, trust companies, securities brokers and other financial institutions at which any Arch Company has an account or safe deposit box or maintains a banking, custodial, trading or other similar relationship. Arch has heretofore delivered to the Trout Contributors a true and complete list and description of each such account, box and relationship, indicating in each case the account number and the names of the respective officers, employees, agents or other similar representatives of any Arch Company having signatory power with respect thereto.

Directors and Officers; No Powers of Attorney

4.2.26 Schedule 4.2.26(1) lists all members of the management committee, managing members and/or executive officers and directors of each Arch Company. As of Closing, except as set forth in Schedule 4.2.26(2), no Arch Company has any powers of attorney or comparable delegations of authority outstanding, except such powers-of-attorney as are granted pursuant to real property leases, equipment leases, mortgages or deeds of trust, in each case in the ordinary course of business and on customary terms.

Accounts Receivable

4.2.27 Except as set forth in Schedule 4.2.27, the accounts and notes receivable of the Arch Companies reflected on the balance sheet included in the Arch Unaudited Financial Statements, and all accounts and notes receivable arising subsequent to the Unaudited Financial Statement Date, (i) arose

from bona fide sales transactions in the ordinary course of business and are payable on ordinary trade terms, (ii) to the Knowledge of Arch, are legal, valid and binding obligations of the respective debtors enforceable in accordance with their terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)) and (iii) are not the subject of any Actions or Proceedings brought by or on behalf of any Arch Company.

Inventory

4.2.28 All inventory of the Arch Companies reflected on the balance sheet included in the Arch Unaudited Financial Statements consisted, and all such inventory acquired since the Unaudited Financial Statement Date consists, of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, subject to normal and customary allowances in the industry for damage and outdated items. Except as disclosed in the notes to the Arch Unaudited Financial Statements and as to such items that are held on consignment (which are set forth in Schedule 4.2.16(a)(1)), all items included in the inventory of the Arch Companies are the property of the Arch Companies, free and clear of any Lien other than Permitted Liens, have not been pledged as collateral, are not held by any Arch Company on consignment from others and conform in all material respects to all standards applicable to such inventory or its use or sale imposed by Governmental or Regulatory Authorities.

Brokers

4.2.29 All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Arch directly with the Trout Contributors and the Company without the intervention of any Person on behalf of Arch in such manner as to give rise to any valid claim by any Person against the Company, the Trout Contributors or any Arch Company for a finder's fee, brokerage commission or similar payment.

Disclosure

4.2.30 There is no fact or circumstance known to Arch that has not been disclosed to the Company and the Trout Contributors, the existence of which would, individually or in the aggregate with other such facts or circumstances, have an Arch Material Adverse Effect. No representation or warranty made by Arch in this Agreement or the other Transaction Documents, no statement contained in the Schedules or in any certificate furnished to the Company or the Trout Contributors pursuant to any provision of this Agreement or any other Transaction Document by or on behalf of Arch or any Arch Company contains any untrue statement of a material fact or

omits to state a material fact required to be stated therein or necessary in order to make the statements made herein or therein, in the light of the circumstances in which they were made, not misleading. The information provided by or on behalf of Arch to Weir in connection with Weir's independent evaluation of the reserves at the Arch Mine Properties and Weir's independent environmental audit did not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made herein or therein, in the light of the circumstances in which they were made, not misleading. As of the Closing, no information contained in the Registration Statement or the Prospectus that was furnished by or on behalf of Arch or any Arch Company, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements made herein or therein, in the light of the circumstances in which they were made, not misleading. All adjustments suggested by Arch in connection with the Company's preparation of its pro forma statements (insofar as such statements relate to the Arch Companies) were made in good faith based on reasonable assumptions.

Reclamation Bonds

- 4.2.31 Schedule 4.2.31(1) contains an accurate and complete list of all Bonds pursuant to, in connection with or as a condition of the Licenses listed in Schedule 4.2.19(1). Other than the Bonds listed on Schedule 4.2.31(2), no other bonds are currently required under applicable law to be posted in connection with the Licenses.

Absence of Certain Business Practices

- 4.2.32 Neither any Arch Company, nor any officer, employee or agent of any Arch Company, nor any other Person acting on behalf of any Arch Company, has, directly or indirectly, within the past four years given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the respective business of such Arch Company (or assist such Arch Company in connection with any actual or proposed transaction) which (a) might subject any Arch Company to any damage or penalty in any Action or Proceeding, (b) if not given in the past might have an adverse effect on the Assets and Properties, business or operations of any Arch Company as reflected in the financial statements delivered pursuant to this Agreement or (c) if not continued in the future, might adversely affect the respective Assets and Properties, business, operations or prospects of any Arch Company or which might subject any Arch Company to suit or penalty in any Action or Proceeding.

Sufficiency of Assets

4.2.33 Except as set forth on Schedule 4.2.33, the Assets and Properties of the Arch Companies, include all of the assets and properties primarily used or held for use in the business and operations of the Arch Companies and together with all rights of the Arch Companies are sufficient to permit the Arch Companies to extract and process coal from the Arch Mine Properties (with respect to leased or subleased property, as to coal covered by such leases or subleases) owned, leased or subleased by any of the Arch Companies in a manner consistent with how such Arch Mine Properties are being operated and were operated during the period covered by the Arch Unaudited Financial Statements.

Securities Act

4.2.34 Arch is not acquiring the Common Stock with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Arch, together with its directors and executive officers and advisors, is familiar with investments of the nature of the Common Stock, understands that this investment involves substantial risks, has adequately investigated the Common Stock and has substantial knowledge and experience in financial and business matters such that it is capable of evaluating, and has evaluated, the merits and risks inherent in acquiring the Common Stock, and is able to bear the economic risks of such investment. Arch acknowledges that the Common Stock have not been registered or qualified under, and are sold in reliance upon an exemption from the registration requirements of, the Securities Act, and the rules and regulations thereunder and any applicable state securities or "Blue Sky" laws, and may not be offered, sold, transferred, pledged, hypothecated or otherwise assigned unless they are registered under such securities laws or regulations or an exemption from such registration is available.

No Other Representations

4.2.35 The Company and the Trout Contributors each acknowledge that none of Arch or any of its respective Affiliates, directors, officers, managers, members, employees, consultants, agents or advisors makes or has made any representation or warranty to the Company or the Trout Contributors or their respective Affiliates regarding Arch, the Arch Companies or any of their respective businesses or Assets and Properties, except for the representations and warranties of Arch expressly set forth in this Agreement, the other Transaction Documents or any certificate delivered pursuant to this Agreement or the other Transaction Documents.

4.3 Trout Contributors' Representations.

The Trout Contributors on a joint and several basis represent and warrant to Arch and the Company (except in the case of Section 4.3.1(a), Section 4.3.2, the second and third sentences of Section 4.3.3, Section 4.3.5(a), Section 4.3.5(b)(i), Section 4.3.5(c)(iii)(A), Section 4.3.30, and Section 4.3.34, in which case each Trout Contributor represents and warrants on a several basis and only as to itself, and except in the case of any representations and warranties qualified by Knowledge, in which case each Trout Contributor represents and warrants on a several basis with respect to its own Knowledge and not that of the other Trout Contributor):

Capacity; Organization

4.3.1 (a) (i) ArcLight is a limited partnership duly formed, validly existing and in good standing under the Law of the State of Delaware. ArcLight has the requisite power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is or will be a party, and (A) on the Execution Date, to perform its obligations hereunder and to consummate the transactions contemplated hereby other than those contemplated to occur on the Closing Date and (B) on the Closing Date, to perform its obligations hereunder and under each of the other Transaction Documents to which it is or will be a party and to consummate the transactions contemplated hereby and thereby contemplated to occur on or prior to the Closing Date.

(ii) Elliott is sui juris and of full capacity to enter into and deliver this Agreement and to perform his obligations under this Agreement and to consummate the transactions contemplated hereby. He is domiciled in the State of North Carolina and has not made an election for his estate to be governed on his death by a law other than the law of the jurisdiction where he is domiciled.

(b) On the Closing Date, each of the Trout Companies will be a limited liability company duly formed, validly existing and (where applicable) in good standing under the Laws of its jurisdiction of organization.

(c) Each of the Trout Companies is duly qualified to do business as a foreign limited liability company, as applicable, and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified could not, individually or in the aggregate, have a Trout Material Adverse Effect. (i) On or prior to the Execution Date, the Trout Contributors have delivered to Arch true and complete copies of the certificate of formation or certificate of organization and limited liability company agreement or similar agreement of each of the Trout Companies as in effect on the date of execution of this Agreement and (ii) on or prior to the Closing Date, the Trout Contributors will have delivered the certificate of formation and limited liability company agreement or similar agreement of each of the Trout Companies as in effect on the Closing Date.

Authority

4.3.2 (a) The execution and delivery by such Trout Contributor of this Agreement and each of the other Transaction Documents to which it is or will be a party, and the performance by such Trout Contributor of its obligations hereunder and thereunder, have been duly and validly authorized and no other action on the part of it is necessary.

(b) This Agreement has been, and at Closing, each of the other Transaction Documents to which such Trout Contributor will be a party will have been, duly and validly executed and delivered by such Trout Contributor, and upon the execution and delivery by such Trout Contributor of each, this Agreement and each of the other Transaction Documents to which such Trout Contributor will be a party will constitute, a legal, valid and binding obligation of such Trout Contributor, enforceable against such Trout Contributor in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

Membership Interests

4.3.3 The membership interests of each Trout Company are or at the time of the Closing will be duly authorized, validly issued and outstanding. Such Trout Contributor, directly or indirectly, owns or at the time of the Closing will own all right, title and interest in the membership interests in the Trout Companies as set forth in Schedule 4.3.3, in each case beneficially and of record, free and clear of all Liens except Liens to secure the Trout Debt and Dakota Debt or any Indebtedness that replaces the same. Upon the delivery to the Company in the State of New York of a certificate or certificates at the Closing representing the membership interests comprising the Trout Equity Interests owned by it, such certificate or certificates either (a) indorsed to the Company or in blank by an effective indorsement or (b) registered in the name of the Company, such Trout Contributor will transfer to the Company good and valid title thereto, free and clear of all Liens and, assuming that the Company has no notice of any adverse claim with respect to the certificate or certificates, the Company will acquire such certificate or certificates (and the membership interests represented thereby) free of any adverse claims under Section 8-303 of the Uniform Commercial Code as in effect on the date thereof in the State of New York.

Coal Mining Interests and Real Property

4.3.4 (a) At the time of Closing, one or more of the Trout Companies will have sole right, title and interest in leases or subleases or good and

marketable title to fee simple ownership rights in all of the Trout Properties to the extent identified on the maps referred to in the definition of the Trout Properties, respectively, in each case free from any Liens, other than Permitted Liens, and other than Assets and Properties that are disposed of in compliance with Section 6.2(d)(ix). Attached as Exhibits I and J are true and complete copies of the maps for each of the Trout Properties. Schedule 4.3.4(a) contains a true and complete list of (i) each parcel of real property shown on such maps that will be owned by a Trout Company as of Closing, (ii) each parcel of real property shown on such maps that will be leased or subleased by one of the Trout Companies (as lessor or lessee, or sublessor or sublessee) at the time of Closing, including the names of the relevant lessor and lessee or sublessor or sublessee, and the date of the lease or sublease, and (iii) all Liens other than (A) Permitted Liens relating to or affecting any parcel of real property referred to in clause (i) or (ii) and (B) any leases or subleases listed on Schedule 4.3.4(a). Except for the real property leased to others referred to in clause (ii), at the time of Closing each Trout Company will be in possession of each parcel of real property that will be owned, leased or subleased by it, together with all buildings, structures, facilities, fixtures and other improvements thereon. At the time of Closing, each Trout Company will have adequate rights of ingress and egress with respect to each such parcel and all buildings, structures, facilities, fixtures and other improvements thereon.

(b) Except as set forth in Schedule 4.3.4(b), at the time of Closing the ownership or leasehold rights described in paragraph (a) above will afford the Trout Companies the right to extract and sell coal from the Trout Mine Properties (with respect to leased or subleased property, as to the coal covered by such leases or subleases) in a manner consistent with how the Trout Mine Properties are currently being operated and as they were operated during the period covered by the Trout Unaudited Financial Statements. As of Closing, the real property described in said Schedule includes all real estate ownership and leasehold rights necessary to fully pursue all mining and reclamation activities authorized under the Licenses currently held by the Trout Companies.

(c) Each lease or sublease referred to in clause (ii) of paragraph (a) above is a legal, valid and binding agreement, enforceable in accordance with its terms, of a Trout Company and to the Knowledge of the Trout Contributors or each other Person that is a party thereto (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and except as set forth in Schedule 4.3.4(c)(1), there is no, and neither Trout Contributor nor any Trout Company has received notice of any default (or any condition or event which, after notice or lapse of time or both, would

constitute a default) or termination thereunder or in respect thereof. No Trout Company owes any brokerage commissions with respect to any such leased space. The amounts of prepaid royalties and rentals available for recoupment as of June 30, 2005 are listed by lease on Schedule 4.3.4(c)(2).

(d) The Trout Contributors have delivered to Arch prior to the execution of this Agreement true and complete copies in all material respects of (i) all deeds, leases, subleases and similar documents, and all amendments thereof, with respect to the real property owned by the Trout Companies, and (ii) all leases (including any amendments and renewal letters) and, to the extent reasonably available, all other documents referred to in clause (i) of this paragraph (d), with respect to the real property leased by the Trout Companies.

(e) Except as disclosed in Schedule 4.3.4(e), no tenant or other party in possession of any of the real properties owned by the Trout Companies, has any right to purchase, or holds any right of first refusal to purchase, such properties.

(f) Except as disclosed in Schedule 4.3.4(f), the improvements on the real property identified in Schedule 4.3.4(a) are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are adequate and suitable for the purposes for which they are presently being used and there are no condemnation or appropriation proceedings pending or, to the Knowledge of the Trout Contributors, threatened against any of such real property or the improvements thereon.

No Conflicts

4.3.5 The execution and delivery by such Trout Contributor of this Agreement do not, and the performance by each of the Trout Contributors of its obligations under this Agreement and the consummation of the transactions contemplated hereby, will not:

(a) in the case of ArcLight, conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of formation or partnership agreement of ArcLight;

(b) (i) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed in Schedule 4.3.5(b), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to such Trout Contributor or any of its Assets and Properties to the extent that such conflict, violation or breach would reasonably be expected, individually or in the aggregate, to result in a Trout Material Adverse Effect; and (ii) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed

in Schedule 4.3.5(b), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to any Trout Company or any of their respective Assets and Properties to the extent that such conflict, violation or breach would reasonably be expected, individually or in the aggregate, to result in a Trout Material Adverse Effect; or

(c) except as set forth on Schedule 4.3.5(c), (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require (A) such Trout Contributor to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of or (B) require any Trout Company to obtain any consent, approval or action or, make any filing with or give any notice to any Person as a result or under the terms of or, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (v) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or (vi) result in the creation or imposition of any Lien upon any Trout Company or any of its Assets and Properties under, any material Contract to which a Trout Company is a party or by which any of their respective material Assets and Properties are bound, that in the case of clauses (i), (ii) and (iii) would reasonably be expected, individually or in the aggregate, to result in a Trout Material Adverse Effect.

Governmental Approvals and Filings

4.3.6 Except as disclosed in Schedule 4.3.6, no consent, approval, authorization, order or action of, filing or registration with or notice under Law or with to any Governmental or Regulatory Authority or any other Person on the part of the Trout Contributors or any Trout Company is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

Books and Records

4.3.7 (a) The Books and Records relating to the Trout Companies are complete and correct in all material respects and have been maintained in accordance with Law, sound business practices and applicable accounting rules.

(b) On the Closing Date, no Trout Company will have any of its Material Books and Records recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of such Trout Company.

Financial Statements

4.3.8 Prior to the execution of this Agreement, the Trout Contributors have delivered to Arch complete copies of the following financial statements:

(a) the actual audited financial statements of Trout Coal Holdings, LLC for each of the fiscal years ended December 31, 2002, 2003 and 2004, and of Dakota LLC for the period from July 3, 2003 to December 31, 2003 and the year ended December 31, 2004, together with a true and complete copy of the report on such audited information by Ernst & Young LLP, and

(b) the actual unaudited financial statements of Trout Coal Holdings, LLC and Dakota LLC for the six month period ended (i) June 30, 2004 and (ii) June 30, 2005 (such financial statements in clause (ii) shall be referred to as the “*Trout Unaudited Financial Statements*”);

Such financial statements (i) were prepared in accordance with GAAP, consistently applied (except as clearly set forth in the notes thereto); and (ii) fairly present, in all material respects, the financial condition, results of operations and cash flows, and changes in financial position of the Trout Companies as of the dates indicated and for the periods then ended (except, in the case of the unaudited financial statements, for normal year-end adjustments consistent with past practice and which are not, in the aggregate, material).

