

CLOUD PEAK ENERGY INC.

Form 10-Q

October 30, 2014

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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, 2014

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: 001-34547

Cloud Peak Energy Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-3088162
(I.R.S. Employer
Identification No.)

505 S. Gillette Ave., Gillette, Wyoming
(Address of principal executive offices)

82716
(Zip Code)

(307) 687-6000

(Registrant's telephone number, including area code)

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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

Number of shares outstanding of Cloud Peak Energy Inc.'s common stock, as of the latest practicable date: Common stock, \$0.01 par value per share, 61,004,549 shares outstanding as of October 23, 2014.

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CLOUD PEAK ENERGY INC.

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Explanatory Note

On March 25, 2014, Cloud Peak Energy Resources LLC, Cloud Peak Energy Finance Corp. (together with Cloud Peak Energy Resources, the Issuers), Cloud Peak Energy Inc., Wilmington Trust Company, as trustee, and Citibank N.A., as securities administrator, entered into the fifth supplemental indenture (the Fifth Supplemental Indenture) to the indenture governing the Issuers' 8.250% Senior Notes due 2017 (which are no

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longer outstanding) and 8.500% Senior Notes due 2019 (collectively, the Notes). Pursuant to the Fifth Supplemental Indenture, Cloud Peak Energy Inc. has agreed to guarantee the Notes and to be bound by the terms of the indenture governing the Notes applicable to guarantors. As a result of such guarantee, and pursuant to Rule 12h-5 promulgated under the Securities Exchange Act of 1934 (Exchange Act) and Rule 3-10 of Regulation S-X, Cloud Peak Energy Resources LLC is no longer required to file reports under Section 15(d) of the Exchange Act and has filed a Form 15 in connection therewith.

Unless the context indicates otherwise, the terms Cloud Peak Energy, the Company, we, us, and our refer to Cloud Peak Energy Inc. and its subsidiaries.

Table of Contents**PART I FINANCIAL INFORMATION****Item 1. Financial Statements.****CLOUD PEAK ENERGY INC.****UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF
OPERATIONS AND COMPREHENSIVE INCOME**

(in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Revenue	\$ 342,337	\$ 374,816	\$ 982,253	\$ 1,042,864
Costs and expenses				
Cost of product sold (exclusive of depreciation, depletion, and accretion, shown separately)	288,345	295,983	830,405	853,615
Depreciation and depletion	25,815	26,918	81,944	75,589
Accretion	3,848	3,995	12,066	12,249
Derivative financial instruments	(515)	295	(16,052)	(25,641)
Selling, general and administrative expenses	12,163	13,201	37,086	39,642
Other operating costs	1,099	592	1,671	1,893
Total costs and expenses	330,755	340,984	947,120	957,347
Gain on sale of Decker Mine interest	(74,262)		(74,262)	
Operating income	85,844	33,832	109,395	85,517
Other income (expense)				
Interest income	37	154	222	343
Interest expense	(12,701)	(9,020)	(64,508)	(29,819)
Tax agreement benefit (expense)	58,595	(10,515)	58,595	(10,515)
Other, net	(31)	2,703	(262)	2,505
Total other income (expense)	45,900	(16,678)	(5,953)	(37,486)
Income (loss) before income tax provision and earnings from unconsolidated affiliates	131,744	17,154	103,442	48,031
Income tax benefit (expense)	(40,688)	785	(30,709)	(10,512)
Earnings from unconsolidated affiliates, net of tax	13	27	562	551
Net income (loss)	91,069	17,966	73,295	38,070
Other comprehensive income (loss)				
Postretirement medical plan amortization of prior service costs	247	444	741	1,331
Postretirement medical plan adjustment				30
Write-off of prior service costs related to Decker pension	3,183		3,183	
Income tax on postretirement medical plan and pension adjustments	(1,235)	(160)	(1,413)	(490)
Other comprehensive income (loss)	2,195	284	2,511	871
Total comprehensive income (loss)	\$ 93,264	\$ 18,250	\$ 75,806	\$ 38,941
Income (loss) per common share				

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Basic	\$	1.50	\$	0.30	\$	1.21	\$	0.63
Diluted	\$	1.49	\$	0.29	\$	1.20	\$	0.62
Weighted-average shares outstanding - basic		60,850		60,658		60,803		60,632
Weighted-average shares outstanding - diluted		61,133		61,161		61,197		61,134

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

Table of Contents**CLOUD PEAK ENERGY INC.****CONDENSED CONSOLIDATED BALANCE SHEETS**

(in thousands)

