



ENTERED
09/05/2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: WESTMORELAND COAL COMPANY, <i>et al.</i> Debtors.	§ § § § § § §	Chapter 11 Case No. 18-35672 (DRJ) (Jointly Administered) Re: ECF No. 1816
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**STIPULATION AND AGREED ORDER RESOLVING WMLP DEBTORS’ OBJECTION
TO PROOF OF CLAIM NO. 11-2 FILED IN CASE NO. 18-35672 BY KILGORE
COMPANIES, LLC DBA LEGRAND JOHNSON CONSTRUCTION**

The WMLP Debtors,¹ and after the WMLP Effective Date, the WMLP Liquidation Trust, and the WLB Debtors² (collectively, with the WMLP Debtors or WMLP Liquidation Trust, as applicable, the “Debtors”) in the above-captioned cases and Kilgore Companies, LLC dba LeGrand Johnson Construction (“Creditor,” and together with the Debtors, the “Parties”) hereby enter into this stipulation and order (this “Stipulation and Agreed Order”) as follows:

WHEREAS, on October 9, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71];

¹ Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

² “WLB Debtors” means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

WHEREAS, on October 18, 2018, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206];

WHEREAS, the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

WHEREAS, on March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “WLB Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan of reorganization (the “WLB Plan”);

WHEREAS, on March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608];

WHEREAS, on June 5, 2019, the Bankruptcy Court entered the *Order Approving Disclosure Statement and Confirming Amended Joint Plan of Liquidation for the WMLP Debtors, As Modified* (the “WMLP Confirmation Order”) [ECF No. 1967], confirming the WMLP Debtors’ plan of liquidation (the “WMLP Plan”);

WHEREAS, on June 21, 2019, the effective date of the WMLP Plan occurred (the “WMLP Effective Date”) [ECF No. 2068];

WHEREAS, on January 18, 2019, Creditor sent a *Preliminary Notice of Lien* (the “Preliminary Lien Notice”) and a *Notice of Intention to File Lien* (the “Lien Notice”) to Debtors Westmoreland Kemmerer Fee Coal Holdings, LLC and Westmoreland Kemmerer, LLC (the “Lien Notice”);

WHEREAS, on February 11, 2019, Creditor filed its Lien Statement in the County of Lincoln, State of Wyoming pursuant to Wyoming Statutes §§ 29-1-312 and 29-2-101 *et seq.* (the “Lien Statement”);

WHEREAS, Debtor Westmoreland Kemmerer, LLC’s Schedules of Assets and Liabilities listed a claim for Claimant (Scheduled Claim No. 50555) (the “Scheduled Claim”);

WHEREAS, Creditor filed Claim No. 11-2 in Case No. 18-35672 (DRC Claim No. 1335) (such claim, the “Claim”);

WHEREAS, the Debtors filed the *WMLP Debtors’ Objection to Proof of Claim No. 11-2 Filed in Case No. 18-35672 By Kilgore Companies, LLC dba LeGrand Johnson Construction* [ECF No. 1816] (the “Objection”) whereby the Debtors requested that the Court reclassify the claim from a secured claim to a general unsecured claim; and

WHEREAS, the Debtors and Creditor have agreed to resolve the Claim, the Objection, and the Scheduled Claim, as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation and Agreed Order, the Parties hereby stipulate and agree as follows:

1. The Parties agree that the Claim and any related lien is subordinate to the claims and senior secured first liens of the WMLP Secured Lenders pursuant to Wyoming Statutes § 29-1-402(c).
2. The Parties agree that the Claim is hereby reclassified as a general unsecured claim against Debtor Westmoreland Kemmerer, LLC (Case No. 16-35696), and shall be treated as a General Unsecured Claim under the WMLP Plan.
3. The Parties agree that the Claim supersedes the Scheduled Claim, and the Scheduled Claim is hereby disallowed and expunged.

