

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	
)	Chapter 11
CLOUD PEAK ENERGY INC., <i>et al.</i> ,)	
)	Case No. 19 – 11047 (KG)
Debtors. ¹)	
)	(Jointly Administered)
)	
)	Re: Docket No. 257

**ORDER (I) ESTABLISHING BAR DATES AND PROCEDURES
AND (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) establishing claims bar dates and procedures and approving the form and manner of notice thereof, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the

¹ The Debtors in these chapter 11 cases (the “*Chapter 11 Cases*”) and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors’ service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

2. Any objections to the Motion not resolved or otherwise withdrawn are **OVERRULED.**

3. The General Bar Date shall be fixed as **August 1, 2019 at 5:00 p.m. (ET).**

4. The Governmental Bar Date shall be fixed as **November 6, 2019 at 5:00 p.m. (ET).**

5. The Amended Schedules Bar Date shall be fixed as the **later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (ET), on the date that is 30 days from the date on which the Debtors provide notice of the previously unfiled Schedule or amendment or supplement to the Schedules.**

6. The Rejection Damages Bar Date shall be fixed as **later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (ET) on the date that is 30 days following service of an order approving the rejection of any executory contract or unexpired lease of the Debtors.**

7. The forms of the Bar Dates Notice, the Proof of Claim Form, the Publication Notice, and the manner of providing notice of the Bar Dates proposed in the Motion are

approved in all respects. The form and manner of notice of the Bar Dates approved herein satisfy the notice requirements of the Bankruptcy Code and the Bankruptcy Rules.

8. Subject to terms described in this Order for holders of claims subject to the Governmental Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

- a. any person or entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules, or is listed in such Schedules as "contingent," "unliquidated," or "disputed," if such person or entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;
- b. any person or entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;
- c. any person or entity who believes that its prepetition claim as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and who desires to have its claim allowed against a Debtor other than that identified in the Schedules; and
- d. any person or entity who believes that its claim against a Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.

9. The following entities, whose claims otherwise would be subject to the General Bar Date or the Governmental Bar Date, need not file claims in these chapter 11 cases:

- a. any person or entity who has already filed a signed proof of claim against the respective Debtor(s) with the Clerk of the Court or with Prime Clerk, the Debtors' claims and noticing agent, in a form substantially similar to Official Form 410;
- b. any person or entity whose claim is listed on the Schedules if: (i) the claim is *not* scheduled as any of "disputed," "contingent," or "unliquidated;" (ii) such person or entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such person or entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;
- c. any person or entity whose claim has previously been allowed by order of the Court on or before the applicable Bar Date;

- d. any person or entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- e. any Debtor having a claim against another Debtor;
- f. any person or entity whose claim is based on an equity interest in any of the Debtors;
- g. any current officer or director of any of the Debtors for claims based on indemnification, contribution, or reimbursement;
- h. any person or entity holding a claim for which a separate deadline is fixed by this Court;
- i. any person or entity holding a claim allowable under sections 503(b) or 507(a)(2) of the Bankruptcy Code as an expense of administration incurred in the ordinary course; *provided, however*, that any person or entity asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such claim by filing a request for payment or a proof of claim on or prior to the General Bar Date;
- j. the DIP Lenders and DIP Agent, for claims arising from or relating to the DIP Facility; and
- k. the Prepetition Secured Noteholders and the Secured Notes Trustee, for claims arising from or relating to the Secured Notes.

10. Parties asserting claims against the Debtors that accrued before the Petition Date must use a proof of claim form (the “***Proof of Claim Form***”) substantially in the form attached as **Exhibit C** to the Motion.

11. The following procedures for the filing of a Proof of Claim Form shall apply:

- a. Proof of Claim Forms must be filed so that it is received on or before the applicable Bar Dates either (i) electronically through Prime Clerk’s website, using the interface available on such website located at <https://cases.primeclerk.com/cloudpeakenergy/EPOC-Index> (the “***Electronic Filing System***”) or (ii) by delivering the original Proof of Claim Form by overnight courier, hand delivery, or first class mail to:

Cloud Peak Energy Inc.
Claims Processing Center
c/o Prime Clerk LLC
850 Third Avenue, Suite 412
Brooklyn, NY 11232