	September 30, 2014 (unaudited)	December 31, 2013 (audited)
ASSETS		
Current assets		
Cash and cash equivalents	\$ 119,290	\$ 231,633
Investments in marketable securities		80,687
Accounts receivable	79,845	74,068
Due from related parties	605	742
Inventories, net	79,511	80,144
Deferred income taxes	17,159	18,326
Derivative financial instruments	25,573	26,420
Other assets	20,832	19,541
Total current assets	342,815	531,561
Noncurrent assets		
Property, plant and equipment, net	1,578,319	1,654,014
Port access contract rights	51,620	9,520
Goodwill	35,634	35,634
Deferred income taxes	60,692	91,361
Other assets	42,382	35,335
Total assets	\$ 2,111,462	\$ 2,357,425
LIABILITIES AND EQUITY		
Current liabilities		
Accounts payable	\$ 50,599	\$ 59,046
Royalties and production taxes	138,079	131,917
Accrued expenses	44,607	41,463
Current portion of tax agreement liability		13,504
Current portion of federal coal lease obligations	63,970	58,958
Other liabilities	1,635	2,513
Total current liabilities	298,890	307,401
Noncurrent liabilities		
Tax agreement liability, net of current portion		90,091
Senior notes	498,420	596,974
Federal coal lease obligations, net of current portion		63,970
Asset retirement obligations, net of current portion	175,462	246,081
Other liabilities	54,528	50,859
Total liabilities	1,027,300	1,355,376
Commitments and Contingencies (Note 14)		
Equity		
Common stock (\$0.01 par value; 200,000 shares authorized; 61,436 and 61,296 shares issued and 61,005 and 60,896 outstanding at September 30, 2014 and December 31, 2013, respectively)	610	609
Treasury stock, at cost (432 shares and 400 shares at September 30, 2014 and December 31, 2013, respectively)	(6,243)	(5,667)

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Additional paid-in capital	566,484	559,602
Retained earnings	531,079	457,784
Accumulated other comprehensive income (loss)	(7,768)	(10,279)
Total equity	1,084,162	1,002,049
Total liabilities and equity	\$ 2,111,462	\$ 2,357,425

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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CLOUD PEAK ENERGY INC.

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Nine Months Ended September 30,	
	2014	2013
Cash flows from operating activities		
Net income (loss)	\$ 73,295	\$ 38,070
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and depletion	81,944	75,589
Accretion	12,066	12,249
Earnings from unconsolidated affiliates, net of tax	(562)	(551)
Distributions of income from unconsolidated affiliates	1,250	2,000
Deferred income taxes	30,715	8,903
Gain on sale of Decker Mine interest	(74,262)	
Tax agreement expense (benefit)	(58,595)	10,515
Equity-based compensation expense	5,819	5,825
Derivative mark-to-market (gains) losses	(16,052)	(25,641)
Non-cash interest expense related to early retirement of debt and refinancings	7,338	
Other	9,268	8,407
Changes in operating assets and liabilities:		
Accounts receivable	(6,459)	(9,834)
Inventories, net	(3,927)	(101)
Due to or from related parties	137	(82)
Other assets	4,173	(5,179)
Accounts payable and accrued expenses	4,850	19,826
Tax agreement liability	(45,000)	
Asset retirement obligations	(788)	(770)
Cash received (paid) for derivative financial instruments	16,905	5,689
Net cash provided by (used in) operating activities	42,115	144,915
Investing activities		
Purchases of property, plant and equipment	(14,680)	(35,765)
Cash paid for capitalized interest	(4,066)	(23,330)
Investments in marketable securities	(8,159)	(46,372)
Maturity and redemption of investments	88,845	46,067
Investment in port access contract rights	(37,100)	
Investment in development projects	(3,522)	(4,087)
Return of partnership escrow		4,468
Other	(1,830)	102
Net cash provided by (used in) investing activities	19,488	(58,917)
Financing activities		
Principal payments on federal coal leases	(58,958)	(63,191)
Issuance of senior notes	200,000	
Repayment of senior notes	(300,000)	
Payment of deferred financing costs	(14,683)	(865)
Other	(305)	(422)
Net cash provided by (used in) financing activities	(73,646)	(64,478)
Net increase (decrease) in cash and cash equivalents	(112,343)	21,520

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Cash and cash equivalents at beginning of period		231,633		197,691
Cash and cash equivalents at end of period	\$	119,290	\$	219,211
Supplemental cash flow disclosures				
Interest paid	\$	37,017	\$	43,125
Income taxes paid (refunded)	\$	(5,798)	\$	11,419
Supplemental noncash investing and financing activities				
Non-cash interest capitalized	\$	30	\$	8,614
Capital expenditures included in accounts payable	\$	1,816	\$	5,525
Assets acquired under capital leases	\$	1,209	\$	10,222
Port access contract rights acquired in sale of Decker Mine interest	\$	5,000	\$	

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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CLOUD PEAK ENERGY INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Business

Cloud Peak Energy is one of the largest producers of coal in the United States of America (U.S.) and the Powder River Basin (PRB), based on our 2013 coal sales. We operate some of the safest mines in the coal industry. According to Mine Safety and Health Administration (MSHA) data, in 2013, we had one of the lowest employee all injury incident rates among the largest U.S. coal producing companies.