4. The Creditor agrees that, pursuant to the *Order (I) Approving the Sale of the Kemmerer Mine and Certain Other Assets Free and Clear of Substantially All Liens, Claims, Encumbrances and Interests Pursuant to a Credit Bid from Secured Lenders, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief* (the “Kemmerer Sale Order”) [ECF No. 1966], the property encumbered by the Lien Statement was sold free and clear of any liens that arose from or relate to Creditor’s Lien Statement.

5. The Clerk of the Court is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Stipulation and Agreed Order.

6. Except as otherwise provided herein, nothing in this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor entity; (b) a waiver of any Party’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined herein; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

7. Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

8. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Bankruptcy Court.

9. This Stipulation and Agreed Order is intended by the Parties to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

10. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective parties and that the respective parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

11. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

12. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

13. This Stipulation and Agreed Order shall not be modified, altered, amended or supplemented except by a writing executed by the Parties or their authorized representatives.

14. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Order.

IT IS SO ORDERED.

Signed: September 04, 2019



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

IN WITNESS WHEREOF, the Parties, by their authorized counsel, executed this Stipulation and Agreed Order as of the date written below.

Dated: August 30, 2019

Jackson Walker LLP
1401 McKinney Street, Suite 1900
Houston, Texas 77010
(713) 752-4200 – Main Telephone
(713) 752-4221 – Main Facsimile

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh
State Bar No. 24062656
Direct Dial: (713) 752-4284
Email: mcavanaugh@jw.com

Jennifer F. Wertz
State Bar No. 2407282
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Direct Dial: (512) 236-2247
Email: jwertz@jw.com

Vienna F. Anaya
State Bar No. 24091225
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Direct Dial: (214) 953-6047
Email: vanaya@jw.com

**COUNSEL TO THE WMLP LIQUIDATION TRUS
AND THE WLB DEBTORS**

Dated: August 30, 2019

Strong & Hanni, PC
102 South 200 East, Suite 800
Salt Lake City, Utah 84111
(801) 532-7080 – Main Telephone
(801) 596-1508 – Main Facsimile

/s/ Reid W. Lambert

Reid W. Lambert (admitted *pro hac vice*)

Direct Dial: (801) 532-7080

Email: rlambert@strongandhanni.com

**COUNSEL FOR CLAIMANT KILGORE
COMPANIES, LLC DBA LEGRAND JOHNSON
CONSTRUCTION**

United States Bankruptcy Court
Southern District of TexasIn re:
Westmoreland Coal Company
Westmoreland Texas Jewett Coal Company
DebtorsCase No. 18-35672-drj
Chapter 11**CERTIFICATE OF NOTICE**

District/off: 0541-4

User: aalo
Form ID: pdf002Page 1 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Sep 07, 2019.