Absence of Changes

4.3.9 Since the date of the Audited Financial Statement Date there has not been any Trout Material Adverse Effect. Without limiting the foregoing, except as disclosed in Schedule 4.3.9 and except for the execution and delivery of this Agreement and the Trout Reorganization Transactions, there has not occurred between the Unaudited Financial Statement Date and the date of this Agreement:

(a) (i) any increase of more than \$5,000,000 in the aggregate salaries, wages or other compensation of officers, employees or consultants of the Trout Companies; (ii) any adoption, entering into or becoming bound by any Plan, employment-related Contract or collective bargaining agreement, or amendment, modification or termination (partial or complete) of any Plan, employment-related Contract or collective bargaining agreement, except to the extent required by applicable Law; or (iii) any entering into an agreement or making of a representation to employees of the Trout Companies or any request or demand by employees of the Trout Companies to provide future increases in benefit levels (or create new benefits) with respect to any Plan, under

circumstances which make it reasonable to expect that such increases would be granted or such benefits created;

(b) any declaration, setting aside or payment of any dividend or other distribution in respect of the membership interests of any Trout Company, or any direct or indirect redemption, purchase or other acquisition by any Trout Company of any such membership interests or of any Option with respect to any Trout Company;

(c) any authorization, issuance, sale or other disposition by any Trout Company of any membership interests of or Option with respect to any Trout Company, or any modification or amendment of any right of any holder of any outstanding membership interests of or Option with respect to any Trout Company;

(d) (i) any incurrence by any Trout Company of Indebtedness in an aggregate amount exceeding \$8,000,000 (net of any amounts discharged during such period), or (ii) any voluntary purchase, cancellation, prepayment or complete or partial discharge in advance of a scheduled payment date with respect to, or waiver of any right of any Trout Company under, any Indebtedness of or owing to any Trout Company;

(e) any physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the plant, real or personal property or equipment of any Trout Company in an aggregate amount exceeding \$5,000,000;

(f) any material change in (i) any pricing, investment, accounting, financial reporting, inventory, credit, allowance or Tax practice or policy of any Trout Company, (ii) any method of calculating any bad debt, contingency or other reserve of any Trout Company for accounting, financial reporting or Tax purposes, or any change in the fiscal year of any Trout Company;

(g) any write-off or write-down of or any determination to write off or write down any of the Assets and Properties of any Trout Company in an aggregate amount exceeding \$5,000,000 other than depreciation in the ordinary course of business of such Trout Company);

(h) any acquisition or disposition of, or incurrence of a Lien (other than a Permitted Lien) on, any Assets and Properties of any Trout Company, other than in the ordinary course of business consistent with past practice;

(i) any (i) amendment of the operating agreement of any Trout Company, (ii) recapitalization, reorganization, liquidation or dissolution of any Trout Company or (iii) merger or other business combination involving any Trout Company and any other Person;

- (j) other than in the ordinary course of business consistent with past practice, any entering into, amendment, modification, termination (partial or complete) or granting of a waiver under or giving any consent with respect to (i) any Contract that is required to be disclosed in Schedule 4.3.18(a) or (ii) any License held by any Trout Company;
- (k) capital expenditures or commitments for additions to property, plant or equipment of the Trout Companies constituting capital assets in an aggregate amount exceeding \$10,000,000;
- (l) any commencement or termination of any Trout Company of any line of business;
- (m) any transaction by any Trout Company with a Trout Contributor, and officer, director or Affiliate (other than any Trout Company) of such Trout Contributor (i) outside the ordinary course of business consistent with past practice or (ii) other than on an arm's length basis;
- (n) any transaction by any Trout Company involving (i) the sale, lease, transfer or other disposal of any of its Assets and Properties, except for inventory sold in the ordinary course of business, or (ii) the waiver or release of any right of substantial value;
- (o) any change in the relations with any Trout Company's employees, agents, customers or suppliers or with any Governmental or Regulatory Authority or any self-regulatory organizations that would be reasonably likely individually or in the aggregate to result in a Trout Material Adverse Effect;
- (p) any institution, settlement or agreement to settle any Action or Proceeding involving any Trout Company or any of their respective Assets and Properties, business or operations outside of the ordinary course of business consistent with past practice;
- (q) (i) any failure by any Trout Company to replenish its respective inventories and supplies in a normal and customary manner consistent with its prior practice and prudent business practices prevailing in the industry, (ii) any purchase commitment in excess of the normal, ordinary and usual requirements of its business or at any price in excess of the current market price or on terms more onerous than those usual and customary in the industry, or (iii) any change in its selling, pricing, advertising or personnel practices inconsistent with its prior practice and prudent business practices prevailing in the industry;
- (r) any change in the banking or safe deposit arrangements of any Trout Company;

- (s) any labor union organizing activity, any actual or threatened employee strikes, work stoppages, slow-downs or lock-outs, or any material change in any Trout Company's relations with such Trout Company's employees, customers, agents or suppliers or with any Governmental or Regulatory Authority;
- (t) any transfer or granting of rights under, or entering into any settlement regarding the breach or infringement of any License or Intellectual Property rights or modified any existing rights with respect thereto;
- (u) additional contingent liabilities in an aggregate of \$5,000,000 or more;
- (v) additional bonding obligations in the aggregate of \$5,000,000;
- (w) any entering into of a Contract to do or engage in any of the foregoing after the Execution Date;
- (x) any other transaction involving or development affecting any Trout Company outside the ordinary course of business consistent with past practice;
- (y) any material change in the working capital balance of the Trout Companies in the aggregate; or
- (z) any notice from Ernst & Young of (A) any material deficiencies in the design or operation of internal controls that could materially adversely affect the ability of the Trout Companies to record, process, summarize and report financial data, or any material weaknesses in internal controls or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Trout Companies.

No Undisclosed Liabilities

- 4.3.10 To the Knowledge of the Trout Contributors, except as reflected or reserved against in either the balance sheet included in the audited financial statements or the Trout Unaudited Financial Statements or in the notes thereto or as previously disclosed in writing to Arch, there are no Liabilities of any Trout Company required by GAAP to be reflected on its balance sheet, other than Liabilities (a) incurred in the ordinary course of business consistent with past practice and (b) which, in the aggregate, would not reasonably be expected to have a Trout Material Adverse Effect.

Taxes

4.3.11 Except as disclosed in Schedule 4.3.11 (with paragraph references corresponding to those set forth below):

- (a) Each Trout Company has filed all Tax Returns required to be filed by it, and it duly paid in full all Taxes owed by it (whether or not shown on such Tax Returns). All such Tax Returns were complete and correct in all material respects.
- (b) Each Trout Company has complied in all material respects with all applicable Laws relating to the withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1446, 3121 and 3406 of the Code or similar provisions under any state or foreign laws), has withheld and timely and properly paid over to the relevant Governmental or Regulatory Authority all amounts required to be withheld under such laws, and has timely filed all Tax Returns with respect to such withholding.
- (c) No election has been filed by or on behalf of any Trout Company to be treated as an association taxable as a corporation for federal income tax purposes (or any similar state, local or foreign tax purposes).
- (d) No Trout Company is a party to or bound by, or has any obligation under, any Tax sharing agreement, Tax indemnification agreement or similar contract or arrangement, or has any liability or obligation to any Person as a result of, or pursuant to, any such agreement, contract or arrangement.
- (e) There are no outstanding requests, agreements, consents or waivers to extend the statute of limitations applicable to the assessment of any Taxes or deficiencies against any Trout Company or against any consolidated, combined or unitary tax group of which it is or has been a member.
- (f) There are no Liens for Taxes (other than Permitted Liens) with respect to any of the Assets or Properties of any Trout Company.

Legal Proceedings

4.3.12 (a) There are no Actions or Proceedings pending or, to the Knowledge of the Trout Contributors, threatened against, or which directly involves, the Trout Contributors or any Trout Company or any of their respective Assets and Properties, business or operations that (i) could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or otherwise result in a diminution of \$5,000,000 or more in the individual or aggregate value of

the Assets and Properties of the Trout Companies, or (ii) except as disclosed in Schedule 4.3.12, if determined adversely to the Trout Contributors or any Trout Company, could reasonably be expected to result in (A) any injunction or other equitable relief against any Trout Company that would interfere in any material respect with such Trout Company's business or operations or (B) except as disclosed in Schedule 4.3.12, Losses by any Trout Company, individually or in the aggregate with Losses in respect of such Actions or Proceedings, exceeding \$5,000,000.

(b) There are no Orders to which any Trout Company or any of the Assets or Properties owned or used by any Trout Company, is subject.

Compliance With Laws

4.3.13 Except as disclosed in Schedule 4.3.13:

(a) each Trout Company is, and at all times since December 31, 2001 has been, in compliance with all existing Laws and Orders now or hereafter applicable to their Assets and Properties, business or operations in all material respects and neither such Trout Contributor or any Trout Company is or has at any time within the last four years been, or has received any notice that it is or has at any time within the last four years been, in violation of or in default under, in any material respect, any Law or Order applicable to any Trout Company or any of their respective Assets and Properties, business or operations;

(b) neither the ownership nor use of each Trout Company's Assets and Properties nor the conduct of its business conflicts with any material right of any other Person or violates, or without the giving of notice or the passage of time, or both, will violate, conflict with, or result in a default under, any Lien, License, Contract, Law or Order to which such Trout Company is a party or by which it may be bound or affected, except to the extent that such conflict or violation could not reasonably be expected, individually or in the aggregate with other conflicts or violations, to result in a Trout Material Adverse Effect, any terms or provisions of such Trout Company's limited liability company agreement or certificate of incorporation and bylaws, as the case may be, as presently in effect.

Benefit Plans; ERISA

4.3.14 (a) Except for the Plans identified in Schedule 4.3.14(a) (such plans being set forth thereon hereafter collectively referred to for purposes of this Section 4.3.14(a) as the "**Trout Benefit Plans**"), neither the Trout Companies, their predecessors nor their respective ERISA Affiliates (collectively, the "**Trout ERISA Entities**") (i) currently sponsor, maintain or contribute to any Plan, and (ii) have at any time within four years prior

to the Execution Date, sponsored, maintained or contributed to any employee pension benefit plan as defined in ERISA Section 3(2).

(b) The Trout Contributors have previously disclosed to Arch in writing a true and complete list of all employees and retirees of the Trout Companies who are receiving benefits under the Trout Benefit Plans as of June 30, 2005. Except as so disclosed with regard to each of the Trout Benefit Plans other than Multiemployer Plans, insofar as any of the following may adversely affect the Trout Companies or the Company, (i) the Trout ERISA Entities have in all respects performed all obligations, whether arising by operation of law or by contract, required to be performed by them in connection with the Trout Benefit Plans and Trout has no Knowledge of any default or violation by any of the parties to the Trout Benefit Plans; (ii) all reports and disclosures relating to the Trout Benefit Plans required to be filed with or furnished to governmental agencies, Trout Benefit Plan participants or Trout Benefit Plan beneficiaries have been filed or furnished in accordance with the applicable legal requirements in a timely manner and each Trout Benefit Plan has been administered in accordance with its governing document; (iii) each of the Trout Benefit Plans which is intended to be qualified under Section 401 of the Code is identified as such on Schedule 4.3.14(a) and each Trout Benefit Plan which is so identified satisfies the requirements of Section 401 of the Code, has received a favorable determination letter from the Internal Revenue Service regarding such qualified status (or a request for such a determination has been timely filed with the Internal Revenue Service) and has not, since receiving the most recent favorable determination letter, been amended or, to the Knowledge of the Trout Contributors, operated in a way which would adversely affect such qualified status; (iv) except as set forth in Schedule 4.3.14(b)(iv) there are no actions, suits or claims pending (other than routine claims for benefits) or, to the Knowledge of the Trout Contributors, threatened against any of the Trout Benefit Plans; (v) all contributions required to be made to the Trout Benefit Plans pursuant to their terms and provisions have been made; (vi) each of the Trout Benefit Plans which is subject to Title IV of ERISA is identified as such in Schedule 4.3.14(a) and with respect to each such Trout Benefit Plan, there has been no event or condition which represents the material risk of Trout Benefit Plan termination, no accumulated funding deficiency, whether or not waived, within the meaning of Section 302 of ERISA or Section 412 of the Code has been incurred, no reportable event within the meaning of Section 4043 of ERISA has occurred, no notice of intent to terminate such plan has been given under Section 4041 of ERISA, the PBGC has not instituted any proceeding under Section 4042 of ERISA to terminate such Trout Benefit Plans, there has been no termination or partial termination of such plan within the meaning of Section 411(d)(3) of the Code and no liability to the PBGC has been incurred (and to the extent this clause (vi) applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is expressly made

not only with respect to the Trout Benefit Plans currently maintained but also with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which contributions were made (or were required to be made) during the preceding four-year period); (vii) none of the Trout Benefit Plans nor any trust created thereunder or with respect thereto has engaged in any “prohibited transaction” or “party in interest transaction” as such terms are defined in Section 4975 of the Code and Section 406 of ERISA which could subject the Trout Companies or the Company to a tax or penalty on prohibited transaction or party in interest transactions pursuant to Section 4975 of the Code or Section 502(i) of ERISA; (viii) none of the Trout Companies have received any written notice of any matter pending (other than routine qualification determination filings) with respect to any of the Trout Benefit Plans before the Internal Revenue Service, the Department of Labor or the PBGC.

(c) The only Multiemployer Plans to which the Trout ERISA Entities contribute to or have contributed to during the last four calendar years (or is or have been obligated to contribute to) are: United Mine Workers of America 1974 Pension Plan; United Mine Workers of America 1950 Pension Plan; United Mine Workers of America 1993 Benefit Plan and Trust; United Mine Workers of America Combined Benefit Fund; and the United Mine Workers of America 1992 Benefit Plan. With respect to each such Multiemployer Plan: (i) no event has occurred that would give rise to any withdrawal liability on the part of the Trout ERISA Entities; (ii) none of Trout ERISA Entities (or their predecessors) has received any written notice that such Multiemployer Plan is in “reorganization” (within the meaning of Section 4241 of ERISA), that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, or that the Multiemployer Plan is or may become “insolvent” (within the meaning of Section 4241 of ERISA); (iii) none of the Trout ERISA Entities (or their predecessors) has received any written notice that a Multiemployer Plan is a party to any pending merger or asset or liability transfer under Part 2 of Subtitle E of Title IV of ERISA and (iv) none of the Trout ERISA Entities (or their predecessors) has received any written notice that the PBGC has instituted proceedings against the Multiemployer Plan.

(d) None of the Trout ERISA Entities has been notified of the assessment of, nor have the Trout ERISA Entities incurred, withdrawal liability under Subtitle E of Title IV of ERISA or termination liability under Subtitle D of Title IV of ERISA.

(e) The Trout ERISA Entities have complied in all material respects with the applicable requirements of Section 4980B of the Code, Sections 601-609 of ERISA, or any local Law of similar effect.

(f) None of the Trout Companies, their predecessors, or any related person to either within the meaning of Section 9701(c) of the Code has any current or past unpaid liability under Section 9704 or Section 9712 of the Code.

(g) Except as set forth in Schedule 4.3.14(g), neither the Trout Companies, their predecessors nor any related person to the Trout Companies or their predecessors within the meaning of Section 9701(c) of the Code currently have any liability for premiums or benefits under either Sections 9704, 9711 or 9712 of the Code.

(h) Except as set forth in Schedule 4.3.14(h), each of the Trout Benefit Plans is, and its administration and operation is and has been since inception, in all material respects in compliance with, and no Trout ERISA Entity has received any claim or notice that any such Trout Benefit Plan is not in compliance with, all applicable Laws or Orders and prohibited transactions exemptions, including the requirements of ERISA, the Code, the Age Discrimination in Employment Act, the Equal Pay Act and Title VII of the Civil Rights Act of 1964, and the terms of such Trout Benefit Plan or any related trust agreement, insurance contract or other funding instrument. No event has occurred, and there exists no condition or set of circumstances in connection with any Trout Benefit Plan, under which the Company or any Trout Company, directly or indirectly (through any indemnification agreement or otherwise), could reasonably be expected to be subject to any risk of material liability under Section 409 of ERISA.

(i) Each Trout Benefit Plan that is intended to afford any Tax benefit to any Trout Company or any other Person complies with the requirements of the applicable provisions of the Code or other Laws required in order to provide such Tax benefit to such Trout Company or such Person. (A) As of the Execution Date, all contributions and other payments required to be made by a Trout ERISA Entity or any other Person to any Trout Benefit Plan with respect to any period ending before or at or including the Execution Date have been made or reserves adequate for such contributions or other payments have been or will be set aside therefor in accordance with GAAP; and (B) as of the Closing Date, all contributions and other payments required to be made by a Trout ERISA Entity or any other Person to any Trout Benefit Plan with respect to any period ending before or at or including the Closing Date will have been made or reserves adequate for such contributions or other payments have been or will be set aside therefor in accordance with GAAP. There are no material outstanding liabilities of any Trout Benefit Plan other than liabilities for benefits to be paid, in the ordinary course, to participants of such Trout Benefit Plan and their beneficiaries in accordance with the terms of such Trout Benefit Plan.