We currently operate solely in the PRB, the lowest cost region of the major coal producing regions in the U.S., where we operate three wholly-owned surface coal mines, the Antelope Mine, the Cordero Rojo Mine and the Spring Creek Mine. We also have two major development projects, the Youngs Creek project and the Crow project. On September 12, 2014, we completed the sale of our 50% non-operating interest in Decker Coal Company (Decker) to an affiliate of Ambre Energy Limited (Ambre Energy). For further information regarding this transaction, please see Note 3.

Our Antelope and Cordero Rojo mines are located in Wyoming and our Spring Creek Mine is located in Montana. Our mines produce subbituminous thermal coal with low sulfur content, and we sell our coal primarily to domestic and foreign electric utilities. We do not produce any metallurgical coal. Thermal coal is primarily consumed by electric utilities and industrial consumers as fuel for electricity generation and steam output. In 2013, the coal we produced generated approximately 4% of the electricity produced in the U.S.

In 2012, we acquired the Youngs Creek project. This project contains substantial undeveloped coal and complementary surface assets in the Northern PRB adjacent to our Spring Creek Mine. In 2013, we entered an option to lease agreement and a corresponding exploration agreement with the Crow Tribe of Indians. This coal project (Crow project) is located on the Crow Indian Reservation in southeast Montana, near our Spring Creek Mine and Youngs Creek project. We are in the process of evaluating the development options for the Youngs Creek project and the Crow project and believe that their proximity to the Spring Creek Mine represents an opportunity to optimize our mine developments in the Northern PRB. For purposes of this report, the term Northern PRB refers to the area within the PRB that lies within Montana and the northern part of Sheridan County, Wyoming. Our Spring Creek Mine, the Youngs Creek project, and the Crow project are located in the Northern PRB.

Since 2008, we have grown our sales of PRB coal into the Asian export market. In 2013, our logistics business was the largest U.S. exporter of thermal coal into South Korea. We continue to seek ways to increase our future export capacity through existing and proposed Pacific Northwest export terminals. In August 2014, we paid \$37.0 million to secure additional committed capacity at the fully-utilized Westshore Terminals Limited Partnership port (Westshore), in British Columbia. As a result, we increased our long-term committed capacity from 2.8 million tons to 6.3 million tons initially and increasing to 7.2 million tons in 2019 and extended the term of our throughput agreement by two years through the end of 2024. For further information regarding this transaction, please see Note 7.

As part of the Decker transaction, we were granted a throughput option for up to 7.7 million tons per year at the proposed Millennium Bulk Terminals coal export facility in Washington State. The proposed new coal export facility is currently in the permitting stage and is planned to be developed in two phases. Our option covers up to 3.3 million tons per year of capacity during the first phase of development and an

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additional 4.4 million tons per year once the second phase capacity is reached. Our throughput capacity will have an initial term of 10 years, with four renewal options for five-year terms. Our option is exercisable following the successful completion of the ongoing permit process for the terminal, the timing and outcome of which are uncertain.

We also have a throughput option agreement with SSA Marine, which provides us with an option for up to 17.6 million tons of capacity per year through the planned dry bulk cargo Gateway Pacific Terminal at Cherry Point in Washington State. Our potential share of capacity will depend upon the ultimate capacity of the terminal and is subject to the terms of the option agreement. The terminal will accommodate cape size vessels. Our option is exercisable following the successful completion of the ongoing permit process for the terminal, the timing and outcome of which are uncertain.

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CLOUD PEAK ENERGY INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Principles of Consolidation

We consolidate the accounts of entities in which we have a controlling financial interest under the voting control model. We accounted for our 50% non-operating interest in Decker, which was sold on September 12, 2014, using the proportionate consolidation method, whereby our share of Decker's assets, liabilities, revenue and expenses were included in our condensed consolidated financial statements through the date of the sale. Investments in other entities that we do not control but have the ability to exercise significant influence over the investee's operating and financial policies are accounted for under the equity method. All intercompany balances and transactions have been eliminated in the condensed consolidated financial statements.

The interim period unaudited condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the U.S. (U.S. GAAP). In accordance with U.S. GAAP for interim financial statements, these unaudited condensed consolidated financial statements do not include certain information and note disclosures that are normally included in annual financial statements prepared in conformity with U.S. GAAP. The year-end condensed consolidated balance sheet data was derived from audited consolidated financial statements but does not include all footnote disclosures required to be included in annual financial statements by U.S. GAAP. Accordingly, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements as of December 31, 2013 and 2012 and for each of the three years ended December 31, 2013 included in our Annual Report on Form 10-K for the year ended December 31, 2013 (2013 Form 10-K). In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments, which are of a normal and recurring nature, necessary to present fairly the financial position as of September 30, 2014, the results of operations and comprehensive income for the three and nine months ended September 30, 2014 and 2013, and the cash flows for the nine months ended September 30, 2014 and 2013, in conformity with U.S. GAAP. Our results of operations for the three and nine months ended September 30, 2014 are not necessarily indicative of the results that may be expected for future quarters or for the year ended December 31, 2014.