db Daron Coal Company, LLC, 9450 South Maroon Circle, Suite 300, Englewood, CO 80112
db WLB Debtors, Jackson Walker, L.L.P., Patricia B. Tomasco, Houston, TX 77010
aty +Anne Piero-Silagay, Silagy Law Offices, 1225 South Main St., Ste. 1,
North Canton, OH 44720-4247
aty +Anupama Yerramalli, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas,
New York, NY 10036-2714
aty +Boies Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001-2163
aty +Christine R. Etheridge, 1738 Bass Road, P.O.Box 13708, Macon, GA 31208-3708
aty +Demme Doufekias, Morrison Forester LLP, 2000 Pennsylvania Avenue, NW, Suite 6000,
Washington, DC 20006-1909
aty +Erica J. Richards, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050
aty +Felice Yudkin, Cole Schotz P.C., 25 Main St., Hackensack, NJ 07601-7189
aty +Gregory J. Ossi, Venable LLP, 8010 Towers Crescent Drive, Suite 300,
Tysons Corner, VA 22182-2723
aty +Janean R. Weber, General Dave Yost, Environmental Enforce, 30 East Broad Street, 25th Floor,
Columbus, OH 43215-3414
aty +Jennifer L Marines, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050
aty +Jennifer R. Sharret, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas,
New York, NY 10036-2714
aty +John C. Goodchild, III, Morgan, Lewis & Bockius LLP, 1701 Market Street,
Philadelphia, PA 19103-2987
aty +John R. Mooney, Mooney, Green, Saindon, Murphy & Welch, 1920 L Street N.W., Suite 400,
Washington, DC 20036-5041
aty +Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, U.S.A. 60654-5412
aty +Laura McCarthy, Morgan Lewis Bockius LLP, One Federal Street, Boston, MA 02110-2003
aty +Leonard Gerson, 200 Constitution Ave. N.W., STE N-4611, Washington, DC 20210-0001
aty +Lorenzo Marinuzzi, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050
aty +Mark A. Lightner, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050
aty +Mark E. Hindley, Stoel Rives LLP, 201 Main St #1100, Salt Lake City, UT 84111-2208
aty +Matthew E. McClintock, K&L Gates LLP, 70 West Madison Street, Suite 3100,
Chicago, IL 60602-4244
aty +Matthew Ziegler, Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178-0060
aty +Michael E. Petrella, Bois Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001-2163
aty Nakisha Duncan, Morgan, Lewis & Bockius, LLP, 101 Park Avenue, New York, NY 10178-0060
aty +Nicholas J. Brannick, Cole Shotz PC, 50 Delaware Avenue, Suite 1410,
Wilmington, DE 19803
aty +Paul Andrew Green, Mooney, Green, Saindon, Murphy & Welch, 1920 L Street, N.W., Suite 400,
Washington, DC 20036-5041
aty +Rachel Jaffe Mauceri, Morgan Lewis & Bockius LLP, 1701 Market St,
Philadelphia, PA 19103-2987
aty +Reid W. Lambert, Strong and Hanni P.C, 102 South 200 East, Ste. 800,
Salt Lake City, UT 84111-3110
aty +Sean F. O'Shea, Bois Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001-2163
aty +Sharon Cason-Adams, Adams & Liming, LLC, 1335 Dublin Road, Suite 104D,
Columbus, OH 43215-7084
aty +Steven Rhodes, Steven Rhodes Consulting, LLC, 1610 Arborview Rd.,
Ann Arbor, MI 48103-3650
aty +Todd M. Goren, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050
aty +Winfield Wilson, Division of Mine Safety and Health, U.S. Department of Labor,
201 12th Street South, Ste. 401, Arlington, VA 22202-5414
cr +Alex J. Sanchez, 2603 Espinoza, Trinidad, CO 81082-3912
cr +Alva Ray Trail, 193 Dusty Miller St., Princeton, WV 24740-7663
cr +American Guarantee and Liability Insurance Company, c/o Duane J. Brescia,
Clark Hill Strasburger, 720 Brazos, Suite 700, Austin, TX 78701-2531
op Baker & Hostetler LLP, SunTrust Center, Suite 2300, 200 South Orange Avenue,
Orlando, FL 32801-3432
intp +Bayou Coal Partners, LLC, Bradley Arant Boulton Cummings LLP, 600 Travis Street, Suite 4800,
Attn: Nathan Graham, Houston, TX 77002-3024
cr +Ben Epifanio Palomino, 537 Railroad Ave, Raton, NM 87740-3222
intp +Bethel J. Brock, 6223 Bear Creek Meadows Drive, Wise, VA 24293-4434
cr Big Horn County, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269
intp +Bond Safeguard Insurance Company, Philip Eisenberg, 600 Travis, Suite 2800,
Houston, TX 77002-2914
cr +Bridgestone Americas Tire Operations, c/o Waller, 511 Union Street, 27th Fl,
Attn: Blake Roth, Nashville, TN 37219-1733
cr +CRG Financial LLC, 100 Union Avenue, Cresskill, NJ 07626-2141
cr +Carl N Neace, 236 East Lynn Rd, Ranger, WV 25557-7003
cr +Carroll Erickson, 2912 SW Trailside Path, Stuart, FL 34997-9013
cr +Caterpillar Financial Services Corporation, 2120 West End Avenue, Nashville, TN 37203-5341
cr +Colonial American Casualty and Surety Company, c/o Duane J. Brescia, Clark Hill Strasburger,
720 Brazos, Suite 700, Austin, TX 78701-2531
cr CornerStone Education Loan Services, PO Box 145123, Salt Lake City, UT 84114-5123