(j) Neither the execution of this Agreement nor the completion of the transaction contemplated by this Agreement will (i) except as set forth in Schedule 4.3.14(j), result in or cause the establishment, payment, acceleration, vesting, an increase in or funding of a benefit under any Trout Benefit Plan, (ii) result in a violation of the fiduciary duties of Section 404 of ERISA, the prohibited transaction rules of Section 406 of ERISA or Section 4975 of the Code, or (iii) result in a payment that will be nondeductible to the Company or any Trout Company or subject to Tax under Code Section 280G or 4999.

(k) Except as set forth in Schedule 4.3.14(k) or for the Trout Benefit Plans required to be maintained pursuant to the NBCWA, the Coal Act or the memorandum of understanding between the United Mine Workers of America and Dakota and Day, each Trout Company has the right to modify or terminate non-pension benefits to employees, former employees, directors or other Persons (other than benefits required to be provided under Section 601 et seq. of ERISA) under any Trout Benefit Plan without incurring any additional benefit cost.

(l) Complete and correct copies of the following documents have been furnished to the Company and Arch prior to the execution of this Agreement:

- (vi) the Trout Benefit Plans and any related trust (or other third party funding vehicle) agreements, including, all amendments thereto;
- (vii) current summary plan descriptions of each Trout Benefit Plan subject to ERISA, and any similar descriptions of all other Trout Benefit Plans;
- (viii) the most recent Form 5500 and Schedules thereto for each Trout Benefit Plan subject to ERISA reporting requirements (excluding multiemployer plans);
- (ix) the most recent actuarial report, if required under ERISA or the Code, with respect to each Trout Benefit Plan; and
- (x) the most recent determination letter received from the Internal Revenue Service with respect to each Trout Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(m) Except as set forth in Schedule 4.3.14(m), no "leased employees," as that term is defined in Section 414(n) of the Code, perform services for the Trout ERISA Entities. None of the Trout ERISA Entities has used the services of such leased employees or independent contractors in such a way that they may have become eligible to participate in the Trout Benefit

Plans or to an extent that would reasonably be expected to result in the disqualification of any Trout Benefit Plan or the imposition of penalties or excise taxes with respect to the Trout Benefit Plans by the Internal Revenue Service, the Department of Labor, the PBGC or any other Governmental or Regulatory Authority.

(n) Except as set forth on Schedule 4.3.14(n), none of the Trout ERISA Entities has any formal plan or commitment, whether legally binding or not, to create any additional benefit plan or modify or change any existing Trout Benefit Plan that would affect any current or former employee of the Trout Companies (or their predecessors).

(o) Except as set forth in Schedule 4.3.14(o), no Trout Benefit Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with respect to current or former employees of the Trout Companies (or their predecessors) beyond their retirement or other termination of service, other than (i) coverage mandated solely by applicable Law, (ii) death benefits or retirement benefits under any "employee pension benefit plan" as defined in Section 3(2) of ERISA, (iii) deferred compensation benefits accrued as liabilities on the books of the Trout Companies, or (iv) benefits the full costs of which are borne by the current or former employee or his or her beneficiary.

(p) Except with respect to changes required by applicable Law, there has been no adoption of, amendment to, written interpretation or announcement (whether or not written) relating to, or change in employee participation or coverage under, any Trout Benefit Plan that would increase materially the expense of maintaining such Trout Benefit Plan above the level of the expense incurred in respect thereof shown on the actual audited Trout Coal, Inc. Contributed Properties Financial Statements for the fiscal year ended December 31, 2004.

(q) To the Knowledge of the Trout Contributors, no representations or communications, oral or written, with respect to the participation, eligibility for benefits, vesting, benefit accrual or coverage under any Trout Benefit Plan have been made that are not in accordance with the terms and conditions of the Trout Benefit Plans.

Working Capital

4.3.15 As of the Closing, the working capital balance of the Trout Companies in the aggregate will not be materially different from the working capital balance reflected in the Trout Unaudited Financial Statements.

Tangible Personal Property; Investment Assets

4.3.16 (a) At the time of Closing, each Trout Company will be in possession of and, except for such equipment as is leased by such Trout Company (in

each case as set forth in Schedule 4.3.16(a)(1)), will own and have good title to all tangible personal property primarily used in or reasonably necessary for the conduct of its business as being operated and as was operated during the period covered by the Trout Unaudited Financial Statements for such Trout Company (including all surplus equipment has been customarily used as spare parts or for maintenance purposes by such Trout Company), including all tangible personal property reflected on the balance sheet included in the Trout Unaudited Financial Statements and tangible personal property acquired since the Unaudited Financial Statement Date other than property disposed of since such date in the ordinary course of business consistent with past practice. All such tangible personal property will be free and clear of all Liens, other than Permitted Liens and Liens disclosed on Schedule 4.3.16(a)(2) at the time of Closing, and is in good working order and condition, ordinary wear and tear excepted. Except as set forth in Schedule 4.3.16(a)(3), no material tangible personal property, whether owned, leased, held on consignment or otherwise, located on the real property site (whether owned, leased or subleased) of any of the Trout Companies on the date on which Arch or its representatives visited such real property site in connection with their due diligence in connection with the transactions contemplated by this Agreement, has been relocated or moved off of the property of the Trout Companies, it being understood that relocation or movement of such personal property to any real property site (whether owned, leased or subleased) of any Trout Company (even if not the real property site upon which such personal property was originally located) shall not constitute a breach of this representation.

(b) No Trout Company owns any Investment Assets.

Intellectual Property Rights

4.3.17 The Trout Companies do not own any material Intellectual Property.

Contracts

4.3.18 (a) Schedule 4.3.18(a) (with paragraph references corresponding to those set forth below) contains a true and complete list of each of the following Contracts (copies, true and complete in all material respects, or, if none, reasonably complete and accurate written descriptions of which, together with all amendments and supplements thereto and all waivers of any terms thereof, have been delivered to Arch prior to the execution of this Agreement), which are currently in force and to which any Trout Company is a party or by which any of their respective Assets and Properties is bound:

(i) (A) except as previously disclosed to Arch, all Contracts (excluding Trout Benefit Plans) providing for a commitment of

employment or consultation services for a specified or unspecified term or otherwise relating to employment or the termination of employment, the name, position and rate of compensation of each Person party to such a Contract and the expiration date of each such Contract; and (B) any written representations, commitments, promises, communications or courses of conduct (excluding Trout Benefit Plans and any such Contracts referred to in clause (A)) involving an obligation of any Trout Company to make payments in any year, other than with respect to salary or incentive compensation payments in the ordinary course of business, to any employee exceeding \$100,000 or any group of employees exceeding \$5,000,000 in the aggregate;

(ii) all Contracts with any Person containing any provision or covenant prohibiting or limiting the ability of any Trout Company to engage in any business activity or compete with any Person or prohibiting or limiting the ability of any Person to compete with any Trout Company;

(iii) all partnership, joint venture, shareholders' or other similar Contracts with any Person;

(iv) all Contracts relating to Indebtedness of any Trout Company in excess of \$5,000,000;

(v) all Contracts with distributors, service providers, dealers, manufacturer's representatives, sales agencies or franchisees that involve aggregate annual payments in excess of \$5,000,000;

(vi) all Contracts relating to (A) the future disposition or acquisition of any Assets and Properties, other than dispositions or acquisitions in the ordinary course of business consistent with past practice or in connection with the Trout Reorganization Transactions, and (B) any merger or other business combination other than the Trout Reorganization Transactions;

(vii) all Contracts between or among any Trout Company, on the one hand, and the Trout Contributors or any officer, director or Affiliate (other than any Trout Company) of the Trout Contributors on the other hand;

(viii) all collective bargaining or similar labor Contracts;

(ix) all Contracts that (A) limit or contain restrictions on the ability of any Trout Company to declare or pay dividends on, to make any other distribution in respect of or to issue or purchase, redeem or otherwise acquire its membership interests, to incur Indebtedness, to incur or suffer to exist any Lien, to purchase or sell

any Assets and Properties, to change the lines of business in which it participates or engages or to engage in any business combination or (B) require any Trout Company to maintain specified financial ratios or levels of net worth or other indicia of financial condition;

(x) (A) as of the Execution Date, all coal sales and transportation agreements to which a Trout Company is a party as of such date; and (B) as of the Closing Date, all coal sales and transportation agreements to which a Trout Company is a party as of such date; and

(xi) all other Contracts (other than Trout Benefit Plans, leases listed in Schedule 4.3.4(a) and the items set forth on Schedule 4.3.16(a)(1) and insurance policies listed in Schedule 4.3.20) that (A) involve the payment or potential payment, pursuant to the terms of any such Contract, by or to any Trout Company of more than \$5,000,000 annually and (B) cannot be terminated within 90 days after giving notice of termination without resulting in any material cost or penalty to any Trout Company.

(b) Each Contract required to be disclosed in Schedule 4.3.18(a) is in full force and effect and constitutes a legal, valid and binding agreement of such Trout Company, enforceable in accordance with its terms enforceable against each in accordance with its terms, (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and to the Knowledge of the Trout Contributors, constitutes a legal, valid and binding agreement, enforceable in accordance with its terms of each other party thereto; and except as disclosed in Schedule 4.3.18(b), neither such Trout Contributor nor any Trout Company, or, to the Knowledge of the Trout Contributors, no other party to such Contract is, or has received notice that it is, in violation or breach of or default under any such Contract (or with notice or lapse of time or both, would be in violation or breach of or default under any such Contract) in any material respect.

Licenses

4.3.19 Schedule 4.3.19(1) contains a true and complete, in all material respects, list of all Licenses used in and material to the business or operations of any Trout Company (and all pending applications for any such Licenses), setting forth the grantor, the grantee, the function and the expiration and renewal date of, and the amount of bond posted with respect to, each. Prior to the execution of this Agreement, the Trout Contributors have made available for review to Arch true and complete, in all material

respects, copies of all such Licenses. Except as disclosed in Schedule 4.3.19(2):

- (a) each License required to be obtained for the current stage of development of the Trout Mine Properties has been duly obtained and validly issued, is in full force and effect, is final and not subject to appeal and held in the name of a Trout Company and is free from conditions or requirements the compliance with which would, individually or in the aggregate, reasonably be expected to have a Trout Material Adverse Effect;
- (b) each License relating to the Trout Mine Properties will be issued in the name of a Trout Company on the Closing Date;
- (c) each applicable Trout Company is in compliance with each such License, except to the extent that noncompliance could not be reasonably likely, individually or in the aggregate, to have a Trout Material Adverse Effect;
- (d) neither the Trout Contributors nor any of the Trout Companies has received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default) under any such License;
- (e) (i) as of the Execution Date, the Trout Contributors have no actual knowledge of any specific reason that any Licenses that have been applied for but not obtained by the Execution Date, and are required to be obtained within next six months will not be obtained in due course and (ii) as of the Closing Date, except as set forth on Schedule 4.2.19(e)(ii), the Trout Contributors have no actual knowledge of any specific reason that any Licenses that have been applied for but not obtained by the Closing Date, will not be obtained in due course (for purposes of this clause (e), **“actual knowledge”** means the actual knowledge of those individuals included in the definition of Knowledge); and
- (f) none of the Trout Companies or, to the Knowledge of the Trout Contributors, or any corporation, partnership, limited liability company or other entity “owned or controlled” by any of them, has been notified by the Federal Office of Surface Mining or the agency of any state administering the Surface Mining Control and Reclamation Act of 1977, as amended (or any comparable state statute) that it is (a) ineligible to receive additional surface mining permits or other Licenses or (b) under investigation to determine whether its eligibility to receive such permits or other Licenses should be revoked, *i.e.*, “permit blocked.” As used in this Section 4.33, “owned or controlled” shall be defined as set forth in 30 C.F.R Section 773.5 (2000).

Insurance

4.3.20 The Trout Contributors have previously provided to Arch a true and complete (in all material respects) list (including the names and addresses of the insurers, the names of the Persons to whom such policies have been issued, the expiration dates thereof, whether it is a “claims made” or an “occurrence” policy and the type of insurance) of all liability, property, workers’ compensation, and other insurance policies currently in effect that insure the business, operations or employees of any Trout Company and that (i) have been issued to any Trout Company or (ii) to the Knowledge of the Trout Contributors, have been issued to any other Person for the benefit of any Trout Company. Each such policy is valid and binding and in full force and effect, no premiums due thereunder have not been paid and neither the Trout Contributors, nor to the Knowledge of the Trout Contributors, any other Person to whom such policy has been issued, has received any notice of cancellation or termination in respect of any such policy or is in default thereunder. Schedule 4.3.20(2) describes all pending insurance claims under the insurance described above.

Affiliate Transactions

4.3.21 Except as disclosed in Schedule 4.3.21(1): (i) there are no intercompany Liabilities between any Trout Company, on the one hand, and a Trout Contributor or any officer, director or Affiliate (other than any Trout Company) of such Trout Contributor, on the other, (ii) neither a Trout Contributor nor, in the case of ArcLight, any officer, director or Affiliate of ArcLight provides or causes to be provided any assets, services or facilities to any Trout Company (except as contemplated herein), (iii) no Trout Company provides or causes to be provided any assets, services or facilities to a Trout Contributor or any such officer, director or Affiliate thereof and (iv) no Trout Company beneficially owns, directly or indirectly, any Investment Assets issued by a Trout Contributor or any such officer, director or Affiliate. Except as disclosed in Schedule 4.3.21(2) and other than any transactions exclusively between or among the Trout Companies, each of the Liabilities and transactions listed in Schedule 4.3.21(1) was incurred or engaged in, as the case may be, on an arm’s-length basis. Except as disclosed in Schedule 4.3.21(3), since the date of the audited balance sheet provided pursuant to Section 4.3.8, all settlements of intercompany Liabilities between any Trout Company, on the one hand, and a Trout Contributor or, in the case of ArcLight, any such officer, director or Affiliate thereof, on the other, have been made, and all allocations of intercompany expenses have been applied, in the ordinary course of business consistent with past practice.

Employees; Labor Relations

4.3.22 (a) Except for the hourly employees of Dakota and Day, who are represented by the United Mine Workers of America and subject to the NBCWA of 2002 or the memorandum of understanding between the United Mine Workers of America and Dakota and Day, no employee of any Trout Company is presently a member of a collective bargaining unit and, to the Knowledge of the Trout Contributors, there are no threatened or contemplated attempts to organize for collective bargaining purposes any of the employees of any Trout Company. Except as set forth on Schedule 4.3.22(a), during the last 12 months, (i) no unfair labor practice complaint or sex, age, race or other discrimination claim has been brought against any Trout Company before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental or Regulatory Authority and (ii) there has been no work stoppage, strike or other concerted action by employees of any Trout Company.

(b) No Person who is not treated as an employee of any Trout Company but who provides or performs services to or on behalf of any Trout Company is (i) a leased employee within the meaning of Section 414(n) of the Code, (ii) employed by a professional employer organization or employee leasing organization, or (iii) required to be treated as a common law employee of any Trout Company under the Code, ERISA or any other applicable Law.

Environmental Matters

4.3.23 To the Knowledge of the Trout Contributors, except as set forth in Schedule 4.3.23, each Trout Company currently holds or at the time of the Closing will hold all Licenses that are necessary under applicable Environmental Laws for the current use, occupancy, or operations of such Trout Company as such operations are currently conducted, except where the failure to have any License could not reasonably be expected to result in a Trout Material Adverse Effect. To the Knowledge of the Trout Contributors, each Trout Company is in compliance, in all material respects, with the terms and conditions of all such Licenses.

In addition, except as set forth in Schedule 4.3.23 (with paragraph references corresponding to those set forth below) and except for such matters as could not, individually or in the aggregate, be reasonably likely to result in a Trout Material Adverse Effect, to the Knowledge of the Trout Contributors:

(a) Within the past four years, (i) no Order has been issued, (ii) no Environmental Claim has been filed, no penalty has been assessed, (iii) to the Knowledge of the Trout Contributors, no investigation or review is

pending or threatened by any Governmental or Regulatory Authority with respect to any alleged failure by any Trout Company to have any License required under applicable Environmental Laws in connection with the conduct of the business or operations of any Trout Company or with respect to any generation, treatment, storage, recycling, transportation, discharge, disposal or Release of any Hazardous Material generated by any Trout Company, (iv) neither the Trout Contributors nor any Trout Company has received written notice of any such investigation or review and (v) to the Knowledge of the Trout Contributors, there are no facts or circumstances in existence which could reasonably be expected to form the basis for any such Order, Environmental Claim, penalty or investigation.

(b) No Trout Company currently owns, operates or leases a treatment, storage or disposal facility requiring a permit under the Resource Conservation and Recovery Act, as amended, or under any other comparable state or local Law; and, without limiting the foregoing, (i) no Trout Company is aware of the existence of, or currently uses, any underground storage tanks located on any property owned, leased or used by a Trout Company; and (ii) in the past four years, there have been no Releases of Hazardous Materials in a reportable quantity under, or in violation of, any Environmental Law into the environment or under any real property now owned, leased or used by any Trout Company which would be reasonably likely individually or in the aggregate to result in a Trout Material Adverse Effect.