The preparation of our condensed consolidated financial statements in conformity with U.S. GAAP requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant estimates in these condensed consolidated financial statements include: assumptions about the amount and timing of future cash flows and related discount rates used in determining asset retirement obligations (AROs) and in testing long-lived assets and goodwill for impairment; the fair value of financial instruments; the calculation of mineral reserves; equity-based compensation expense; workers' compensation claims; reserves for contingencies and litigation; useful lives of long-lived assets; postretirement employee benefit obligations; the recognition and measurement of income tax benefits and related deferred tax asset valuation allowances; allowances for inventory obsolescence; and assumptions about the timing of future cash flows used in determining the tax agreement liability for periods before its termination in August 2014. Actual results could differ materially from those estimates.

Certain amounts have been reclassified to conform to current period presentation. Due to the tabular presentation of rounded amounts, certain tables reflect insignificant rounding differences.

2. Accounting Policies and Standards Update

Recently Issued Accounting Pronouncements

From time to time, the Financial Accounting Standards Board (FASB) or other standard setting bodies issue new accounting pronouncements. Updates to the FASB Accounting Standards Codification are communicated through issuance of an Accounting Standards Update (ASU). Unless otherwise discussed, we believe that the impact of recently issued guidance will not be material to our consolidated financial statements upon adoption.

In April 2014, FASB issued ASU 2014-08, Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360) (ASU 2014-08), which changes the criteria for reporting discontinued operations and requires additional disclosures about discontinued operations. The standard requires that we report as a discontinued operation only

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CLOUD PEAK ENERGY INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

those disposals that represent a strategic shift and have a major effect on our operations and financial results. ASU 2014-08 is effective prospectively for new disposals that occur within annual periods beginning on or after December 15, 2014 with early adoption permitted. We elected to adopt ASU 2014-08 during the three months ended September 30, 2014 and have applied the new guidance to the sale of our 50% non-operating interest in the Decker Mine described in Note 3. The sale of our ownership interest does not represent a strategic shift that has a major impact on our operations or financial results; therefore, the transaction is being reported as a disposal of a significant component and not as a discontinued operation.

In July 2013, FASB issued ASU 2013-11, Presentation of Unrecognized Tax Benefits (ASU 2013-11) requiring entities to present unrecognized tax benefits as a reduction to any related deferred tax assets for net operating losses, similar tax losses or tax credit carryforwards if such settlement is required or expected in the event an uncertain tax position is disallowed. The new presentation guidance is effective for interim and annual periods beginning January 1, 2014. The adoption of ASU 2013-11 did not affect our results of operations, financial condition or cash flows.

In May 2014, FASB issued ASU 2014-09, Revenue from Contracts with Customers (ASU 2014-09) requiring entities to provide greater insight into both revenue that has been recognized and revenue that is expected to be recognized in the future from existing contracts. The new guidance is effective for interim and annual periods beginning after December 15, 2016. We are considering the impact of the adoption of ASU 2014-09 on our results of operations, financial condition and cash flows.

3. Sale of Decker Mine Interest

On September 12, 2014, we completed the sale of our 50% non-operating interest in the Decker Mine to Ambre Energy. Under the terms of the agreement, Ambre Energy acquired our 50% interest in the Decker Mine and related assets and assumed all reclamation and other liabilities, giving Ambre Energy 100% ownership of the Decker Mine. Ambre Energy also fully replaced our \$66.7 million in outstanding reclamation and lease bonds relating to our 50% interest in Decker's reclamation and lease liabilities. As we no longer have any ownership interest and all Decker liabilities have been assumed by Ambre Energy, Ambre Energy is now fully responsible for reclamation at the end of the Decker Mine's life. As a result, we released the related \$72.2 million of asset retirement obligation.

In addition, an affiliate of Ambre Energy granted us an option for up to 7.7 million tons per year of its throughput capacity at the proposed Millennium Bulk Terminals coal export facility. The proposed new coal export facility at Millennium Bulk Terminals in Washington State, which is owned 62% by an affiliate of Ambre Energy and 38% by Arch Coal, is currently in the permitting stage. It is planned to be developed in two phases: the first phase is planned to have capacity of 27.6 million tons per year with the second phase taking annual capacity to 48.5 million tons. Our option covers up to 3.3 million tons per year of Ambre Energy's share of the first phase and 4.4 million tons per year of its share of the second phase. Our throughput capacity will have an initial term of 10 years, with four renewal options for five-year terms. Our option is exercisable following the successful completion of the ongoing permit process for the terminal, the timing and outcome of which are uncertain. We valued the option using a discounted cash flow analysis based on comparable agreements, the terms of the agreement and general market data.