District/off: 0541-4

User: aalo
Form ID: pdf002Page 2 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

cr +Davis Graham & Stubbs LLP, 1550 17th Street Suite 500, Denver, CO 80202,
UNITED STATES 80202-1500

cr +Dennis Neuberger, 417 Front Street, Beulah, ND 58523-6729

cr +Donna Ramsey, c/o Edwards Law Firm, 1648 Poly Drive, Suite 206, Billings, MT 59102-1704

cr +Double M. Mud Co., Inc., PO Box 1618, Aztec, NM 87410-4618

cr +Earl Spears, 115 Fox Dr., Pennington Gap, VA 24277-8166

cr Edward Leon Freeman, 8314 Birchfield Heights Rd., Wise, VA 24293

intp +Edward Velasquez, P.O. Box 516, Aguilar, CO 81020-0516

intp +Ethel Nadine Mead, P.O. Box 248, La Plata, NM 87418-0248

cr +Eugene S Castillo, 1012 Pierce Street, Trinidad, CO 81082-3649

cr +Fidelity and Deposit Company of Maryland, c/o Duane J. Brescia, Clark Hill Strasburger,
720 Brazos, Suite 700, Austin, TX 78701-2531

cr +Frank Colangelo, 312 Robard Ave, Trinidad, CO 81082-3137

cr Freestone County et al, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269

cr +G.R. Peart, POB 114, Randolph, UT 84064-0114

cr +Gloria Chavez, 8060 CR 69.1, Trinidad, CO 81082-9716

intp +Harold Ray Ball, 4526 Main Hewett Creek Rd., Hewett, WV 25108-9804

intp +Harold Richard Guptill, 790 Legion Street, Craig, CO 81625-1758

cr +Holt Texas Ltd. dba Holt CAT and dba Holt Rental S, c/o Caldwell East & Finlayson PLLC,
700 N. St. Mary's Street, Attn: Zachary J. Fanucchi, Suite 1825,
San Antonio, TX 78205-3545

intp +James K. Bills, 1125 Sorensen Dr., Kemmerer, WY 83101-3442

cr +Jim S. Villos, P O Biox 621, Kenimerer, WY 83101-0621

intp +Joe McGuire, P.O. Box 344, Diamondville, WY 83116-0344

cr +John Montano, 9315 CR 43.6, Trinidad, CO 81082-9509

intp +K.D. Black, 1412148, 1697 FM 980, Huntsville, TX 77343-0001

cr +Karol Kolle Latham, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433

cr +Katherine Kolle King, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433

intp +Ken Lloyd, 210 Webster St., Montpelier, ID 83254-1076

intp +Kenneth Clark, 518 Upper Sunset Dr., Kemmerer, WY 83101-3309

intp +Kim McKee, PO Box 27, Kemmerer, WY 83101-0027

cr +Komatsu Financial Limited Partnership, c/o Kane Russell Coleman Logan PC,
5051 Westheimer Road, Suite 1000, Houston, TX 77056-5749

cr Larry Rutherford, 205 E. 11th St W, Big Stone Gap, VA 24219

cr Larry Wharton, 620 N 12th St, Herrin, IL 62948-3226

cr +Lewis A. Clark, 210 Howard Lawson Dr, Big Stone Gap, VA 24219-8522

intp +Lexon Insurance Company, Inc., Locke Lord LLP, c/o Philip G. Eisenberg, Esq.,
2800 JPMorgan Chase Tower, 600 Travis St., Houston, TX 77002-3009

intp +Lexon Insurance Company, Inc. / Sompo Internationa, Harris Beach PLLC, ATTN: Lee Woodard,
333 W. Washington St., Ste. 200, Syracuse, NY 13202-5202

intp +Lonnie Smith, PO Box 406, Diamondville, WY 83116-0406

cr +Marvin Bauer, 309 2nd Ave SE, POB 712, Beulah, ND 58523-0712

intp +Marvin Kern, 180 Mississippi Dr., Duffield, VA 24244-4375

cr +Max Casias, 2607 Espinoza St, Trinidad, CO 81082-3936

intp +Melvin & Trudy Hatch, 405 Sixth Street, PO Box 254, Cokeville, WY 83114-0254