(c) No Trout Company currently transports or arranges for the transportation of any Hazardous Material to any location that any Trout Company has Knowledge is (i) listed on the NPL under CERCLA, (ii) listed for possible inclusion on the NPL by the Environmental Protection Agency in CERCLIS or on any similar state or local list or (iii) the subject of enforcement actions by federal, state or local Governmental or Regulatory Authorities that may lead to Environmental Claims against any Trout Company.

(d) No site or facility currently owned, operated or leased by any Trout Company is listed or to the Knowledge of the Trout Contributors, proposed for listing on the NPL, CERCLIS or any similar state or local list of sites requiring investigation or clean-up.

(e) No Liens have arisen under or pursuant to any Environmental Law on any site or facility currently owned, operated or leased by any Trout Company, and no federal, state or local Governmental or Regulatory Authority action has been taken in the past four years or, to the Knowledge of the Trout Contributors, is in process that could subject any such site or facility to such Liens, and no Trout Company would be required to place any notice or restriction relating to the presence of

Hazardous Materials at any site or facility owned by it in any deed to the real property on which such site or facility is located.

(f) There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted outside the ordinary course of business consistent with past practice in the past four years that are in the possession of, any Trout Company in relation to any site or facility now or previously owned, operated or leased by any Trout Company which have not been delivered to Arch prior to the execution of this Agreement.

(g) Each of the Trout Companies (i) has carried out all reclamation with respect to their coal mining and processing operations required to date by law and (ii) in the past four years, has received no notice asserting or claiming the existence of seepage, leaks, breakthroughs or other events that could result in harm to health, safety or the environment with respect to any surface impoundment or sealed deep mine.

Substantial Customers; Material Suppliers

4.3.24 (a) Schedule 4.3.24(a) lists the five largest customers of each Trout Company, on the basis of revenues for goods sold or services provided for the most recently completed fiscal year. No such customer has ceased or materially reduced its purchases from or use of the services of the Trout Companies since the Unaudited Financial Statement Date, or to the Knowledge of the Trout Contributors, has threatened to cease or materially reduce such purchases or use after the Execution Date. To the Knowledge of the Trout Contributors, no such customer is currently in, or threatened with, bankruptcy or insolvency.

(b) Schedule 4.3.24(b)(1) lists the material suppliers of the goods and services listed to the Trout Companies in Schedule 4.3.21(b)(1). Except as disclosed in Schedule 4.3.21(b)(2), no such supplier has ceased or materially reduced its supplies to the Trout Companies since the Unaudited Financial Statement Date, or to the Knowledge of the Trout Contributors, has threatened to cease or materially reduce such supply after the Execution Date. Except as disclosed in Schedule 4.3.21(b)(3), to the Knowledge of the Trout Contributors, no such supplier is currently in, or threatened with, bankruptcy or insolvency.

Bank and Brokerage Accounts

4.3.25 Schedule 4.3.25 sets forth a true and complete list of the names and locations of all banks, trust companies, securities brokers and other financial institutions at which any Trout Company has an account or safe deposit box or maintains a banking, custodial, trading or other similar relationship. The Trout Contributors have heretofore delivered to Arch a true and complete list and description of each such account, box and

relationship, indicating in each case the account number and the names of the respective officers, employees, agents or other similar representatives of any Trout Company having signatory power with respect thereto.

Directors and Officers; No Powers of Attorney

4.3.26 Schedule 4.3.26(1) lists all members of the management committee, managing members and/or executive officers and directors of each Trout Company. As of Closing, except as set forth in Schedule 4.3.26(2), no Trout Company has any powers of attorney or comparable delegations of authority outstanding, except such powers-of-attorney as are granted pursuant to real property leases, equipment leases, mortgages or deeds of trust, in each case in the ordinary course of business and on customary terms.

Accounts Receivable

4.3.27 Except as set forth in Schedule 4.3.27, the accounts and notes receivable of the Trout Companies reflected on the balance sheet included in the Trout Unaudited Financial Statements, and all accounts and notes receivable arising subsequent to the Unaudited Financial Statement Date, (i) arose from bona fide sales transactions in the ordinary course of business and are payable on ordinary trade terms, (ii) to the Knowledge of the Trout Contributors, are legal, valid and binding obligations of the respective debtors enforceable in accordance with their terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)) and (iii) are not the subject of any Actions or Proceedings brought by or on behalf of any Trout Company.

Inventory

4.3.28 All inventory of the Trout Companies reflected on the balance sheet included in the Trout Unaudited Financial Statements consisted, and all such inventory acquired since the Unaudited Financial Statement Date consists, of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, subject to normal and customary allowances in the industry for damage and outdated items. Except as disclosed in the notes to the Trout Unaudited Financial Statements and as to such items that are held on consignment, all items included in the inventory of the Trout Companies are the property of the Trout Companies, free and clear of any Lien other than Permitted Liens, have not been pledged as collateral, are not held by any Trout Company on consignment from others and conform in all material respects to all

standards applicable to such inventory or its use or sale imposed by Governmental or Regulatory Authorities.

Brokers

- 4.3.29 All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by such Trout Contributor directly with Arch and the Company without the intervention of any Person on behalf of the Trout Contributors in such manner as to give rise to any valid claim by any Person against the Company, Arch or any Trout Company for a finder's fee, brokerage commission or similar payment.

Disclosure

- 4.3.30 There is no fact or circumstance known to the Trout Contributors that has not been disclosed to the Company and Arch, the existence of which would, individually or in the aggregate with other such facts or circumstances, have a Trout Material Adverse Effect. No representation or warranty made by such Trout Contributor in this Agreement or the other Transaction Documents, no statement contained in the Schedules or in any certificate furnished to the Company or Arch pursuant to any provision of this Agreement or any other Transaction Document by or on behalf of such Trout Contributor or any Trout Company contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements made herein or therein, in the light of the circumstances in which they were made, not misleading. The information provided by or on behalf of such Trout Contributor to Weir in connection with Weir's independent evaluation of the reserves at the Trout Mine Properties and their independent environmental audit did not contain any untrue statement of material fact or omit to state a material fact required to be stated therein necessary in order to make the statements made herein or therein, in the light of the circumstances in which they were made, not misleading. As of the Closing, no information contained in the Registration Statement or the Prospectus that was furnished by or on behalf of such Trout Contributor or any Trout Company, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements made herein or therein in the light of the circumstances in which they were made, not misleading. All adjustments suggested by such Trout Contributor in connection with the Company's preparation of its pro forma statements (insofar as such statements relate to the Trout Companies) were made in good faith based on reasonable assumptions.

Reclamation Bonds

- 4.3.31 Schedule 4.3.31(1) contains an accurate and complete list of all Bonds pursuant to, in connection with or as a condition of the Licenses listed in Schedule 4.3.19(1). Other than the Bonds listed on Schedule 4.3.31(2), no other bonds are currently required under applicable Law to be posted in connection with the Licenses.

Absence of Certain Business Practices

- 4.3.32 Neither any Trout Company, nor any officer, employee or agent of any Trout Company, nor any other Person acting on behalf of any Trout Company, has, directly or indirectly, within the past four years given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the respective business of such Trout Company (or assist such Trout Company in connection with any actual or proposed transaction) which (a) might subject any Trout Company to any damage or penalty in any Action or Proceeding, (b) if not given in the past might have an adverse effect on the Assets and Properties, business or operations of any Trout Company as reflected in the financial statements delivered pursuant to this Agreement or (c) if not continued in the future, might adversely affect the respective Assets and Properties, business, operations or prospects of any Trout Company or which might subject any Trout Company to suit or penalty in any Action or Proceeding.

Sufficiency of Assets

- 4.3.33 Except as set forth on Schedule 4.3.33, the Assets and Properties of the Trout Companies, include all of the assets and properties primarily used or held for use in the business and operations of the Trout Companies and together with all rights of the Trout Companies are sufficient to permit the Trout Companies to extract and process coal from the Trout Mine Properties (with respect to leased or subleased property, as to coal covered by such leases or subleases) owned, leased or subleased by any of the Trout Companies in a manner consistent with how such Trout Mine Properties are being operated and were operated during the period covered by the Trout Unaudited Financial Statements.

Securities Act

- 4.3.34 Such Trout Contributor is not acquiring the Common Stock with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Such Trout Contributor, together with, in the case of ArcLight, its directors and executive officers and advisors, is familiar with investments of the nature of the Common Stock, understands that this investment involves substantial risks, has adequately investigated the

Common Stock and has substantial knowledge and experience in financial and business matters such that it is capable of evaluating, and has evaluated, the merits and risks inherent in acquiring the Common Stock, and is able to bear the economic risks of such investment. Such Trout Contributor acknowledges that the Common Stock have not been registered or qualified under, and are sold in reliance upon an exemption from the registration requirements of, the Securities Act, and the rules and regulations thereunder and any applicable state securities or “Blue Sky” laws, and may not be offered, sold, transferred, pledged, hypothecated or otherwise assigned unless they are registered under such securities laws or regulations or an exemption from such registration is available.

No Other Representations

4.3.35 The Company and Arch each acknowledge that neither Trout Contributor nor, in the case of ArcLight, any of its Affiliates, directors, officers, managers, members, employees, consultants, agents or advisors makes or has made any representation or warranty to the Company or Arch or their respective Affiliates regarding the Trout Contributors, the Trout Companies or any of their respective businesses or Assets and Properties, except for the representations and warranties of the Trout Contributors expressly set forth in this Agreement, the other Transaction Documents or any certificate delivered pursuant to this Agreement or the other Transaction Documents.

4.4 Closing Date Representations.

The representations and warranties contained in Sections 4.2.18(a)(x)(B), 4.3.18(a)(x)(B), 4.2.19(e)(ii) and 4.3.19(e)(ii) are all representations and warranties that will only be made on and as of the Closing Date and any schedules with respect thereto will be delivered on the Closing Date; provided, however, no Contributor shall list a Contract on Schedules 4.2.18(a)(x)(B) or 4.3.18(a)(x)(B), as applicable, that was executed prior to the Execution Date and that was not listed on Schedule 4.2.18(a)(x)(A) or 4.3.18(a)(x)(A), as applicable.

4.5 Disclaimer of Warranties.

(a) If prior to the Closing any party (the “**Waiving Party**”) has actual knowledge of any breach (“**Breach**”) by any other party of any representation, warranty or covenant contained in this Agreement or any Transaction Document, and the effect of such breach is a failure of any condition to the Waiving Party’s obligations set forth in Article V and the Waiving Party proceeds with the Closing, the parties shall discuss such circumstances and, unless the parties otherwise agree in writing, the Waiving Party shall be deemed to have waived such breach and the Waiving Party and its successors, assigns and Affiliates shall not be entitled to be indemnified pursuant to Section 10.3, to sue for damages or to assert any other right or remedy for any losses arising from any matters relating

to such condition or breach, notwithstanding anything to the contrary contained herein or in any certificate delivered pursuant hereto.

(b) Each of the Contributors and the Company shall promptly notify the other Contributors and the Company (as the case may be) of, and furnish each of them with any information that such Contributor or the Company may reasonably request with respect to, the occurrence, to such Contributor's actual knowledge, of any event or condition or the existence of any fact that would cause any of the conditions to such Contributor's obligation to consummate the transactions contemplated by this Agreement not to be fulfilled, including any breach by any party of any representation, warranty or covenant contained in this Agreement or any Transaction Document.

(c) To the extent that any jurisdiction in which the Conveyed Equity Interests or Underlying Assets are located may require that documents be recorded in order to evidence the transfers of title reflected in this Agreement, then the disclaimers set forth in Section 4.4(a) shall also be applicable to the conveyances under such documents, except as otherwise provided in such document.

(d) No fewer than three days prior to the Closing, each party shall deliver to the other parties a draft of the Schedules that it or he proposes to be updated and/or delivered at Closing.

ARTICLE V

Closing Conditions

5.1 Closing.

The closing (the "**Closing**") of the contribution of the Conveyed Equity Interests and the assumption of the Trout Debt shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, as soon as possible, but in no event later than the date of the IPO, after satisfaction of the conditions set forth in this Article V, or at such other time or place as the Contributors and the Company shall mutually agree.

5.2 Initial Issuance of Common Stock.

Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations of the Company and the Contributors set forth above, on the Closing Date, the Company shall issue to the Contributors and the Arch Holding Companies, and the Contributors shall purchase (or, in the case of the Arch Holding Companies, Arch will cause the Arch Holding Companies to purchase) from the Company, the number of shares of Common Stock described in Sections 2.1 and 2.2. Such issuances and purchases shall be effected on the Closing Date by the Company executing and delivering to each of the Contributors and the Arch Holding Companies, duly registered in its name, a duly executed stock certificate evidencing the shares of Common Stock being issued to it, against delivery by each of the Contributors to the Company of the Conveying Documents.

5.3 Order of Completion of Transactions.

The transactions provided for in Articles II and III of this Agreement shall be completed on the Closing Date in the following order:

- (a) First, the transactions provided for in Article II shall be completed in the order set forth therein; and
- (b) Second, the transactions provided for in Article III shall be completed in the order set forth therein.

5.4 General Conditions.

The obligation of the parties hereto to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following conditions:

(a) There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or which could reasonably be expected to otherwise result in a material diminution of the benefits of the transactions contemplated by this Agreement to the parties hereto, and there shall not be pending or threatened on the Closing Date any action or proceeding in, before or by any Governmental or Regulatory Authority which could reasonably be expected to result in the issuance of any such order or the enactment, promulgation or deemed applicability to any law.

(b) All consents, approvals and actions of, filings with and notices to any Governmental or Regulatory Authority necessary to permit the parties hereto to perform their respective obligations under this Agreement and to consummate the transactions contemplated hereby and thereby (i) shall have been duly obtained, made or given, (ii) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (iii) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement, including under the HSR Act, shall have occurred.

(c) Such members of the management committees, managing members and/or executive officers and directors of the Trout Companies and the Arch Companies as are designated by the Company shall have tendered, effective at the Closing Date, their resignations as such officers and directors, members, officers and directors of the management committee and managing members, and shall have been replaced with the persons agreed by the parties hereto.

(d) The registration statement filed on Form S-1 relating to the IPO shall have been declared effective (such effective registration statement, the "**Registration Statement**") by, the Securities and Exchange Commission, and the Company, the Contributors and the managing underwriter shall have entered into

an underwriting agreement in connection with the IPO, and all conditions to the consummation of the transactions contemplated by such underwriting agreement, other than transactions contemplated by this Agreement, capable of satisfaction immediately prior to consummation thereof shall have been satisfied or waived.

(e) Execution and delivery of the Master Coal Sales and Services Agreement, the Registration Rights Agreement, the Blue Creek Lease, the Transition Services Agreement and the Conveying Documents (together with this Agreement, the “**Transaction Documents**”).

(f) Arch shall have delivered to the Company and the Trout Contributors evidence that the Arch Companies have been fully released (or arrangements therefor satisfactory to the Company and the Trout Contributors shall have been made) from any and all Liabilities of any kind under or in respect of the Arch Credit Agreement, and none of the Assets and Properties of the Arch Companies are subject to any Liens securing the Liabilities under the Arch Credit Agreement (or arrangements therefor satisfactory to the Company and the Trout Contributors shall have been made).

5.5 Conditions of Obligations of Company.

In addition to the conditions set forth in Section 5.4, the obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following further conditions:

(a) Each of the Contributors shall deliver to Company such deeds, certificates, securities, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary or appropriate to vest in the Company all right, title and interest in, to and under the Conveyed Equity Interests.

(b) The representations and warranties of each of the Contributors in this Agreement and the Transaction Documents (i) that are qualified as to materiality (or with the term “Arch Material Adverse Effect” or “Trout Material Adverse Effect”) shall be true and complete and (ii) that are not so qualified shall be true and complete in all material respects, as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality (or with the term “Arch Material Adverse Effect” or “Trout Material Adverse Effect”) shall be true and complete, and those not so qualified shall be true and complete in all material respects, on and as of such earlier date), and the Company shall have received a certificate to that effect, dated the Closing Date, from Elliott and an Executive Officer of ArcLight and a certificate to that effect, dated the Closing Date, from an Executive Officer of Arch.

(c) Each Contributor shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it by the time of the Closing, and the Company shall have received a certificate to that effect, dated the Closing Date, from Elliott and an Executive Officer of ArcLight and a certificate to that effect, dated the Closing Date, from an Executive Officer of Arch.

(d) All consents (or in lieu thereof waivers) listed in Part A of Schedule 5.5 (a) shall have been obtained, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

(e) The Company shall have received legal opinions delivered pursuant to Section 5.6(e) and Section 5.7(e) in form and substance reasonably satisfactory to ArcLight, Arch and the Company.

(f) Each of the Arch Reorganization Transactions and the Trout Reorganization Transactions shall have occurred.