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As a result of this agreement, we recognized a gain on sale, after tax, of the Decker Mine interest of \$46.8 million as follows (in thousands):

Net cash surrendered	\$	(207)
ARO liability released		72,175
Millennium Bulk Terminals option		5,000
Write-off of prior service costs related to Decker pension		(3,183)
Net other (assets) liabilities		820
Other		(343)
Gain on sale of Decker Mine interest		74,262
Tax at statutory rate		(27,477)
Net gain on sale of Decker Mine interest	\$	46,785

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We reported the results of our 50% interest in the Decker Mine in our Corporate and Other segment. Results of operations, up to the date of sale, for the Decker Mine included in the consolidated statements of operations and comprehensive income consist of the following (in thousands):

Decker Mine	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Revenues	\$ 6,095	\$ 6,845	\$ 15,653	\$ 14,669
Costs and expenses	5,774	9,037	19,475	21,565
Operating income (loss)	321	(2,192)	(3,823)	(6,896)
Other income (expense)	(13)	(15)	(41)	(43)
Income (loss) before income tax provision	\$ 309	\$ (2,207)	\$ (3,863)	\$ (6,939)

The table below summarizes the assets and the liabilities of the Decker Mine immediately prior to the completion of the sale of our 50% ownership interest (in thousands):

	September 12, 2014	December 31, 2013
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 207	\$ 4,143
Accounts receivable, net	3,326	2,130
Inventories, net	4,552	3,744
Other	18	97
Total current assets	8,103	10,114
Property, plant and equipment, net	15	34
Total assets	\$ 8,118	\$ 10,148
LIABILITIES		
Current Liabilities		
Accounts payable	\$ 1,211	\$ 1,186
Royalties and production taxes	2,387	2,758
Accrued expenses	693	480
Other current liabilities	966	966
Total current liabilities	5,257	5,390
Asset retirement obligations	72,175	70,806
Other liabilities	3,474	3,142
Total liabilities	\$ 80,906	\$ 79,338

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Inventories, net, consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Materials and supplies	\$ 77,768	\$ 77,748
Less: Obsolescence allowance	(1,092)	(1,011)
Material and supplies, net	76,676	76,737
Coal inventory	2,836	3,406
Inventories, net	\$ 79,511	\$ 80,144

5. Derivatives***Coal Contracts***

We use international coal forward contracts linked to forward Newcastle coal prices to help manage our exposure to variability in international coal prices. We use domestic coal futures contracts referenced to the 8800 Btu coal price sold from the PRB, as quoted on the Chicago Mercantile Exchange (CME), to help manage our exposure to market changes in domestic coal prices. At September 30, 2014, we held coal derivative positions that are expected to settle in the following years (in thousands):

	2014	2015	2016	Total
International Coal Forward Contracts				
Notional amount (tons)	562	344	132	1,038
Net asset position	\$ 7,945	\$ 12,926	\$ 4,699	\$ 25,570
Domestic Coal Futures Contracts				
Notional amount (tons)	180	2,160	120	2,460

Amounts due to us or to the CME as a result of changes in the market price of our open domestic coal futures contracts and to fulfill margin requirements are received or paid through our brokerage bank on a daily basis; therefore, there is no asset or liability on the consolidated balance sheets.

WTI Collars

We use collars to help manage our exposure to market changes in diesel fuel prices. The collars are indexed to the West Texas Intermediate (WTI) crude oil price as quoted on the New York Mercantile Exchange. As such, the nature of the collar does not directly offset market changes to our diesel costs. Under a collar agreement, we pay the difference between the monthly average index price and a floor price if the index price is below the floor, and we receive the difference between the ceiling price and the monthly average index price if the index price is above the ceiling price. No amounts are paid or received if the index price is between the floor and ceiling prices. While we would not receive the full benefit of price decreases beyond the collars, the collars mitigate the risk of crude oil price increases and thereby increased diesel costs that would otherwise have a negative impact on our cash flow.

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At September 30, 2014, we held the following WTI collars:

Settlement Period	Notional Amount (barrels, in thousands)	September 30, 2014	
		Weighted-Average per Barrel Floor	Ceiling
2014	141	\$ 72.65	\$ 113.92
2015	396	71.59	111.13
Total	537	\$ 71.87	\$ 111.86

Offsetting and Balance Sheet Presentation

	Gross Amounts of Recognized		September 30, 2014 Gross Amounts Offset in the Consolidated Balance Sheet		Net Amounts Presented in the Consolidated Balance Sheet	
	Assets	Liabilities	Assets	Liabilities	Assets	Liabilities
International coal forward contracts	\$ 27,121	\$ (1,551)	\$ (1,551)	\$ 1,551	\$ 25,570	\$
WTI collars	2	(5)			2	(5)
Total	\$ 27,123	\$ (1,556)	\$ (1,551)	\$ 1,551	\$ 25,573	\$ (5)