intp +Merida Natural Resources, LLC, Bradley Arant Boulton Cummings LLP,
600 Travis Street, Suite 4800, Attn: Nathan Graham, Houston, TX 77002-3024

intp +Mining and Minerals Division, NM Energy, Minerals, 1220 South St. Frances Dr.,
Santa Fe, NM 87505-4225

cr +Monsanto Company, c/o Husch Blackwell, Attn: Buffey Klein, 1900 N. Pearl, Suite 1800,
Dallas, TX 75201-2467

cr +Monsen Engineering, LLC, c/o Cooley LLP, 1299 Pennsylvania Avenue, NW, Suite 700,
Washington, DC 20004-2431

cr +Montana Department of Environmental Quality, c/o Lynn H. Butler, Husch Blackwell LLP,
111 Congress Avenue, Suite 1400, Austin, TX 78701-4093

intp +Montana State Fund, c/o Kelly Hart & Hallman, 201 Main Street, Suite 2500,
Fort Worth, TX 76102-3129

cr +New Mexico State Land Office, 310 Old Santa Fe Trail, Santa Fe, NM 87501-2708

intp +North American Coal Corporation, c/o Hunton Andrews Kurth LLP, 600 Travis, Suite 4200,
Houston, TX 77002-2929

intp +NorthWestern Corporation, a Delaware Corporation,, 208 N. Montana Ave., Suite 205,
Helena, MT 59601-3837

cr +Oracle America, Inc., Buchalter, a Professional Corporation, c/o Shawn M. Christianson,
55 2nd St. 17th Fl., San Francisco, Ca 94105-3493

cr +PNM Resources, Inc. and Public Services Company of, c/o Annie Catmull, Sanders McGarvey LLP,
12 Greenway Plaza #210, Houston, TX 77046-1216

cr +PacifiCorp, c/o Mark E. Hindley, STOEL RIVES LLP, 201 Main St., #1100,
Salt Lake City, UT 84111-2208

cr +PacifiCorp, c/o Oren Buchanan Haker, STOEL RIVES LLP, 760 SW Ninth, Suite 3000,
Portland, OR 97205-2587

intp +Pat Argyle, PO Box 339, Garden City, UT 84028-0339

cr +Perry Norris, P O Box 235, Randolph, UT 84064-0235

intp Railroad Commission of Texas, c/o Office of the Attorney General,
Bankruptcy & Collections Division, P. O. Box 12548, Austin, TX 78711-2548

cr +Reaco Battery SVC Corporation, c/o Glenn R. LeMay, 1900 West Loop South, Ste. 1000,
Houston, TX 77027-3264

cr Rick Halter, POB 1031, Beulah, ND 58523-1031

intp +Rick Whitmore, PO Box 201, Kemmever, WY 83101-0201

cr +Ronald E. George, Sr., POB 461, Craigs ville, WV 26205-0461

cr +Rosebud County, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269

District/off: 0541-4

User: aalo
Form ID: pdf002Page 3 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