(g) Arch shall have delivered to the Company and the Trout Contributors a long-form certificate of the Secretary of State of Delaware with respect to, among other things, the good standing of each of the Arch Companies, the limited liability company agreement of each of TC Sales, Robin Land, Catenary Apogee and Hobet, and the Trout Contributors shall have delivered to the Company and Arch a long-form certificate of the Secretary of State of Delaware with respect to, among other things, the good standing of each of Trout and Trout II, and certificates of existence of the Secretary of State of West Virginia with respect to, among other things, existence of each of Brook Trout and each of the Subsidiaries thereof and of Trout II, and the limited liability company agreements of each Trout Company.

(h) There shall not be threatened, instituted or pending any action or proceeding by any Person before any court or Governmental or Regulatory Authority, domestic or foreign, (i) seeking to restrain, prohibit or otherwise interfere with the ownership or operation by the Company or any of its Affiliates of all or any material portion of the Conveyed Equity Interests, the Underlying Assets or the business or assets of the Company or any of its Affiliates or to compel Company or any of its Affiliates to dispose of all or any material portion of the Conveyed Equity Interests, the Underlying Assets or of the Company or any of its Affiliates or (ii) seeking to require divestiture by the Company or any of its Affiliates of any Conveyed Equity Interests or the Underlying Assets or the business or assets of the Company or any of its Affiliates.

(i) Since the Execution Date, nothing has occurred that has or can reasonably be expected to have an Arch Material Adverse Effect or a Trout Material Adverse Effect.

(k) The Company shall have received such other certificates, instruments and documents both in confirmation of the representations and warranties of the Trout Contributors and Arch and in furtherance of the transactions contemplated by this Agreement and the other Transaction Documents as the Company or its counsel may reasonably request.

(l) Arch shall have caused Hobet Mining, Inc. and Apogee Coal Company, Inc. to contribute \$36,900,000 to the Hobet VEBA and \$179,000,000 to the Apogee VEBA as applicable.

(m) The Company shall have received a joinder agreement executed by the Arch Holding Companies pursuant to which the Arch Holding Companies shall become parties to this Agreement in a form mutually satisfactory to the parties hereto.

5.6 Conditions of Obligations of Trout Contributors.

In addition to the conditions set forth in Section 5.4, the obligation of the Trout Contributors to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following further conditions:

(a) Arch shall deliver to Company such deeds, certificates, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary or appropriate to vest in the Company all right, title and interest in, to and under the Arch Equity Interests.

(b) The representations and warranties of Arch and the Company in this Agreement and the Transaction Documents (i) that are qualified as to materiality (or with the term "Arch Material Adverse Effect") shall be true and complete and (ii) that are not so qualified shall be true and complete in all material respects as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality (or with the term "Arch Material Adverse Effect") shall be true and complete, and those not so qualified shall be true and complete in all material respects, on and as of such earlier date), and ArcLight shall have received a certificate to that effect, dated the Closing Date and executed by an Executive Officer of Arch and an Executive Officer of the Company.

(c) Arch and the Company shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Arch by the time of the Closing, and the Trout Contributors shall have received a certificate to that effect, dated the Closing Date and executed by an Executive Officer of Arch and an Executive Officer of the Company.

(d) All consents (or in lieu thereof waivers) listed in Part A of Schedule 5.6, (a) shall have been obtained, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

(e) The Trout Contributors shall have received legal opinions in form and substance reasonably satisfactory to ArcLight and Arch.

(f) Each of the Arch Reorganization Transactions and Trout Reorganization Transactions shall have occurred.

(g) Arch shall have delivered to the Company and the Trout Contributors a certificate of the General Counsel of Arch attaching a long-form certificate of the Secretary of State of Delaware with respect to, among other things, the good standing of Arch and each of the Arch Companies. The Trout Contributors shall have received all documents they may reasonably request relating to the existence of the Company and Arch and the authority of the Company and Arch for this Agreement, all in form and substance reasonably satisfactory to the Trout Contributors.

(h) There shall not be threatened, instituted or pending any action or proceeding by any Person before any court or Governmental or Regulatory Authority or agency, domestic or foreign, (i) seeking to restrain, prohibit or otherwise interfere with the ownership or operation by the Company or any of its Affiliates of all or any material portion of the Arch Equity Interests, the Underlying Assets or the business or assets of the Company or any of its Affiliates or to compel Company or any of its Affiliates to dispose of all or any material portion of the Arch Equity Interests, the Underlying Assets or of the Company or any of its Affiliates or (ii) seeking to require divestiture by the Company or any of its Affiliates of any Arch Equity Interests or the Underlying Assets or the business or assets of the Company or any of its Affiliates.

(i) Since the Execution Date, nothing has occurred which has or can reasonably be expected to have an Arch Material Adverse Effect.

(l) The Trout Contributors shall have received such other certificates, instruments and documents both in confirmation of the representations and warranties of the Company and Arch and in furtherance of the transactions contemplated by this Agreement and the other Transaction Documents as the Trout Contributors or their counsel may reasonably request.

(m) ArcLight shall have received an approval from its investment committee approving the terms of the transactions contemplated by this Agreement and the other Transaction Documents and the terms and conditions of the IPO, including without limitation, the public offering price per share and related pricing terms.

(n) The board of directors of the Company shall have approved the terms of the transactions contemplated by this Agreement and the other Transaction Documents (including the IPO).

(o) ArcLight shall have received from Arch in writing a true and complete list of all employees and retirees of the Arch Companies who are, as of 30 days prior to the Closing Date, receiving benefits under the Arch Benefit Plans.

(p) Arch shall have caused Hobet Mining, Inc. and Apogee Coal Company, Inc. to contribute \$36,900,000 to the Hobet VEBA and \$179,000,000 to the Apogee VEBA as applicable.

(q) The Trout Contributors shall have received from each of Arch and the Company a certificate duly executed by an executive officer thereof setting forth any Breaches by the Trout Contributors of which Arch or the Company, as the case may be, is aware as of the Closing Date.

5.7 Conditions of Obligations of Arch.

In addition to the condition set forth in Section 5.4, the obligation of Arch to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following further conditions:

(a) Each Trout Contributor shall deliver to the Company such deeds, certificates, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary or appropriate to vest in the Company all right, title and interest in, to and under the Trout Equity Interests owned by it.

(b) The representations and warranties of the Trout Contributors and the Company in this Agreement and the Transaction Documents (i) that are qualified as to materiality (or with the term "Trout Material Adverse Effect") shall be true and complete and (ii) that are not so qualified shall be true and complete in all material respects as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality (or with the term "Trout Material Adverse Effect") shall be true and complete, and those not so qualified shall be true and complete in all material respects, on and as of such earlier date), and Arch shall have received a certificate to that effect, dated the Closing Date and executed by Elliott and an Executive Officer of ArcLight and by the Executive Officer of the Company.

(c) Each Trout Contributor and the Company shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such Trout Contributor by

such time, and Arch shall have received a certificate to that effect, dated the Closing Date and executed by Elliott and an Executive Officer of ArcLight.

(d) All consents (or in lieu thereof waivers) listed in Part A of Schedule 5.7, (a) shall have been obtained, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

(e) Arch shall have received legal opinions in form and substance reasonably satisfactory to ArcLight and Arch.

(f) Each of the Arch Reorganization Transactions and the Trout Reorganization Transactions shall have occurred.

(g) The Trout Contributors shall have delivered to the Company and Arch a certificate of Elliott and an Executive Officer of ArcLight attaching a long-form certificate of the Secretary of State of Delaware with respect to, among other things, the good standing of each of Trout I and Trout II, and certificates of existence from the Secretary of State of West Virginia for Brook Trout and each Subsidiary thereof and each Subsidiary of Trout II. Arch shall have received all documents it may reasonably request relating to the existence of the Company, the Trout Contributors and the Trout Companies and the authority of the Company, the Trout Contributors and the Trout Companies party hereto for this Agreement, all in form and substance reasonably satisfactory to Arch.

(h) There shall not be threatened, instituted or pending any action or proceeding by any Person before any court or Governmental or Regulatory Authority or agency, domestic or foreign, (i) seeking to restrain, prohibit or otherwise interfere with the ownership or operation by the Company or any of its Affiliates of all or any material portion of the Trout Equity Interests, the Underlying Assets or the business or assets of the Company or any of its Affiliates or to compel Company or any of its Affiliates to dispose of all or any material portion of the Trout Equity Interests, the Underlying Assets or of the Company or any of its Affiliates or (ii) seeking to require divestiture by the Company or any of its Affiliates of any Trout Equity Interests or the Underlying Assets or the business or assets of the Company or any of its Affiliates.

(i) Since the Execution Date, nothing has occurred which has or can reasonably be expected to have a Trout Material Adverse Effect.

(j) Arch shall have received such other certificates, instruments and documents both in confirmation of the representations and warranties of the Company and the Trout Contributors and in furtherance of the transactions contemplated by this Agreement and the other Transaction Documents as Arch or its counsel may reasonably request.

(k) Arch shall have received an approval from its board of directors approving the terms of the transactions contemplated by this Agreement and the

other Transaction Documents and the terms and conditions of the IPO, including, without limitation, the public offering price per share and related pricing terms.

(l) The board of directors of the Company shall have approved the terms of the transactions contemplated by this Agreement and the other Transaction Documents (including the IPO).

(m) Arch shall have received copies of the Permit Assignment and Assumption Agreements duly executed by the parties thereto other than Arch.

(n) The Company shall have assumed all obligations of Arch or its Affiliate, as applicable, under the Retention Agreements.

(o) Arch shall have received from the Trout Contributors in writing a true and complete list of all employees and retirees of the Trout Companies who are, as of 30 days prior to the Closing Date, receiving benefits under the Trout Benefit Plans.

(p) Arch shall have received from each of the Trout Contributors and the Company a certificate duly executed by an executive officer thereof (or Elliott, with respect to Elliott) setting forth any Breaches by Arch of which such Trout Contributor or the Company, as the case may be, is aware as of the Closing Date.

ARTICLE VI

Covenants

6.1 Covenants of All Parties.

(a) Subject to the terms and conditions of this Agreement, the Company and the Contributors will use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or desirable (including, executing and delivering such other documents, certificates, agreements and other writings) under applicable Laws to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

(b) The Company and each of the Contributors shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental or Regulatory Authority, agency, official or authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers, and shall, subject to applicable legal requirements, permit

the other parties to review in advance any written communication to any Government or Regulatory Authority, and furnish to the other parties copies of all material correspondence, filings, and communications between them and their respective representatives on the one hand, and any Governmental or Regulatory Authority or their respective staffs on the other hand, in connection with the transactions contemplated by this Agreement (including, without limitation, taking all commercially reasonable actions necessary or appropriate to cause the prompt expiration or termination of any applicable waiting period under the HSR Act in respect of the transactions contemplated hereby, including, without limitation, complying as promptly as practicable with any requests for additional information).

6.2 Covenants of Contributors.

(a) From the Execution Date until the Closing, subject to applicable Law, each Contributor will (i) give the other Contributors, the Company, and their respective counsel, financial advisors, auditors and other authorized representatives full access to the offices, properties, books and records (as applicable) of such Contributor relating to the Conveyed Equity Interests and Underlying Assets, (ii) furnish to the other Contributors, the Company and their respective counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Conveyed Equity Interests and the Underlying Assets as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisors of such Contributor to cooperate with the other Contributors and the Company in their investigation of the Conveyed Equity Interests and the Underlying Assets. The Contributors agree to comply with the information sharing restrictions of the Confidentiality Agreement, including the restriction that all information sharing relate solely to the transactions contemplated by this Agreement and the other Transaction Documents. Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of relevant Contributor and its Subsidiaries. Notwithstanding the foregoing and subject to applicable Law, no Contributor nor the Company shall have access to personnel records of a Contributor relating to individual performance or evaluation records, medical histories or other information which in such Contributor's good faith opinion is sensitive or the disclosure of which could subject such Contributor to risk of liability.

(b) From the Execution Date until the Closing, each Contributor shall promptly notify the other Contributors and the Company of:

(i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement or the filing of the Registration Statement and the consummation of the IPO;

(ii) any notice or other communication from any Governmental or Regulatory Authority in connection with the transactions contemplated by this Agreement or the filing of the Registration Statement and the consummation of the IPO;

(iii) any Actions that are commenced or, to its Knowledge are threatened against, relating to or involving or otherwise affecting such Contributor or the Conveyed Equity Interests or the Underlying Assets conveyed (directly or indirectly) by it that, if pending on the date of the execution of this Agreement, would have been required to have been disclosed pursuant to Sections 4.2.12 and 4.3.12 or that relate to the consummation of the transactions contemplated by this Agreement or the filing of the Registration Statement and the consummation of the IPO; and

(iv) the damage or destruction by fire or other casualty of any part of the Underlying Assets held by the Arch Companies or the Trout Companies or in the event that any such or part thereof becomes the subject of any proceeding or, to the Knowledge of such Contributor, threatened proceeding for the taking thereof or any part thereof or of any right relating thereto by condemnation, eminent domain or other similar governmental action.

(c) From the Execution Date until the Closing, except for the Arch Reorganization Transactions and the Trout Reorganization Transactions, each Contributor shall conduct its portion of the business of the Conveyed Equity Interests and the Underlying Assets, as applicable, in the ordinary course consistent with past practice and shall use commercially reasonable efforts to preserve intact the business organizations and relationships with third parties and to keep available the services of the present employees of the business of the applicable Conveyed Equity Interests and Underlying Assets. Without limiting the generality of the foregoing, from the Execution Date until the Closing Date, except for the Arch Reorganization Transactions and the Trout Reorganization Transactions, no Contributor will:

(i) with respect to the business of the applicable Conveyed Equity Interests or the applicable Underlying Assets acquire a material amount of assets from any other Person;

(ii) sell, lease, license, otherwise dispose of, or create any Liens on, any (A) Conveyed Equity Interests or (B) Underlying Assets other than, with respect to the Underlying Assets (1) the sale of inventory in the ordinary course of business, (ii) the sale, transfer or discarding of obsolete or worn-out equipment no longer required in connection with the business of such Person or (iii) Assets and Properties that are replaced by other Assets and Properties of like utility in such Person's business;

(iii) agree or commit to do any of the foregoing;

(iv) other than this Agreement, the Registration Statement, and the underwriting agreement in connection with the IPO and the ancillary agreements thereto, either (I) enter into any agreement (whether written or verbal) to sell, pledge, grant, transfer or otherwise dispose of (or authorize the issuance, sale, pledge, grant, transfer or other disposition), or (II) create, permit, allow or suffer to exist any Lien in respect of (A) any shares of capital stock of the Company or any other securities convertible into or exchangeable or exercisable for any shares of such capital stock (or derivative securities thereof), or (B) any options, warrants or other rights of any kind to acquire any shares of such capital stock, or any other ownership interest (including, without limitation, any phantom interest), of the Company, other than the issuance of shares of Company Common Stock pursuant to the exercise of stock options, warrants or convertible securities outstanding as of the Execution Date; or

(v) take or agree or commit to take any action that would make any representation or warranty of such Contributor hereunder inaccurate in any respect at, or as of any time prior to, the Closing Date or (ii) omit or agree or commit to omit to take any action necessary to prevent any such representation or warranty from being inaccurate in any respect at any such time.