	Gross Amounts of Recognized		December 31, 2013 Gross Amounts Offset in the Consolidated Balance Sheet		Net Amounts Presented in the Consolidated Balance Sheet	
	Assets	Liabilities	Assets	Liabilities	Assets	Liabilities
International coal forward contracts	\$ 26,712	\$ (349)	\$ (349)	\$ 349	\$ 26,363	\$
WTI collars	58				58	
Total	\$ 26,770	\$ (349)	\$ (349)	\$ 349	\$ 26,420	\$

Net amounts of international coal forward contracts and WTI collar assets are included in the Derivative financial instruments line and net amounts of WTI collar liabilities are included in Other current liabilities in the consolidated balance sheets. There were no cash collateral requirements at September 30, 2014 or December 31, 2013.

Derivative Gains and Losses

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Derivative mark-to-market (gains) and losses recognized in the consolidated statement of operations and comprehensive income were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
International coal forward contracts	\$ (3,989)	\$ 78	\$ (18,071)	\$ (26,106)
Domestic coal futures contracts	2,946	572	1,958	689
WTI collars	526	(355)	60	(224)
Total	\$ (515)	\$ 295	\$ (16,052)	\$ (25,641)

See Note 6 for a discussion related to the fair value of derivative financial instruments.

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We use a three-level fair value hierarchy that categorizes assets and liabilities measured at fair value based on the observability of the inputs utilized in the valuation. The levels of the hierarchy, as defined below, give the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs.

- Level 1 is defined as observable inputs such as quoted prices in active markets for identical assets. Our Level 1 assets currently include money market funds.
- Level 2 is defined as observable inputs other than Level 1 prices. These include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Our Level 2 assets and liabilities include investments in marketable securities, primarily asset-backed securities, and derivative financial instruments with fair values derived from quoted prices in over-the-counter markets or from prices received from direct broker quotes.
- Level 3 is defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. We had no Level 3 investments as of September 30, 2014 or December 31, 2013.

The tables below set forth, by level, our financial assets and liabilities that are recorded at fair value in the accompanying condensed consolidated balance sheets (in thousands):

Description	Fair Value at September 30, 2014		
	Level 1	Level 2	Total
Assets			
Money market funds (1)	\$ 44,284	\$	\$ 44,284
Derivative financial instruments	\$	\$ 25,573	\$ 25,573
Liabilities			
Derivative financial instruments	\$	\$ 5	\$ 5

Description	Fair Value at December 31, 2013		
	Level 1	Level 2	Total
Assets			
Money market funds (1)	\$ 140,438	\$	\$ 140,438

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Derivative financial instruments	\$	\$	26,420	\$	26,420
Investments in marketable securities	\$	\$	80,687	\$	80,687

(1) Included in cash and cash equivalents in the consolidated balance sheets along with \$75.0 million and \$91.2 million of demand deposits at September 30, 2014 and December 31, 2013, respectively.

We did not have any transfers between levels during the nine months ended September 30, 2014. Our policy is to value all transfers between levels using the beginning of period valuation.

7. Port Access Contract Rights

In August 2014, we paid \$37.0 million to Coal Valley Resources, Inc. (CVRI), a recently acquired unit of Westmoreland Coal Company, to terminate its throughput agreement with Westshore. In a related transaction, we amended our agreement with Westshore to increase our committed capacity from 2.8 million tons to 6.3 million tons initially and

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increasing to 7.2 million tons in 2019 and extend the term of our throughput agreement from the end of 2022 through the end of 2024. We have capitalized the \$37.0 million payment as an intangible asset.

Other port access contract rights include \$9.5 million related to the SSA Marine throughput option agreement and \$5.0 million for the Millennium Bulk Terminals throughput option. See below and Note 1 for further information on these agreements.

	Cloud Peak Energy's Annual Throughput (million tons)	Net Asset (in millions)	Term
Existing Ports			
Westshore	6.3 - 7.2	\$ 37.1	2015 - 2024
Proposed Ports			
SSA Marine's Gateway Pacific Terminal at Cherry Point	Up to 17.6	\$ 9.5	10 Years (1)
Millennium Bulk Terminals	Up to 7.7	\$ 5.0	10 Years (2)

(1) From date developer certifies port is available to Cloud Peak Energy.

(2) From date of first Cloud Peak Energy shipment.

Port access contract rights, net consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Port access contract rights	\$ 51,620	\$ 9,520
Less: Accumulated amortization		
Port access contract rights, net	\$ 51,620	\$ 9,520

We will amortize the costs on a straight line basis over the performance period of the contracts. As none of those periods have yet begun, there was no amortization expense for the nine months ended September 30, 2014. Future amortization expense related to the port access contract rights is currently expected to be \$3.7 million per year beginning January 1, 2015 through 2018 with additional amounts in later years.