crcm Rosebud County et al, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269
 cr +Roy R. Townsend, 145 Boat Docket Lane, Gate City, VA 24251-4596
 intp +Sabine Pass Coal Group, LLC, Bradley Arant Boulton Cummings LLP,
 600 Travis Street, Suite 4800, Attn: Nathan Graham, Houston, TX 77002-3024
 cr +Salvador Sanchez, 1601 Garfield Ave, Trinidad, CO 81082-3714
 cr +Silver Spur Conveyors, Inc., Silver Spur Conveyors, Inc., P.O. Box 490, 578 Raven Road,
 Raven, VA 24639, UNITED STATES 24639-0490
 intp +Sompo International Insurance, c/o Philip G. Eisenberg, 2800 JP Morgan Chase Tower,
 600 Travis, Suite 2800, Houston, TX 77002-2914
 intp +Sonia Chae United States Securities & Exchange Com, 175 W. Jackson Blvd., Suite 1450,
 Chicago, IL 60604-2710
 cr +Stephanie Raver, PO Box 5128, Etna, WY 83118-0128
 cr +Stephen Earl Kolle, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433
 intp +Steven Roberts, P.O. Box 4, Kemmerer, WY 83101-0004
 cr +Susan K Marek, 1614 Crestmon, Wharton, TX 77488-3433
 cr +Texas Comptroller of Public Accounts, John Stern, P.O. Box 12548, Austin, TX 78711-2548
 cr +The Crow Tribe of Indians, c/o Barnet B. Skelton, Jr., 815 Walker, Suite 1502,
 Houston, TX 77002-5832
 cr The Texas Ad Valorem Taxing Jurisdictions, c/o Tara LeDay, PO Box 1269,
 Round Rock, TX 78680-1269
 cr +Tractor & Equipment Co., Perkins Coie LLP, 1201 Third Avenue, Suite 4900,
 Seattle, WA 98101-3095
 intp +Trustees of the United Mine Workers of America 199, c/o Morgan, Lewis & Bockius LLP,
 Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048
 intp +Trustees of the the United Mine Workers of America, c/o Morgan, Lewis & Bockius LLP,
 Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048
 cr +U.S. Bank National Association, as Trustee and Not, Shipman & Goodwin LLP,
 One Constitution Plaza, Hartford, CT 06103-1919
 cr +Virginia Bates Kolle, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433
 cr +Virginia Bates Kolle Family Trust, 1614 Crestmont St, Wharton, TX 77488-3433
 intp +WMLP Liquidation Trust, Jennifer F Wertz, Jackson Walker LLP, 100 Congress Avenue,
 Suite 1100, Austin, TX 78701-4042
 cr Wells Fargo Vendor Financial Services, LLC, PO Box 13708, Macon, GA 31208-3708
 intp +Western Coal Acquisition Partners, LLC, Bradley Arant Boulton Cummings LLP,
 Attn: Jay R. Bender, 1819 Fifth Avenue North, Birmingham, AL 35203-2120
 cr +Western Oilfiled Services Co., dba Rain for Rent, C/O Marc L. Ellison, 2211 Norfolk,
 Ste 510, Houston, TX 77098, UNITED STATES OF AMERICA 77098-4048
 intp +Westmoreland Mining Holdings, LLC, c/o John F. Higgins, Porter Hedges LLP,
 1000 Main Street, 36th Floor, Houston, TX 77002-6341
 cr +Zurich American Insurance Company, c/o Duane J. Brescia, Clark Hill Strasburger,
 720 Brazos, Suite 700, Austin, TX 78701-2531
 cr +Zurich Insurance Company Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,
 720 Brazos, Suite 700, Austin, TX 78701-2531
 cr +Zurich Insurance Group, Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,
 720 Brazos, Suite 700, Austin, TX 78701-2531

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland-Roanoke Valley LP,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Coal Company,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Absaloka Coal, LLC,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Basin Resources, Inc.,
 9540 South Maroon Circle, Suite 300, Englewood, co 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Buckingham Coal Company, LLC,
 9540 South Maroon Circle, Suite 300, x, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Dakota Westmoreland Corporation,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Harrison Resources, LLC,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Haystack Coal Company,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Oxford Conesville, LLC,
 9540 South Maroon Circle, Suite 300, Englewood, co 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Oxford Mining Company - Kentucky, LLC,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Oxford Mining Company,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 San Juan Coal Company,
 9540 South Maroon Circle, Suite 300, Englewood, Co 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 San Juan Transportation Company,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Texas Westmoreland Coal Company,
 9540 South Maroon Circle, Suite 300, Englewood, Co 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 WCC Land Holding Company, Inc.,
 9540 South Maroon Circle, Suite 300, Englewood, co 80112
 db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 WEI - Roanoke Valley, Inc.,
 9540 South Maroon Circle, Suite 300, Englewood, CO 80112

District/off: 0541-4

User: aalo
Form ID: pdf002Page 4 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center (continued)