(d) From the Execution Date until the Closing, Arch shall not permit any of the Arch Companies, and the Trout Contributors shall not permit any of the Trout Companies (and, in the case of paragraph (iv) below, neither Arch nor the Trout Contributors shall), to do (or suffer to exist) any of the following without the prior consent of the other Contributors, except to the extent contemplated in the Arch Reorganization Transactions and the Trout Reorganization Transactions:

(i) amend or otherwise modify in any respect its charter, by-laws or other equivalent organizational documents;

(ii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its outstanding equity or debt securities (other than cash dividends or distributions made prior to the Closing);

(iii) reclassify, combine, split, subdivide or otherwise amend the terms of, or redeem, repurchase or otherwise acquire, directly or indirectly, any of its outstanding equity or debt securities (or securities convertible into, or exercisable or exchangeable for equity or debt securities);

(iv) other than as contemplated under the Employment Offer Letter dated July 14, 2005 from Trout I and Trout Coal Holdings II, LLC to Paul Vining or any substantially similar arrangement in respect of Paul Vining, permit any Arch Company (in the case of Arch) or Trout Company (in the case of the Trout Contributors) to either (I) issue, sell, pledge, grant,

transfer or otherwise dispose of (or authorize the issuance, sale, pledge, grant, transfer or other disposition), or (II) create, permit, allow or suffer to exist any Lien in respect of (A) any ownership interests of any Arch Company or Trout Company, as the case may be, or any other securities convertible into or exchangeable or exercisable for any such ownership interests (or derivative securities thereof), or (B) any options, warrants or other rights of any kind to acquire any ownership interests (including, without limitation, any phantom interest), of any Arch Company or Trout Company, as the case may be;

(v) in the case of any Arch Company, grant any increase in compensation or benefits, or otherwise increase the compensation or benefits payable, or to become payable, to any director, officer or employee of, or any consultant to, any Arch Company or grant any rights to retention, severance or termination pay to, or enter into any new (or amend any existing) employment, retention, severance or other Contract with, any such Person other than any such increase in compensation or benefits made in the ordinary course of business and consistent with past practices;

(vi) in the case of any Arch Company, adopt any new or amend any existing Arch Benefit Plan (or any plan, arrangement or other Contract that would be an Arch Benefit Plan of any Arch Company if so adopted or amended), including, without limitation, (A) amending or modifying the period (from that currently provided for) of exercisability of options granted under any Arch Benefit Plan of any Arch Company or (B) authorizing cash payments in exchange for any options to acquire equity interests granted thereunder;

(vii) enter into, adopt, extend, renew or amend any collective bargaining agreement or other contract with any labor organization, union or association, except in each case as required by applicable Law (and following written notice to the other Contributors and the Company);

(viii) incur or assume any liabilities, obligations or indebtedness for borrowed money or guarantee any such liabilities, obligations or indebtedness (other than indebtedness with respect to working capital in the ordinary course and in amounts consistent with past practice), or issue any other debt securities, or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person, or otherwise make any loans or advances material to the business of any Arch Company or Trout Company;

(ix) sell, transfer, lease, license or otherwise dispose of any real or personal property or other assets thereof that are material to the business of any Arch Company or any Trout Company, other than (i) the sale of inventory in the ordinary course of business, (ii) the sale, transfer or

discarding of obsolete or worn-out equipment no longer required in connection with the business of such Person or (iii) Assets and Properties that are replaced by other Assets and Properties of like utility in such Person's business;

(x) enter into, modify, amend, terminate, permit the lapse of or renew any lease of real property, except any renewals of existing leases in the ordinary course of the Business and consistent with past practice, with respect to which the other Contributors and the Company shall be provided prior written notice;

(xi) modify, amend, terminate or permit the lapse of any lease of, or reciprocal easement agreement, operating agreement or other material agreement relating to, real property, except any renewals of existing leases or agreements pursuant to their terms or terminations or lapses of existing leases or agreements pursuant to the expiration of the then current term, in each case in the ordinary course of business and consistent with past practice;

(xii) create, permit, allow or suffer to exist any Lien that would have been required to be disclosed on Schedules 4.2.4(a)(iii), 4.2.16(a)(2), 4.3.4(a)(iii) and 4.3.16(a)(2) if existing as of the Execution Date;

(xiii) cancel, pay, discharge or satisfy any claims, indebtedness, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) or waive any rights of material value, other than the payment, discharge or satisfaction of claims, indebtedness, liabilities or obligations in the ordinary course of business;

(xiv) make any payment other than in the ordinary course of business consistent with past practice or transfer any assets to, or enter into any Contract with, any Contributor or any Affiliate of any Contributor in each case on terms that are less favorable to the Arch Company or Trout Company, as the case may be, than could be obtained on an arm's-length basis from unrelated third parties;

(xv) make any change with respect to the Arch Companies' or the Trout Companies', as the case may be, accounting practices, policies, principles, methods or procedures, including, without limitation, revenue recognition policies, other than as required by GAAP (which GAAP-required changes will be provided to the other parties in writing);

(xvi) make any Tax election or settle or compromise any material Tax liability except as noted in Section 11.2(c);

(xvii) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or Person or any division thereof, other than

the purchase of inventory in the ordinary course of business consistent with past practice;

(xviii) make or authorize any capital expenditure, other than capital expenditures in the ordinary course of the business consistent with past practice;

(xix) (A) amend, modify, terminate, cancel or request any modification or amendment to, or agree to any of the foregoing in respect of any Transaction Document or contract to which an Arch Company or Trout Company is a party, or (B) enter into any additional contract or agreement other than in the ordinary course of business; or

(xx) authorize or enter into any formal or informal agreement (whether or not in writing) or otherwise make any commitment to do any of the foregoing, or to take any action which would make any of the representations or warranties contained in this Agreement untrue or incorrect or prevent the Contributors and the Company from performing or cause the Contributors and the Company not to perform its obligations hereunder, or result in any of the conditions to the transactions contemplated hereby not being satisfied.

(e) If any of the Contributors shall become aware of any fact, event or condition, as a result of which the Registration Statement or Prospectus contains an untrue statement of material fact or omits to state a material fact required to be stated therein necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, such Contributor shall promptly notify the Company, the managing underwriters in the IPO and the other Contributors of such fact and shall promptly further provide all such information as shall be reasonably required to prepare an amendment or supplement to the Registration Statement or Prospectus in order that neither the Registration Statement nor the Prospectus contains any such misstatements or omissions, and is not misleading in any respect.

(f) Following the Closing, Arch and the Trout Contributors shall deliver to the Company, promptly upon the reasonable request of the Company from time to time (i) all Books and Records solely related to the business and operations of the Arch Companies and the Trout Companies, respectively (other than the Material Books and Records, which shall have been delivered to the Company pursuant to Section 4.2 and Section 4.3.) and (ii) in the case of Books and Records that relate to the business and operations of the Arch Companies or the Trout Companies, as the case may be, but do not relate solely thereto, the information contained in such Books and Records that relates to the business and operations of the Arch Companies and the Trout Companies.

(g) If any Arch Company is required to make any payments, refunds or credits to the UMWA funds in connection with any claims that the UMWA

funds have against any Arch Company as of the Closing arising under the A.T. Massey Coal Company Case, Arch shall pay the amount of such payment, refund or credit to the Company within 10 business days of receipt of notice from the Company thereof.

(h) The Company shall deliver to Arch promptly after receipt by it from the UMWA funds the assessment of monthly payments for the then upcoming calendar year due by the Company in respect of Coal Act Benefits. Within ten calendar days before each monthly payment is due, Arch shall pay the relevant monthly payment amount to the Company. Arch shall cooperate in good faith with the Company to arrange for direct payment by Arch of all Coal Act Benefits to the UMWA funds.

(i) Arch will cooperate in good faith with the Company to obtain any governmental approvals necessary as a result of a change in ownership of the Arch Companies.

(j) Prior to the Closing, Arch, and following the Closing, Arch and the Company, shall take appropriate actions to seek recognition by the Internal Revenue Service of the exempt status of the Hobet VEBA and the Apogee VEBA under Section 501(c)(9) of the Code.

(k) As of the Closing, Hobet and Apogee, together, shall have an aggregate cash balance (the "**Cash Balance**") of \$4,576,000 for the purpose of providing benefits to the Benefits Covered Employees under the Black Lung Benefits Reform Act of 1977, as amended in 1981; **provided, however**, the Cash Balance shall not be considered in the calculation of working capital pursuant to Section 4.2.15.

6.3 Covenants of the Company.

(a) The Company will assume the following obligations with respect to the employees of each Arch Company and each Trout Company (together, the "**Covered Employees**"):

(i) Equivalent Compensation. From the Closing Date until six months following the Closing Date, the Company will maintain or will cause to be maintained base salary, wages, and compensation levels for the benefit of the Covered Employees, and such Covered Employees will be eligible to participate in the Company's benefit plans and programs, which, in the aggregate, are reasonably equivalent in value to, the wages, compensation levels, and benefit plans provided to the Covered Employees on the Execution Date. In addition, and notwithstanding the previous sentence, for the 12 months following the Closing Date, the Company will maintain as to each Covered Employee a severance plan that is substantially equivalent to the severance plan to which such Covered Employee was entitled prior to the Closing Date.

(ii) Service Credit. The Company shall provide each Covered Employee with credit for all service with the applicable Contributors and their respective Affiliates,

including any service with predecessors of the Contributor and its Affiliates, for vesting and eligibility purposes only under each employee benefit plan, program, or arrangement of the Company or its Affiliates in which such employee is eligible to participate, except to the extent that such service credit would result in a duplication of benefits with respect to the same period of service and in accordance with the eligibility and vesting requirements contained under such plans. With respect to each group health plan or welfare plan provided by the Company or its Affiliates as of the Closing Date in which the Covered Employees are eligible to participate after the Closing Date, the Company shall (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Covered Employees, provided that if such plan is provided under an insured arrangement, such waiver will occur only to the extent otherwise permitted under the applicable insurance contract or agreement, provided, further, that the Company shall use its best efforts to procure such waivers and (ii) provide each Covered Employee with credit for any co-payments and deductibles paid prior to the Closing Date in satisfying any applicable deductible or out-of-pocket requirements under such group health plan.

(b) The Company will cooperate in good faith with Arch to obtain any governmental approvals to the permit transfers contemplated in the Permit Assignment and Assumption Agreements.

(c) From the Closing Date until the date that is ten years thereafter, if the Company or any Arch Company terminates, or implements a change to any Arch Benefit Plan that results in a 10% decrease in the accumulated post-retirement benefit obligations (exclusive of actuarial gain or loss) ("**APBO**") of, any FAS 106 Benefits available under such Arch Benefit Plan pursuant to which FAS 106 Benefits are provided to the Benefits Covered Employees, the Company will pay to Arch an amount equal to (i) in the event of a termination, the actuarial value (using the same assumptions as were used for the then most recent annual calculation thereof) of the FAS 106 Benefits for the Benefits Covered Employees under the applicable Benefit Plan prior to termination determined at the date of termination, or (ii) in the event of such a decrease in the APBO, the difference between (x) the actuarial value (using the same assumptions as were used for the then most recent annual calculation thereof) of the FAS 106 Benefits for the Benefits Covered Employees prior to the material decrease and (y) the actuarial value (using the same assumptions as were used for the then most recent annual calculation thereof) of the FAS 106 Benefits for the Benefits Covered Employees under the Benefit Plan as amended, in each case, determined at the date of such decrease.

(d) If any Arch Company is entitled to any payments, refunds or credits in connection with any claims of any Arch Company relating to the A.T. Massey Coal Company Case, and any such amounts are paid to the Company or any Arch Company, or the Company or any Arch Company receives any credit or refund in connection therewith following the Closing, the Company shall pay the amount of such payment, credit or refund to Arch within 10 business days of receipt thereof.

ARTICLE VII
Non-solicitation of Employees

(a) The Company agrees that it will not, and none of its Affiliates will, either for his or its own account or in connection with or on behalf of any Person at any time from the Execution Date until the date that is six months after the Closing Date (the “**Restricted Period**”), directly or indirectly, either for itself or any other Person, (i) induce, solicit or entice or attempt to induce, solicit or entice any employee at such time of Arch or ArcLight or any of their respective Subsidiaries at such time to leave the employ thereof, or (ii) in any way interfere with the relationship between Arch, ArcLight or any of their respective Subsidiaries at such time and any of their respective employees at such time, it being understood that upon consummation of the contributions contemplated in Article II, such restrictions are not applicable to the Arch Companies and the Trout Companies given that they will be Subsidiaries of the Company.

(b) Arch agrees that it will not, and none of its Affiliates will, either for his or its own account or in connection with or on behalf of any Person during the Restricted Period, directly or indirectly, either for itself or any other Person, (i) induce, solicit or entice or attempt to induce, solicit or entice any employee at such time of the Company or ArcLight or their respective Subsidiaries at such time to leave the employ of thereof, or (ii) in any way interfere with the relationship between the Company, ArcLight or any of their respective Subsidiaries at such time and any of their respective employees at such time.

(c) Each Trout Contributor agrees that it or he will not, and none of its or his Affiliates will, either for his or its own account or in connection with or on behalf of any Person during the Restricted Period, directly or indirectly, either for itself or any other Person, (i) induce, solicit or entice or attempt to induce, solicit or entice any employee at such time of Arch or the Company or their respective Subsidiaries at such time to leave the employ thereof, or (ii) in any way interfere with the relationship between the Company, Arch or any of their respective Subsidiaries at such time and any of their respective employees at such time.

(d) In the event of a breach of any covenant set forth in this Article VII of this Agreement, the term of such covenant will be extended by the period of the duration of such breach. If any provision contained in this Article shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Section, but this Section shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the parties that if any of the restrictions or covenants contained herein is in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under applicable Law, a court of competent jurisdiction shall construe and interpret or reform this Section to provide for a covenant having the maximum enforceable provisions (not greater than those contained herein) as shall be valid and enforceable under such applicable Law. Each party acknowledges that the other parties would be irreparably harmed by any breach of this Section and that there would be no adequate remedy at law or in damages to compensate such other parties for any such breach.

The parties agree that other parties shall be entitled to injunctive relief requiring specific performance by such party of this Section.

ARTICLE VIII
Arch Guarantees

8.1 Arch Guarantees.

The Company agrees with Arch to use commercially reasonable efforts after the Closing Date to facilitate the release of Arch from its obligations under any guarantees (the "**Arch Guarantees**") provided by it with respect to payments under (i) the coal mining leases held by Catenary, Apogee and Hobet and (ii) the Bonds. Arch agrees to cooperate fully with the Company in connection with the Company's efforts to seek the releases described in this Section 8.1. Notwithstanding the foregoing, if the Company fails to obtain the release of Arch from the guarantees related to the Bonds by the date that is two years after the Closing Date, the Company will arrange for a letter of credit to be posted in favor of Arch in the amount of the portion of the Bonds reflected as liabilities on Books and Records of the Company, which may be drawn upon in the event that Arch is required to make any payments in respect of such guarantees.

ARTICLE IX
Cost Reimbursement

9.1 Cost Reimbursement.

(a) The Company shall pay all sales, use and similar taxes arising out of the contributions, conveyances and deliveries to be made hereunder, and shall pay all documentary, filing, recording, transfer, deed, and conveyance taxes and fees required in connection therewith and all other fees and expenses of the parties hereto in connection with the transactions contemplated by this Agreement and the other Transaction Documents (including the IPO), in each case out of the proceeds of the IPO. In addition, the Company shall be responsible for all costs, liabilities and expenses (including court costs and reasonable attorneys' fees) incurred by the Company in connection with the satisfaction or waiver of any restriction pursuant to Section 11.1.

(b) If the Closing Date does not occur by 5:00 p.m. on March 31, 2006 each party hereto shall bear its own costs in connection with the transactions contemplated hereby and Arch shall bear 37.5% of all Shared Expenses and the Trout Contributors shall bear 62.5% of all Shared Expenses.

ARTICLE X
Further Assurances; Termination; Indemnification

10.1 Further Assurances.

(a) From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions, as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement, including, such assignments, deeds, bills of sale, consents and other instruments as any party or its counsel may reasonably request as necessary or desirable for such purpose.

(b) Each party agrees to furnish to the other parties, upon request, as promptly as practicable, such information and assistance relating to the Conveyed Equity Interests and the Underlying Assets (including, without limitation, access to Books and Records and employees thereof) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, the prosecution or defense of any claim, suit or proceeding relating to any Tax and the defense of the Arch Companies Litigation or the prosecution or defense of any other litigation by or against any Person (other than any litigation by a party to this Agreement against another party to this Agreement); **provided, however**, in any case, each party agrees to furnish to the other parties upon the reasonable request copies therefore those Books and Records that were delivered by such party to the Company in connection with the consummation of the transactions contemplated hereby. Each party shall retain all Books and Records with respect to Taxes and the matters in dispute in the Arch Companies Litigation pertaining to the Conveyed Equity Interests and the Underlying Assets for a period of at least six years following the Closing Date. At the end of such period, each party shall provide the other with at least ten days prior written notice before destroying any such Books and Records, during which period the party receiving such notice can elect to take possession, at its own expense, of such Books and Records. The parties shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes or the Arch Companies Litigation involving the Conveyed Equity Interests, the Underlying Assets or the business thereof.

(c) If at any time prior to the second anniversary of the Closing Date, a Person challenges (whether or not through a legal proceeding) the title of any of the Arch Companies to the real property purported to be owned, leased or subleased by it, Arch shall, as and when reasonably requested by the Company, execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions, as the Company and Arch may reasonably deem necessary or desirable to defend the title of the relevant Arch Company thereto; **provided** that Arch shall not be required to expend any money in connection with compliance with this paragraph (c) to the extent that such expenditure does not exceed the threshold set forth in the proviso contained in Section 10.3(a).

10.2 Termination

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual agreement of the Company, Arch and ArcLight ;

(ii) by either Arch or ArcLight if the Closing shall not have been consummated on or before March 31, 2006;

(iii) by ArcLight if an Arch Material Adverse Effect has occurred which has not been cured (if such Arch Material Adverse Effect is capable of being cured) by Arch within 30 days after notice from the Trout Contributors of such Arch Material Adverse Effect;

(iv) by Arch if a Trout Material Adverse Effect has occurred which has not been cured (if such Trout Material Adverse Effect is capable of being cured) by the Trout Contributors within 30 days after notice from Arch of such Trout Material Adverse Effect;

(v) by the Company, Arch or ArcLight if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final Order of any court or Governmental or Regulatory Authority having competent jurisdiction;

(vi) by either Arch or ArcLight if there is a material adverse change in the expected equity value of the Company as of the Closing Date;

(vii) by Arch, if Arch shall not have received an approval from its board of directors approving the terms of the transactions contemplated by this Agreement and the other Transaction Documents and the terms and conditions of the IPO, including, without limitation, the public offering price per share and related pricing terms;

(viii) by ArcLight if it shall not have received an approval from the investment committee of ArcLight approving the terms of the transactions contemplated by this Agreement and the other Transaction Documents and the terms and conditions of the IPO, including, without limitation, the public offering price per share and related pricing terms; or

(ix) by the Company if it shall not have received an approval from its board of directors approving the terms of the transactions contemplated by this Agreement and the other Transaction Documents and the terms and conditions of the IPO, including, without limitation, the public offering price per share and related pricing terms.