8. Tax Agreement Liability

In connection with the 2009 initial public offering (IPO), we entered into a Tax Receivable Agreement (TRA) with Rio Tinto Energy America Inc. (Rio Tinto), our former parent, and recognized a liability for the undiscounted amounts that we estimated would be paid to Rio Tinto under this agreement. The amounts to be paid were determined based on an annual calculation of future income tax savings that we actually realized as a result of the tax basis increase that resulted from the 2009 IPO and 2010 Secondary Offering transactions. Generally, we retained 15% of the realized tax savings generated from the tax basis step-up and Rio Tinto was entitled to the remaining 85%.

In August 2014, we entered into an acceleration and release agreement with Rio Tinto whereby we agreed to pay \$45.0 million to Rio Tinto to terminate the TRA. This payment settles all existing and future liabilities that were or would have been owed under the TRA. At the date of signing, we carried an undiscounted liability of \$103.6 million in respect of our estimated future obligations under the TRA and anticipated making cash payments of approximately \$14 million each year in 2014 and 2015 and additional payments in subsequent years.

The termination of the TRA resulted in a non-cash gain during the third quarter of 2014 of \$58.6 million before tax and \$37.1 million after adjustments to the associated deferred tax assets. We continue to retain the deferred tax assets related

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to the step up in tax basis as a result of the 2009 IPO and 2010 Secondary Offering transactions. As such, we now expect to benefit from 100% of the increased tax depreciation.

9. Senior Notes

Senior notes consisted of the following (in thousands):

	September 30, 2014			December 31, 2013		
	Principal	Carrying Value	Fair Value (1)	Principal	Carrying Value	Fair Value (1)
8.25% senior notes due 2017, net of unamortized discount	\$	\$	\$	\$ 300,000	\$ 298,727	\$ 313,125
8.50% senior notes due 2019, net of unamortized discount	300,000	298,420	313,500	300,000	298,248	325,500
6.375% senior notes due 2024	200,000	200,000	197,000			
Total senior notes	\$ 500,000	\$ 498,420	\$ 510,500	\$ 600,000	\$ 596,974	\$ 638,625

(1) The fair value of the senior notes was based on observable market inputs, which are considered Level 2 in the fair value hierarchy.

On March 11, 2014, Cloud Peak Energy Resources LLC and Cloud Peak Energy Finance Corp. (collectively, the Issuers) issued \$200 million aggregate principal amount of 6.375% Senior Notes due 2024 (2024 Notes) at an issue price of 100% of the face amount. We used the net proceeds to fund a portion of the Issuers tender offer and consent solicitation for the Issuers previously existing 8.25% Senior Notes due 2017 (2017 Notes), as discussed below. There are no mandatory redemption or sinking fund payments for the 2024 Notes and interest payments are due semi-annually on March 15 and September 15, beginning on September 15, 2014. Subject to certain limitations, we may redeem some or all of the 2024 Notes by paying specified redemption prices in excess of their principal amount, plus accrued and unpaid interest, if any, prior to March 15, 2022, or by paying their principal amount thereafter, plus accrued and unpaid interest, if any.

Debt issuance costs of \$4.9 million, including underwriting discounts and commissions, were incurred in connection with the issuance of the 2024 Notes. These costs have been deferred and are being amortized to interest expense over the term of the 2024 Notes using the straight-line method which approximates the effective interest method.

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The senior notes are jointly and severally guaranteed by Cloud Peak Energy Inc. and all of our existing and future restricted subsidiaries that guarantee our debt under our credit facility. See Note 12. Substantially all of our current consolidated subsidiaries, excluding Cloud Peak Energy Receivables LLC, are considered to be restricted subsidiaries and guarantee the senior notes.

The indentures governing the senior notes, among other things, limit our ability and the ability of our restricted subsidiaries to incur additional indebtedness and issue preferred equity; pay dividends or distributions; repurchase equity or repay subordinated indebtedness; make investments or certain other restricted payments; create liens; sell assets; enter into agreements that restrict dividends, distributions, or other payments from restricted subsidiaries; enter into transactions with affiliates; and consolidate, merge, or transfer all or substantially all of their assets and the assets of their restricted subsidiaries on a combined basis.

Upon the occurrence of certain transactions constituting a change in control as defined in the indentures, holders of our senior notes could require us to repurchase all outstanding notes at 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase.

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In the first quarter of 2014, we used the proceeds from the 2024 Notes, together with cash on hand, to repurchase and redeem \$300 million aggregate principal amount of the 2017 Notes. We recognized a loss on early retirement of debt of \$19.3 million, which was comprised of \$13.8 million related to the premium paid in excess of par, \$5.1 million related to the write-off of deferred financing costs and original issue discount, and \$0.4 million in related expenses. The loss is classified in Interest expense in the Unaudited Condensed Consolidated Statement of Operations and Comprehensive Income for the nine months ended September 30, 2014.