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Western Energy Company,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland Coal Company Asset Corp., 9540 South Maroon Circle, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland Coal Sales Company, Inc., 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland Energy Services New York, Inc., 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Energy Services, Inc.,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Energy, LLC,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland Kemmerer Fee Coal Holdings, LLC, 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Kemmerer, LLC,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Mining LLC,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland North Carolina Power, LLC, 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Partners,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Power, Inc.,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Resource Partners, LP,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Resources GP, LLC,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Resources, Inc.,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland San Juan Holdings, Inc., 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland San Juan, LLC,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 Westmoreland Savage Corporation,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

db E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11
Westmoreland Texas Jewett Coal Company, 9540 South Maroon Circle, Suite 300,
Englewood, CO 80112

dbpos E-mail/Text: legal@westmoreland.com Sep 05 2019 22:31:11 WRI Partners, Inc.,
9540 South Maroon Circle, Suite 300, Englewood, CO 80112

aty +E-mail/Text: ccooper@mooneygreen.com Sep 05 2019 22:35:48 Diana Bardes,
Mooney, Green, Saindon, Murphy & Welch, 1920 L Street, N.W., Suite 400,
Washington, DC 20036-5041

aty +E-mail/Text: sst@lawtoll.com Sep 05 2019 22:31:00 Sheldon S Toll,
Law Office of Sheldon S. Toll PLLC, 29580 Northwestern Hwy., Suite 1000,
Southfield, MI 48034-1031

cr E-mail/Text: houston_bankruptcy@LGBS.com Sep 05 2019 22:34:41 Harris County,
Linebarger Goggan Blair & Sampson LLP, C/O John P. Dillman, PO Box 3064,
Houston, TX 77253-3064

cr +E-mail/Text: stephen@youtzvaldez.com Sep 05 2019 22:31:05
International Union of Operating Engineers, Local, c/o Youtz & Valdez PC,
900 Gold Avenue SW, Albuquerque, NM 87102-3043

cr +E-mail/Text: TRD-bankruptcyunit@state.nm.us Sep 05 2019 22:33:16
New Mexico Taxation and Revenue Department, P.O. Box 8575, Albuquerque, NM 87198-8575

cr E-mail/Text: pat@pmfpc.com Sep 05 2019 22:35:31 United Mine Workers of America,
c/o Patrick M. Flynn, P.C., 1225 North Loop W, STE 1000, Houston, TX 77008-1775
TOTAL: 42

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

aty The WMLP Debtors and the Conflicts Committee of th
aty Vedder Price P.C.
cr A. Harper
cr ACE American Insurance Company
cr ACE Insurance Company of Texas
cr ACE Property & Casualty Insurance Company
intp Andrew Skillin
intp Ankura Trust Company, LLC
intp Anthony Winder
intp Argonaut Insurance Company
cr Avista Corporation
cr B. Grannon
cr Benjamin J. Smith

District/off: 0541-4

User: aalo
Form ID: pdf002Page 5 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