The party desiring to terminate this Agreement pursuant to the clauses above shall give notice of such termination to the other party or parties.

(b) If this Agreement is terminated as permitted by clause (a) above, such termination shall be without liability of any party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other parties to this Agreement; **provided** that:

(i) if such termination under clauses (a)(ii) shall result from the (A) failure to perform a covenant of this Agreement or (B) breach by a party hereto of any representation or warranty or agreement contained herein,

such party shall be fully liable for all Shared Expenses and all out-of-pocket costs and expenses incurred or suffered by the other parties as a result of such failure or breach provided that the other parties are not in material breach of this Agreement; and

(ii) if such termination occurs (A) in the case of Arch, as a result of a failure of Arch to obtain the requisite board approval for the transactions contemplated by this Agreement and the other Transaction Documents other than solely because of a Trout Material Adverse Effect; **provided** that the conditions set forth in Section 5.5 and Section 5.7 have been satisfied, (B) in the case of ArcLight, as a result of a failure of ArcLight to obtain the requisite investment committee approval for the transactions contemplated by this Agreement and the other Transaction Documents other than solely because of an Arch Material Adverse Effect; **provided** that the conditions set forth in Section 5.5 and Section 5.6 have been satisfied, (C) as a result of willful failure of a party to fulfill a condition to the performance of the obligations of the other parties or (D) willful failure of a party to perform a covenant of this Agreement, then if the terminating party is Arch, it shall pay ArcLight, and if the terminating party is ArcLight, it shall pay Arch (x) all Shared Expenses and all out-of-pocket costs and expenses incurred or suffered by such non-termination party as a result of such failure or breach and (y) a break-up fee of \$25,000,000, in each case within 30 days of termination.

10.3 Indemnification.

(a) Notwithstanding anything to the contrary in this Agreement, Arch hereby indemnifies the Company, the Trout Contributors and their respective Affiliates, directors, officers, employees and agents against and agrees to hold each of them harmless from any and all damage, loss, liability and expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding whether involving a third party claim or a claim solely between the parties hereto) ("**Damages**") incurred or suffered by the recipient of such indemnity or any of its Affiliates, directors, officers, employees and agents arising out of any breach of a representation or warranty (each such breach of a representation or warranty a "**Warranty Breach**") by Arch or breach of covenant or agreement made or to be performed by Arch pursuant to this Agreement regardless of whether such Damages arise as a result of the negligence, strict liability or any other theory of law or equity of any Trout Contributor or the Company or any of their respective Affiliates, directors, officers, employees and agents (including Control Person liability under Section 15 of the Securities Act and Section 20(a) of the Securities Exchange Act), but in the case of a breach of covenant except to the extent caused by any Trout Contributor or the Company or any of their respective Affiliates (other than Arch and its Affiliates); **provided** that with respect to an indemnification by Arch for any Warranty Breach under Article IV other than under Section 4.2.30 (A) Arch shall not be liable unless the

aggregate amount of Damages with respect to any Warranty Breach exceeds \$7,500,000 and then for the full amount of such Damages and (B) Arch's maximum liability for all such Warranty Breaches shall not exceed \$75,000,000. If the Trout Contributors and the Company are entitled to indemnification under this clause (a) from Arch, the Trout Contributors' claims for indemnification shall be satisfied in full prior to satisfaction of the Company's claim for indemnification.

(b) (i) Notwithstanding anything to the contrary in this Agreement, ArcLight hereby indemnifies Arch and the Company and their respective Affiliates, directors, officers, employees and agents against and agrees to hold each of them harmless from any and all Damages incurred or suffered by the recipient of such indemnity or any of its Affiliates, directors, officers, employees and agents arising out of any Warranty Breach by ArcLight or the Trout Contributors or breach of covenant or agreement made or to be performed by ArcLight or the Trout Contributors pursuant to this Agreement other than a representation or covenant arising under any of the Sections referred to in the lead-in to Section 4.3, Section 6.2(b)(i) or Article VII as said Article relates to Elliott regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity of Arch or the Company or any of its Affiliates, directors, officers, employees and agents (including Control Person liability under Section 15 of the Securities Act and Section 20(a) of the Securities Exchange Act), but in the case of a breach of covenant except to the extent caused by Arch or the Company or any of their respective Affiliates (other than the Trout Contributors and their respective Affiliates); **provided** that with respect to indemnification by ArcLight for any Warranty Breach under Article IV other than under Section 4.3.30 (A) ArcLight shall not be liable unless the aggregate amount of Damages with respect to any such Warranty Breach together with any Warranty Breach under clause (b)(ii) below exceeds \$7,500,000 and then for the full amount of such Damages payable by ArcLight under this Section 10.3(b)(i) and (B) ArcLight's maximum liability for all such Warranty Breaches shall not exceed \$97,000,000. If Arch and the Company are entitled to indemnification under this clause (b)(i) from ArcLight, Arch's claims for indemnification shall be satisfied in full prior to satisfaction of the Company's claim for indemnification.

(ii) Notwithstanding anything to the contrary in this Agreement, Elliott hereby indemnifies Arch and the Company and their respective Affiliates, directors, officers, employees and agents against and agrees to hold each of them harmless from any and all Damages incurred or suffered by the recipient of such indemnity or any of its Affiliates, directors, officers, employees and agents arising out of any Warranty Breach by Elliott or breach of covenant or agreement made or to be performed by Elliott pursuant to this Agreement, regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity of Arch or the Company or any of its Affiliates, directors, officers, employees and agents (including Control Person liability under Section 15 of the Securities Act and Section 20(a) of the Securities

Exchange Act), but in the case of a breach of covenant except to the extent caused by Arch or the Company or any of their respective Affiliates (other than the Trout Contributors and their respective Affiliates); **provided** that (i) with respect to indemnification by Elliott for any Warranty Breach under Article IV (A) Elliott shall not be liable unless the aggregate amount of Damages with respect to any such Warranty Breach together with any Warranty Breach under clause (b)(i) above exceeds \$7,500,000 and then for the full amount of such Damages payable by Elliott under this Section 10.3(b)(ii) and (B) Elliott's maximum liability for all such Warranty Breaches shall not exceed \$3,000,000. If Arch and the Company are entitled to indemnification under this clause (b)(ii) from Elliott, Arch's claims for indemnification shall be satisfied in full prior to satisfaction of the Company's claim for indemnification.

(c) Notwithstanding anything to the contrary in this Agreement, ArcLight hereby indemnifies each of the Company, Arch and each of their respective Affiliates, directors, officers, employees and agents against and agree to hold the Company, Arch and each of their Affiliates, directors, officers, employees and agents harmless from any and all Losses incurred by it arising out of (i) the execution or delivery of the documents relating to the Trout Debt by Trout I or Dakota and the performance by the parties thereto of their respective obligations thereunder, (ii) any loan made thereunder or the use of the proceeds therefrom or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory; **provided** that such indemnity shall not, as to any indemnitee, be available with respect to any such Losses that are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such indemnitee.

(d) Notwithstanding anything to the contrary in this Agreement, Arch hereby indemnifies the Company and the Trout Contributors and their respective Affiliates, directors, officers, employees and agents from and against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any of them arising out of or in connection with any of the litigation or arbitral proceedings set forth on Schedule 10.3(d), which constitute all currently pending litigation or arbitration proceedings involving any Arch Company or any of the Assets and Properties, business or operations of any Arch Company (the "**Arch Companies Litigation**"). Arch shall assume the defense of the Arch Companies Litigation and the parties shall make available to each other all relevant information in their possession relating to any Arch Companies Litigation, subject to protection of attorney client and attorney work product privileges, and shall cooperate in the defense thereof. In furtherance of Arch's right to assume such defense, the Company shall cause each relevant Arch Company to issue a power-of-attorney in favor of Arch, in form and substance mutually acceptable to Arch and the Company.

(e) Notwithstanding anything to the contrary in this Agreement, the Company hereby indemnifies Arch and its Affiliates, directors, officers,

employees and agents, from and against, and agrees to reimburse Arch in respect of, (i) any and all payments made by it under the Arch Guarantees and (ii) any and all reasonable and customary costs and/or expenses paid or incurred by Arch in connection with the Bonds, including without limitation, the cost of maintenance of the Bonds.

(f) Notwithstanding anything to the contrary in this Agreement, the Company hereby indemnifies the Trout Contributors and Arch and their respective Affiliates against and agrees to hold each of them harmless from any and all Damages incurred or suffered by the recipient of such indemnity or any of its Affiliates arising out of any Warranty Breach by the Company or breach of covenant or agreement made or to be performed by the Company pursuant to this Agreement regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity, but in the case of a breach of covenant except to the extent caused by Arch or the Trout Contributors or any of their respective Affiliates (other than the Trout Contributors and their Affiliates); **provided** that (i) with respect to indemnification by the Company for any Warranty Breach under any of Section 4.1 in favor of Arch or any Affiliate thereof (A) the Company shall not be liable unless the aggregate amount of Damages with respect to any Warranty Breach exceeds \$7,500,000 and then for the full amount of such Damages and (B) the Company's maximum liability for all such Warranty Breaches shall not exceed \$75,000,000 and (ii) with respect to indemnification by the Company for any Warranty Breach under any of Section 4.1 in favor of the Trout Contributors or any Affiliate thereof (A) the Company shall not be liable unless the aggregate amount of Damages with respect to any Warranty Breach exceeds \$7,500,000 and then for the full amount of such Damages and (B) the Company's maximum liability for all such Warranty Breaches shall not exceed \$100,000,000.

(g) Notwithstanding anything to the contrary in this Agreement, the Company hereby indemnifies and holds harmless (i) the applicable Contributor and its Affiliates, directors, officers, employees and agents against any and all Losses under the Worker Adjustment and Retraining Notification Act, the continuation coverage requirements contained in Section 4980B(f) of the Internal Revenue Code of 1986 and Section 601 et seq. of ERISA or any similar laws relating to any Covered Employee arising out of or relating to this Agreement, and (ii) Arch and its Affiliates directors, officers, employees and agents in respect of (A) any claims made against any of them with respect to a Retention Agreement or (B) a liability under the Coal Act Benefits with respect to which Arch has theretofore paid the Company in full pursuant to Section 6.2(h).

(h) Notwithstanding anything to the contrary in this Agreement, Arch hereby indemnifies and holds harmless the Company, its Affiliates, directors, officers, employees and agents from and against and agrees to hold each of them harmless from any and all liabilities of the Company for workers' compensation benefits paid to the Benefits Covered Employees ("**Workers' Compensation Benefits**").

(i) Notwithstanding anything to the contrary in this Agreement, the Company hereby indemnifies and holds harmless Arch, its Affiliates, directors, officers, employees and agents from and against any and all Losses incurred by any of them after the Closing Date with respect to any FAS 106 Benefits or Black Lung Benefits payable to the Benefits Covered Employees.

(j) The party seeking indemnification under this Section (the “**Indemnified Party**”) agrees to give prompt notice to the party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought under such Section; **provided** that the failure to so notify shall not affect the obligations of the Indemnifying Party except to the extent such failure to notify actually prejudices the Indemnifying Party. The Indemnifying Party may at the request of the Indemnified Party participate in and control the defense of any such suit, action or proceeding at its own expense. The Indemnifying Party shall not be liable under this Section for any settlement effected without its consent of any claim, litigation or proceeding in respect of which indemnity may be sought hereunder.

(k) Except in the case of Fraud by a party, the remedies provided in this Section 10.3 shall be the exclusive remedies of the parties after the Closing in connection with the transactions contemplated by this Agreement, including without limitation any breach or non-performance of any representation, warranty, covenant or agreement contained herein. Except in the event of Fraud, no party may commence any suit, action or proceeding against any other party with respect to the subject matter of this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, except to enforce such Party’s rights under this Section 10.3, or equitable and specific performance remedies with respect to Article VII. As used herein, “Fraud” means knowing misrepresentation made with the intention of causing material harm to the other party. Any party alleging Fraud shall bear the burden of proving the existence of Fraud.

10.4 Survival.

The representations and warranties, covenants and other agreements of the parties hereto (and the corresponding indemnities under Section 10.3) contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive (a) in the case of representations (and the corresponding indemnities under Section 10.3) until the date that is 60 days after the Closing Date and (b) in the case of covenants, indemnities and other agreements, indefinitely unless otherwise specified; **provided** that (i) each representation and warranty (and the corresponding indemnity) in Section 4.2.1, Section 4.3.1, Section 4.2.2, Section 4.3.2, Section 4.2.5 and Section 4.3.5 shall survive until the date that is 12 months after the Closing Date, (ii) each representation and warranty (and the corresponding indemnity) in Section 4.2.3, paragraphs (a), (b), (c) and (e) of Section 4.2.4, Section 4.3.3, and paragraphs (a), (b), (c) and (e) of Section 4.3.4, Section 4.2.14, Section 4.3.14, Section 4.2.23, Section 4.3.23 and Section 10.3(c) shall survive until the earlier of (A) expiration of the statute of limitations

applicable to the matter covered thereby (giving effect to any waiver, mitigation or extension thereof) and (B) three years from the Closing Date, (iii) each representation, warranty and covenant (and the corresponding indemnity) in Section 4.2.11, Section 4.3.11, and Section 11.2 shall survive until the earlier of (A) expiration of the statute of limitations applicable to tax matters and (B) three years from the Closing Date, (iv) the representation and warranty (and the corresponding indemnity) in Section 4.2.30 and Section 4.3.30 and the covenant in Section 6.2(e) shall survive until expiration of the relevant statute of limitations to file a complaint based on the disclosures contained in the Registration Statement or the Prospectus, and (v) each of the agreements in Sections 6.2(a), (b), (c), (d) and (e) shall survive until the third anniversary of the Closing Date. Notwithstanding the preceding sentence, any representation or warranty or covenant in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if written notice of the inaccuracy thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

ARTICLE XI Miscellaneous

11.1 Consents; Restriction on Assignment.

Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Conveyed Equity Interest, any Underlying Asset or any claim or right or any benefit arising thereunder or resulting therefrom if such assignment, without the consent of a third party thereto, would constitute a breach or other contravention of such Conveyed Equity Interest or Underlying Asset or in any way adversely affect the rights of the Contributors and the Company thereunder. The Contributors will use their commercially reasonable efforts to obtain the consent of the other parties to any such Conveyed Equity Interest or Underlying Asset or any claim or right or any benefit arising thereunder for the assignment thereof to the Company as the Company may request. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of a Contributor thereunder so that the Company would not in fact receive all such rights, such Contributor and the Company will cooperate in a mutually agreeable arrangement under which the Company would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including sub-contracting, sub-licensing, or sub-leasing to the Company which such Contributor would enforce for the benefit of the Company, with the Company assuming such Contributor's obligations, any and all rights of such Contributor against a third party thereto. Such Contributor will promptly pay to the Company when received all monies received by such Contributor under any Conveyed Equity Interest, Underlying Asset or any claim or right or any benefit arising thereunder. In such event, such Contributor and the Company shall, to the extent the benefits therefrom and obligations thereunder have not been provided by alternate arrangements satisfactory to the Company and such Contributor, negotiate in good faith an adjustment in the consideration paid by the Company for the Conveyed Equity Interests.

11.2 Tax Matters.

(a) As between Arch and the Company, all real estate and personal property taxes relating to the assets of the Arch Companies (herein collectively referred to as the “**Arch Taxes**”) shall be borne by Arch for the period of time prior to the Closing Date and by the Company for the period of time from and after the Closing Date. The Company shall pay the Arch Taxes for the tax period that includes the Closing Date and shall submit to Arch proof of payment of such Arch Taxes within a reasonable time of such payment for reimbursement by Arch under the terms of such leases. Arch shall fully reimburse the Company for any unpaid amounts of the Arch Taxes relating to the period of time prior to the Closing Date.

(b) As between the Trout Contributors and the Company, all real estate and personal property taxes relating to the assets of the Trout Companies (herein collectively referred to as the “**Trout Taxes**”) shall be borne by the Trout Contributors for the period of time prior to the Closing Date and by the Company for the period of time from and after the Closing Date. The Company shall pay the Trout Taxes for the tax period that includes the Closing Date and shall submit to the Trout Contributors proof of payment of such Trout Taxes within a reasonable time of such payment for reimbursement by the Trout Contributors under the terms of such leases. The Trout Contributors shall fully reimburse the Company for any unpaid amounts of the Trout Taxes for the period of time prior to the Closing Date.