- b. Proof of Claim Forms will be deemed filed when **actually received** by Prime Clerk.
- c. Forms may not be delivered to Prime Clerk via facsimile or electronic mail transmission (the Electronic Filing System not being considered electronic mail transmission). Any facsimile or electronic mail submissions **will not be accepted** and will not be considered properly or timely filed for any purpose in these chapter 11 cases.
- d. Proof of Claim Forms will be collected, docketed, and maintained by Prime Clerk.
- e. All forms must be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English and be denominated in United States currency. Claimants should set forth with specificity the legal and factual basis for the alleged claim and attach to the completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.
- f. Any person or entity asserting claims against multiple Debtors must file a separate form with respect to each Debtor. In addition, any person or entity filing a claim must identify on its Proof of Claim Form the particular Debtor against which the entity asserts its claim. Any claim filed under the Debtors' joint administration case number, or that otherwise fails to identify a Debtor shall be deemed as filed only against Debtor Cloud Peak Energy Inc. If an entity lists more than one Debtor on any one form, the relevant claims will be treated as filed only against the first listed Debtor. *Provided, however*, that notwithstanding anything to the contrary set forth in this Order, (i) any indenture trustee or designated agent (an "***Indenture Trustee***") under any agreement or related document governing any prepetition notes, bonds, debentures, or other debt securities, in each case, issued by or on behalf of any of the Debtors (each, a "***Debt Instrument***") that is required hereunder to submit a Proof of Claim, will only be required to submit a single Proof of Claim against the chapter 11 estates of the Debtor(s) that is (are) the primary obligor(s) on the underlying debt, and if such Proof of Claim identifies the Debtors, together with their respective chapter 11 case numbers, that are guarantors or otherwise secondary obligors under the applicable Debt Instrument, such Proof of Claim will be deemed to have been submitted against the chapter 11 estate of each guarantor or secondary obligor; and (ii) in lieu of attaching voluminous documentation, an Indenture Trustee under any Debt Instrument may include a summary of the operative documents with respect to its Proof of Claim, *provided, further, however*, that such Indenture Trustee shall make copies of the operative documents with respect to its Proof of Claim available for the Debtors, the Committee, or the U.S. Trustee within ten (10) business days after receipt of a written request for such documents. For the avoidance of doubt, in accordance with paragraph 9(k) hereof, none of the DIP Agent, the DIP Lenders, the

Prepetition Secured Noteholders, or the Secured Notes Trustee are required to submit any Proof of Claim for claims arising from or related to the DIP Facility or the Secured Notes, respectively, and any Proof of Claim submitted by the DIP Agent, the DIP Lenders, the Prepetition Secured Noteholders, or the Secured Notes Trustee shall be governed by paragraph 49 of the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Secured by Senior Priming Liens and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 106].

12. Any entity holding an interest in the Debtors (an “*Interest Holder*”), which interest is based exclusively upon the ownership of: (a) a membership interest in a limited liability company; (b) common or preferred stock in a corporation; or (c) warrants or rights to purchase, sell or subscribe to such a security or interest (any such security or interest being referred to herein as an “*Interest*”), need not file a proof of interest on or before the General Bar Date; *provided, however*, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a proof of claim by the applicable Bar Date, unless another exception identified in this Order applies.

13. Pursuant to Bankruptcy Rule 3003(c)(2), any person or entity that is required to file a proof of claim in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Order with respect to a particular claim against the Debtors, but that fails to do so properly by the applicable Bar Date, shall not be treated as a creditor with respect to (a) such claim for purposes of voting upon any plan in these chapter 11 cases and (b) distribution from property of the Debtors’ estates.

14. The Debtors shall retain the right to: (a) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature,

amount, liability, classification or otherwise; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules.

15. As soon as practicable but no later than three business days after entry of the Order, the Debtors, through Prime Clerk or otherwise, shall serve the Bar Dates Notice Package, including a copy of the Bar Date Notice and the Proof of Claim Form, substantially in the forms attached to the Motion as **Exhibit B** and **Exhibit C**, respectively, by first-class mail, postage prepaid, on: (a) all holders of claims or potential claims listed in the Debtors' Schedules; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Committee; (d) all parties that have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date of the entry of the Order; (e) all known creditors and other known holders of potential claims against any of the Debtors; (f) all counterparties to executory contracts and unexpired leases of the Debtors listed in the Schedules or their designated representatives; (g) all parties to pending litigation with the Debtors; (h) all current and former employees of the Debtors (to the extent that contact information for former employees is available in the Debtors' records); (i) the Internal Revenue Service and all other taxing authorities for the jurisdictions in which the Debtors conduct business; (j) all relevant state attorneys general; (k) all holders of record of any Interests in any of the Debtors as of the date of the Order (although copies of the Proof of Claim Form will not be provided to them); (l) all other entities listed on the Debtors' respective creditor matrices; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

16. The Debtors shall post the Bar Date Notice and Proof of Claim Form on Prime Clerk's website at <https://cases.primeclerk.com/cloudpeakenergy>.

17. Pursuant to Bankruptcy Rule 2002(l) and 9008, the Debtors shall publish the Publication Notice in *USA Today* and certain additional local publications as may be deemed appropriate as means to provide notice of the Bar Dates to such unknown potential claimants. The Debtors will cause such publication to occur no later than five business days after entry of this Order.

18. The Debtors and Prime Clerk are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. Entry of this Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing the date by which holders of claims not subject to the Bar Dates established herein must file such claims against the Debtor or be forever barred from so doing.

20. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Dated: July 1st, 2019
Wilmington, Delaware