***** BYPASSED RECIPIENTS (continued) *****

cr Bob Post
 intp Brett Grunig
 intp Brian Nelson
 cr Brian Post
 intp CCU Coal and Construction LLC
 intp CIBC Bank USA
 intp Calder Lutz
 cr Canadian Imperial Bank of Commerce
 intp Charles M. Hunzie
 cr Chevron Products Company, a division of Chevron U.
 cr Christopher K Seglem
 cr Chrystella Montoya
 cr Chubb Insurance Company of Canada
 cr City of Dover, Ohio
 op Claims Administrator Cullen Speckhart
 intp Clarson Moore
 cr Claud E Onrada
 intp Claudia Ourada
 intp Clint Bowen
 op Coal Act Retirees Committee
 intp Connie Gunter
 cr Conveyors & Equipment, Inc.
 intp David Auilg
 intp Dower Rolex
 sp Drinker Biddle & Reath LLP
 intp Eddie W Gomez
 intp Emily Oddino
 intp Epsilon Palomins
 inre Ethel Nadine Mead, Trust
 cr Evan Pargeon
 cr Everly I Silva, Sr.
 cr Federal Insurance Company
 cr First Surety Corporation
 cr Floyd Cozort
 cr GT Nix Construction, Inc.
 intp Gary Biebinger, Jr.
 cr Genesis Alkali, LLC
 intp Gilbert Remmal
 cr Great Northern Insurance Company
 intp Great Northern Properties L.P.
 cr HYG Financial Services, Inc. fka NMHG Financial Se
 cr Henry Moore
 intp Hopedale Mining LLC
 cr Illinois Union Insurance Company
 cr J. Carano
 cr J. Collins
 cr James Cardill, Birdstone Gap, VT
 intp James W Barker
 intp Jason B Chandler
 intp Jason K.
 intp John B. McKnight, IV
 intp John Beachler
 intp Johnny L. Cantor
 intp Joni Henderson
 cr K. Dixon
 intp Kathleen Plaistd
 intp Kevin L.
 intp Kilgore Company
 cr Kinder Morgan Utopia LLC
 cr L. Boone
 intp Larry Kennedy
 cr Lenders and Ad Hoc Noteholders
 intp Les Rex
 cr M. Baisden
 intp MKiall
 cr MLP Ad Hoc Group
 intp Mar-Bow Value Partners, LLC
 cr Marie Crum
 consult McKinsey Recovery & Transformation Services U.S.,
 intp Mickil Klinginbury
 cr Mine Safety and Health, US Department of Labor
 cr Montana Dakota Utilities Co.
 cr Montana Department of Natural Resources and Conser
 cr Montana Department of Revenue
 intp Moody's Investors Service, Inc.
 cr NRG Texas Power LLC
 intp Natural Resource Partners L.P.
 intp Navakai, Inc
 intp Neil L Argyle

District/off: 0541-4

User: aalo
Form ID: pdf002Page 6 of 6
Total Noticed: 179

Date Rcvd: Sep 05, 2019

***** BYPASSED RECIPIENTS (continued) *****

cr Nelson Brothers Mining Services, LLC
 cr Norman R. Mestos
 intp North Dakota Public Service Commissio
 cr Northwest Colstrip Owners (NWCO)
 intp Ohio Department of Natural Resources
 intp Ohio Environmental Protection Agency
 cr Ohio Machinery Co. ("Ohio Cat") and OMCO Leasing C
 cr Paul Buchanan
 cr Pension Benefit Guaranty Corporation
 cr Portland General Electric Company
 consult PricewaterhouseCoopers LLP
 cr Prudential Retirement Insurance and Annuity Company
 cr Puget Sound Energy, Inc.
 intp Robert Huff
 cr Robert McLaughlin
 cr Robert T Sanchez
 cr Rock Springs Royalty Company LLC
 cr Ronald Crum
 intp Samoa Hale Jordan
 cr San Juan County Museum Association
 intp State of Montana, Department of Revenue
 intp State of Ohio
 cr Stephanie Crum
 cr Talen Montana, LLC
 cr Tenaska Power Services Co.
 intp Thayne Christensen
 crcm The Official Committee of Unsecured Creditors
 cr The Sierra Club
 intp The WMLP Debtors, US
 cr Todd Manring
 intp Tom Price
 cr Travelers Casualty and Surety Company of America
 intp Tyler Hysell
 cr U.S. Bank National Association
 cr United States Department of Labor
 cr United States Department of the Interior
 cr United States Secretary of Labor
 cr United States of America
 intp Verdie Winder
 intp Virgil Kent Service
 intp WPP LLC
 cr Wagner Equipment Co.
 cr Westchester Fire Insurance Company
 cr Westchester Surplus Lines Insurance Company
 intp Western Organization of Resource Councils
 cr Wheeler Machinery Co.
 intp Whitney Garrett
 cr Wilmington Savings Fund Society, FSB
 intp Wyoming Office of State Lands and Investments
 intp* +G. R. Peart, P.O. Box 114, Randolph, UT 84064-0114

TOTALS: 141, * 1, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
 USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Sep 07, 2019

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on September 5, 2019 at the address(es) listed below:
 NONE.

TOTAL: 0