(c) (i) The Company agrees that in the event any amounts are collected or received by any of the Arch Companies from and after the Closing with respect to any tax claims which related to a period ending on or prior to the Closing, including but not limited to those claims set forth in Schedule 11.2(c), filed by Arch relating to the Arch Companies, the Company as soon as practically possible shall pay over all such amounts to Arch (net of expenses). The Company agrees to permit Arch to control the prosecution of any such outstanding tax claims to which Arch or its Affiliates is entitled under this Section 11.2, and upon Arch’s reasonable request in writing, the Company will, or will cause its relevant Affiliates to, authorize by appropriate powers of attorney such Persons as Arch designates to represent such Affiliates with respect to such claims. Arch shall indemnify the Company for any costs or expenses it incurs that are directly related to, or arise out of, Arch’s prosecution of such outstanding tax claims

(ii) The Company agrees that in the event any amounts are collected or received by any of the Trout Companies from and after the Closing with respect to any tax claims which related to a period ending on or prior to the Closing, including but not limited to those claims set forth in Schedule 11.2(c), relating to a Trout Company, the Company as soon as practically possible shall pay over all such amounts to the Trout Contributors (net of expenses). The Company agrees to permit the Trout Contributors to control the prosecution of any such outstanding tax claims to which the Trout Contributors or their respective Affiliates is entitled under this Section 11.2, and upon the reasonable request of a Trout Contributor in writing, the Company will, or will cause its relevant

Affiliates to, authorize by appropriate powers of attorney such Persons as the Trout Contributors designate to represent such Affiliates with respect to such claims. The Trout Contributors shall indemnify the Company for any costs or expenses it incurs that are directly related to, or arise out of, the prosecution of such outstanding tax claims by the Trout Contributors.

(d) From and after the Closing Date, Arch shall be liable for, and shall indemnify the Company and each of its officers, directors, employees, stockholders, agents and representatives against and hold them harmless from:

(i) all liability for Income Taxes (as a result of Treasury Regulation §1.1502-6(a) or similar provision under applicable foreign, state or local Law) for Taxes of Arch or any other corporation which is or has been a member of the affiliated group, within the meaning of section 1504 of the Code, of which Arch is the common parent; and

(ii) all liability for reasonable legal fees and expenses for any item attributable to any item in clause (i) above.

(e) The Company agrees that in the event (i) Arch is unable to fully deduct for federal and state income taxes the Arch VEBA Contributions and (ii) the Company receives a Tax Benefit (as defined below) with respect to such Arch VEBA Contributions then the Company shall pay the Tax Benefit attributable to such Arch VEBA Contribution to Arch (net of any reasonable expenses directly attributable thereto). For purposes of this Section the Tax Benefit shall equal the actual amount of any reduction in federal or state income taxes when and to the extent received as a result of any deduction to the Company under Sections 162 and 419 attributable to the Arch VEBA Contribution (a "**Tax Benefit**"). The Company shall advise Arch on an annual basis of the amount of Tax Benefit, if any, attributable to the Arch VEBA Contribution and provide a calculation of such Tax Benefit. In the event Arch disagrees with the calculation of such Tax Benefit the parties shall negotiate in good faith to determine such Tax Benefit and absent reaching agreement as to the amount of such Tax Benefit the parties shall jointly retain a mutually acceptable nationally recognized accounting firm to resolve the dispute. The costs, fees and expenses of the accounting firm shall be borne by the non-prevailing party.

(f) From the Closing Date until the date that is five years thereafter, neither the Company nor any Arch Company (nor any successors thereof) shall amend the Hobet VEBA or Apogee VEBA to change the class of employees eligible for membership thereunder or the type of benefits payable therefrom; except as may be required by law or, with the prior written consent of Arch, to maintain the qualification of the Hobet VEBA or Apogee VEBA as voluntary employees' benefit associations within the meaning of Code section 501(c)(9). Moreover, the Company and the relevant Arch Company shall assist Arch in its efforts to obtain favorable letter rulings from the Internal Revenue Service

regarding the tax-exempt status of the Hobet VEBA and the Apogee VEBA under Code Section 501(c)(9); provided that the Company and the relevant Arch Company shall have no liability for Arch's failure to obtain such favorable letter rulings, except to the extent such failure is a direct result of the Company and the relevant Arch company failing to assist in such ruling as set forth in this subsection, and further provided that any reasonable out-of-pocket expense incurred by the Company or the relevant Arch Company shall be reimbursed by Arch.

11.3 Assignment; Successors and Assigns.

This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any party (including by operation of law in connection with a merger or consolidation of such party) without the prior consent of the other parties hereto. Notwithstanding the foregoing, any Contributor may assign its right to purchase the shares of Common Stock of the Company to a subsidiary of such Contributor (if any) without the prior consent of any other party; **provided, however**, (i) any such assignment shall be expressly conditioned upon the written agreement of the assignee to be bound by the provisions hereof and of any other applicable Transaction Documents and (ii) notwithstanding any such agreement by an assignee, no assignment shall limit or affect the assignor's obligations hereunder. Any attempted assignment in violation of this Section 11.3 shall be null and void and of no effect. The Agreement shall be binding upon and inure to the benefit of the parties signatory hereto and their respective successors and assigns.

11.4 No Third Party Rights.

This Agreement is for the sole and exclusive benefit of the parties hereto and their successors and permitted assigns, and nothing herein expressed or implied shall give, or be construed to give, to any Person, other than the parties hereto and such successors and permitted assigns, any legal or equitable right, remedies or claims under or with respect to this Agreement or any provisions hereof.

11.5 Counterparts.

This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other parties. Any such counterpart may be delivered to a party by facsimile.

11.6 Governing Law.

This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Agreement shall be governed by, the law of the State of New York, except to the extent that it is mandatory that the law of some other jurisdiction, wherein the Conveyed Equity Interests or Underlying Assets are located, shall apply.

11.7 Submission to Jurisdiction.

Each party irrevocably submits to the exclusive jurisdiction of (a) the Supreme Court of the State of New York, New York County, and (b) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement, any Ancillary Agreement or any transaction contemplated hereby or thereby. Each party agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of New York or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Section 11.7. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, any Transaction Document or the transactions contemplated hereby and thereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11.8 Waiver of Jury Trial

EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY TRANSACTION OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTION DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.8.

11.9 Severability.

If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the Laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, and an equitable adjustment shall be made and necessary provision added so as to give effect to the intention of the parties as expressed in this Agreement at the time of execution of this Agreement.

11.10 Amendment or Modification.

This Agreement may be amended or modified from time to time only by the written agreement of all the parties hereto and affected thereby.

11.11 Integration.

This Agreement and the Transaction Documents (and any schedules, exhibits or annexes thereto), contain the entire agreement and understanding among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. None of the parties shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein or therein.

11.12 Notices.

All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

(a) in the case of Arch and the Arch Companies to:

Arch Coal, Inc.
One City Place Drive, Suite 300
St. Louis, MO 63141
Facsimile: (314) 994-2878
Attention: David Peugh

with copies to:

Arch Coal, Inc.
One CityPlace Drive, Suite 300
St. Louis, MO 63141
Facsimile: (314) 994-2878
Attention: Robert Jones

Bryan Cave LLP
One Metropolitan Square, Suite 3600
St. Louis, MO 63102
Facsimile: (314) 259-2020
Attention: Patricia Brandt

(b) in the case of ArcLight:

ArcLight Energy Partners Fund I, L.P.
200 Clarendon Street, 55th Floor
Boston, MA 02117
Facsimile: (617) 531-6300
Attention: Christine Miller, Esq.

(c) in the case of Elliott:

6605 Horseshoe Bend Court
Summerfield, North Carolina 27358
Facsimile: (336) 644-6135
Attention: Timothy Elliott

(d) in the case of the Company:

106 Lockheed Drive
Beaver, WV 25813

Facsimile: (304) 255-9455
Attention: Paul H. Vining

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
Facsimile : (917) 777-2694
Attention : Phyllis Korff

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

11.13 No Consequential Damages.

No party hereunder shall be liable for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Transaction Documents or any act or omission or event occurring in connection therewith; and each party hereto hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

11.14 Payments

All payments under this Agreement shall be made in immediately available funds, without deduction, setoff or counterclaim.

11.15 Joint and Several Liability.

Notwithstanding anything to the contrary in this Agreement, the Trout Contributors shall be jointly and severally liable for the representations and warranties and obligations of either Trout Contributor hereunder except (a) to the extent that any such representation, warranty or obligation arises under any of any of the Sections referred to in the lead-in to Section 4.3, Section 6.2(b)(i) or Article VII with respect to which each of ArcLight and Elliott shall be severally liable with respect to the representations or warranties or obligations incurred thereunder by it or him, respectively and (b) in the case of any representation or warranty qualified by Knowledge, in which case each Trout Contributor represents and warrants on a several basis with respect to its own Knowledge and not that of the other Trout Contributor.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

Arch Coal, Inc.

By: /s/ David B. Peugh
Name: David B. Peugh
Title: Vice President

Timothy Elliott

By: /s/ Timothy Elliott

Magnum Coal Company

By: /s/ Paul H. Vining
Name: Paul H. Vining
Title: CEO

ArcLight Energy Partners Fund I, L.P.

By: ArcLight PEF GP, LLC, its General Partner
By: ArcLight Capital Holdings, LLC, its Manager

By: /s/ Daniel R. Revers
Name: Daniel R. Revers
Title: Managing Partner

Signature Page to the Master Contribution Agreement

Appendix A
Schedules and Exhibits

11.16 Schedules and Exhibits.

The following schedules and exhibits are attached hereto:

Apogee Properties
Schedule 1.1(a)

Catenary Properties
Schedule 1.1(b)

Hobet Properties
Schedule 1.1(c)

Arch Individuals with Knowledge
Schedule 1.1(d)

ArcLight Individuals with Knowledge
Schedule 1.1(e)

Material Books and Records
Schedule 1.1(f)

Robin Properties
Schedule 1.1(g)

TC Sales Agreements
Schedule 1.1(h)

Trout Properties
Schedule 1.1(i)

Trout Debt
Schedule 2.1

Company Stock Disclosure
Schedule 4.1(c)

Company Governmental Approvals and Consents
Schedule 4.1(g)

Coal Mining Interests and Real Property (Arch)
Schedule 4.2.4(a)
Schedule 4.2.4(b)

- Schedule 4.2.4(c)(1)
- Schedule 4.2.4(c)(2)
- Schedule 4.2.4(e)
- Schedule 4.2.4(f)

No Conflicts/Consents (Arch)

- Schedule 4.2.5(b)
- Schedule 4.2.5(c)

Governmental Approvals and Filings (Arch)

- Schedule 4.2.6

Absence of Changes (Arch)

- Schedule 4.2.9

Undisclosed Liabilities (Arch)

- Schedule 4.2.10

Taxes (Arch)

- Schedule 4.2.11

Legal Proceedings (Arch)

- Schedule 4.2.12

Compliance with Laws (Arch)

- Schedule 4.2.13

Benefits Plans; ERISA (Arch)

- Schedule 4.2.14(a)
- Schedule 4.2.14(b)
- Schedule 4.2.14(g)
- Schedule 4.2.14(h)
- Schedule 4.2.14(j)
- Schedule 4.2.14(k)
- Schedule 4.2.14(m)
- Schedule 4.2.14(n)
- Schedule 4.2.14(o)

Tangible Personal Property (Arch)

- Schedule 4.2.16(a)(1)
- Schedule 4.2.16(a)(2)
- Schedule 4.2.16(a)(3)

Contracts (Arch)

Schedule 4.2.18(a)

Schedule 4.2.18(a)(x)(B) (to be delivered at the Closing)

Schedule 4.2.18(b)

Licenses (Arch)

Schedule 4.2.19(1)

Schedule 4.2.19(2)

Schedule 4.2.19(e)(ii) (to be delivered at the Closing)

Insurance (Arch)

Schedule 4.2.20(1) – intentionally omitted

Schedule 4.2.20(2)

Affiliate Transactions (Arch)

Schedule 4.2.21(1)

Schedule 4.2.21(2)

Schedule 4.2.21(3)

Employees; Labor Relations (Arch)

Schedule 4.2.22

Environmental Matters (Arch)

Schedule 4.2.23

Substantial Customers and Suppliers (Arch)

Schedule 4.2.24(a)

Schedule 4.2.24(b)(1)

Schedule 4.2.24(b)(2)

Schedule 4.2.24(b)(3)

Bank and Brokerage Accounts (Arch)

Schedule 4.2.25

Directors and Officers; Powers of Attorney (Arch)

Schedule 4.2.26(1)

Schedule 4.2.26(2)

Accounts Receivable (Arch)

Schedule 4.2.27

Reclamation Bonds (Arch)

Schedule 4.2.31(1)

Schedule 4.2.31(2)

Sufficiency of Assets (Arch)

Schedule 4.2.33

Membership Interests (Trout)

Schedule 4.3.3

Coal Mining Interests and Real Property (Trout)

Schedule 4.3.4(a)

Schedule 4.3.4(b)

Schedule 4.3.4(c)(1)

Schedule 4.3.4(c)(2)

Schedule 4.3.4(e)

Schedule 4.3.4(f)

No Conflicts/Consents (Trout)

Schedule 4.3.5(b)

Schedule 4.3.5(c)

Governmental Approvals and Filings (Trout)

Schedule 4.3.6

Absence of Changes (Trout)

Schedule 4.3.9

Taxes (Trout)

Schedule 4.3.11

Legal Proceedings (Trout)

Schedule 4.3.12

Compliance with Laws (Trout)

Schedule 4.3.13

Benefits Plans; ERISA (Trout)

Schedule 4.3.14(a)

Schedule 4.3.14(b)(iv)

Schedule 4.3.14(g)

Schedule 4.3.14(h)

Schedule 4.3.14(j)

Schedule 4.3.14(k)

Schedule 4.3.14(m)

Schedule 4.3.14(n)

Schedule 4.3.14(o)

Tangible Personal Property (Trout)

Schedule 4.3.16(a)(1)

Schedule 4.3.16(a)(2)

Schedule 4.3.16(a)(3)

Contracts (Trout)

Schedule 4.3.18(a)

Schedule 4.3.18(a)(x)(B) (to be delivered at the Closing)

Schedule 4.3.18(b)

Schedule 4.3.19 – Licenses (Trout)

Schedule 4.3.19(1)

Schedule 4.3.19(2)

Schedule 4.3.19(e)(ii) (to be delivered at the Closing)

Insurance (Trout)

Schedule 4.3.20(1) – intentionally omitted

Schedule 4.3.20(2)

Affiliate Transactions (Trout)

Schedule 4.3.21(1)

Schedule 4.3.21(2)

Schedule 4.3.21(3)

Employees; Labor Relations (Trout)

Schedule 4.3.22(a)

Environmental Matters (Trout)

Schedule 4.3.23

Substantial Customers and Suppliers (Trout)

Schedule 4.3.24(a)

Schedule 4.3.24(b)(1)

Schedule 4.3.24(b)(2)

Schedule 4.3.24(b)(3)

Bank and Brokerage Accounts (Trout)

Schedule 4.3.25

Directors and Officers; Powers of Attorney (Trout)

Schedule 4.3.26(1)

Schedule 4.3.26(2)

Accounts Receivable (Trout)

Schedule 4.3.27

Reclamation Bonds (Trout)

Schedule 4.3.31(1)

Schedule 4.3.31(2)

Sufficiency of Assets (Trout)

Schedule 4.3.33

Company Consents

Schedule 5.5

Trout Consents

Schedule 5.6

Arch Consents

Schedule 5.7

Indemnification

Schedule 10.3(d)

Outstanding Tax Claims relating to Arch Companies

Schedule 11.2(c)

Exhibit A – Apogee Properties

Exhibit B – Blue Creek Lease Agreement (Lease and Memo of Lease)

Exhibit C – Blue Creek Option to Purchase

Exhibit D – Catenary Properties

Exhibit E – Hobet Properties

Exhibit F – Intentionally Omitted

Exhibit G – Permit Assignment and Assumption Agreements

Exhibit H – Transition Services Agreement

Exhibit I – Trout Properties Map 1

Exhibit J – Trout Properties Map 2

I, Steven F. Leer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Arch Coal, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2005

/s/ Steven F. Leer

Steven F. Leer

Chief Executive Officer

I, Robert J. Messey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Arch Coal, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2005

/s/ Robert J. Messey

Robert J. Messey
Chief Financial Officer

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Arch Coal, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Steven F. Leer, Chief Executive Officer of the Company, certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Steven F. Leer

Steven F. Leer

Chief Executive Officer

November 9, 2005

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Arch Coal, Inc. and will be retained by Arch Coal, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Arch Coal, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert J. Messey, Chief Financial Officer of the Company, certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert J. Messey

Robert J. Messey

Chief Financial Officer

November 9, 2005

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Arch Coal, Inc. and will be retained by Arch Coal, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.