10. Federal Coal Lease Obligations

Federal coal lease obligations consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Federal coal lease obligations, current	\$ 63,970	\$ 58,958
Federal coal lease obligations, noncurrent		63,970
Total federal coal lease obligations	\$ 63,970	\$ 122,928

Our federal coal lease obligations, as reflected in the consolidated balance sheets, consist of obligations payable to the Bureau of Land Management of the U.S. Department of the Interior discounted at an imputed interest rate. Imputed interest is included in accrued expenses.

We have the following federal coal lease payments (dollars in thousands):

Payment Dates	Annual Payment	Imputed Interest Rate	September 30, 2014		December 31, 2013	
			Carrying Value	Fair Value (1)	Carrying Value	Fair Value (1)
July 1, 2011 - 2015	\$ 59,545	8.50%	54,880	59,093	105,460	116,664
September 1, 2011 - 2015	\$ 9,862	8.50%	9,090	9,771	17,467	19,255
			\$ 63,970	\$ 68,864	\$ 122,928	\$ 135,919

(1) The fair value of estimates for federal coal lease obligations was determined by discounting the remaining lease payments using the then current estimate of the credit-adjusted, risk-free rate based on our then current credit rating, which is considered Level 2 in the fair value hierarchy.

Future payments on federal coal leases are as follows (in thousands):

Year Ended December 31,		
2015	\$	69,407
Less: imputed interest		5,437
Total principal payments		63,970
Less: current portion		63,970
Federal coal leases payable, net of current portion	\$	

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Changes in the carrying amount of our asset retirement obligations were as follows (in thousands):

	2014	2013
Balance at January 1	\$ 247,329	\$ 240,634
Reduction in asset retirement obligation attributable to sale of Decker Mine interest (see Note 3)	(72,175)	
Accretion expense	12,066	12,249
Revisions to estimated future reclamation cash flows	(9,852)	(20,124)
Payments	(788)	(770)
Balance at September 30	176,580	231,989
Less: current portion	(1,118)	(9,715)
Asset retirement obligation, net of current portion	\$ 175,462	\$ 222,274

Revisions to estimated future reclamation cash flows reflect our regular updates to our estimated costs of closure activities throughout the lives of the respective mines and reflect changes in estimates of closure volumes, disturbed acreages, the timing of the reclamation activities, and third-party unit costs as of September 30, 2014 and 2013.

12. Other Obligations***Capital Equipment Lease Obligations***

From time to time, we enter into capital leases on equipment under various lease schedules, which are subject to a master lease agreement and are pre-payable at our option. Interest on the leases is based on the one-month London Interbank Offered Rate (LIBOR) plus 1.95% for a current rate of 2.11% as of September 30, 2014. The gross value of property, plant and equipment under capital leases was \$11.4 million as of September 30, 2014 and related to the leasing of mining equipment. The accumulated depreciation for these items was \$1.6 million at September 30, 2014, and changes thereto have been included in depreciation, depletion and amortization in the consolidated statements of operations. Due to the variable nature of the imputed interest, fair value is equal to carrying value.

Future payments on capital equipment lease obligations are as follows (in thousands):

Year Ended December 31,

2014	\$	457
2015		1,807
2016		1,773
2017		1,738
2018		1,705
Thereafter		2,549
Total		10,029
Less: interest		584
Total principal payments		9,445
Less: current portion		1,633
Capital equipment lease obligations, net of current portion	\$	7,812

Accounts Receivable Securitization

On February 11, 2013, we executed an Accounts Receivable Securitization Facility (A/R Securitization Program) with a committed capacity of up to \$75 million. Certain of our subsidiaries are parties to the A/R Securitization Program. In

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January 2013, we formed Cloud Peak Energy Receivables LLC (the SPE), a special purpose, bankruptcy-remote wholly-owned subsidiary, to purchase, subject to certain exclusions, in a true sale, trade receivables generated by certain of our subsidiaries without recourse (other than customary indemnification obligations for breaches of specific representations and warranties) and then transfer undivided interests in up to \$75 million of those accounts receivable to a financial institution for cash borrowings for our ultimate benefit. The total borrowings are limited by eligible accounts receivable, as defined under the terms of the A/R Securitization Program. At September 30, 2014, the A/R Securitization Program would have allowed for \$41 million of borrowing capacity. There were no borrowings outstanding from the A/R Securitization Program at September 30, 2014 or December 31, 2013. The SPE is consolidated into our financial statements.

Credit Facility

On February 21, 2014, Cloud Peak Energy Resources LLC entered into a five-year Credit Agreement with PNC Bank, National Association, as administrative agent, and a syndicate of lenders (the Credit Agreement). The Credit Agreement provides us with a senior secured revolving credit facility with a capacity of up to \$500 million that can be used to borrow funds or issue letters of credit. The borrowing capacity under the Credit Agreement is reduced by the amount of letters of credit issued, which may be up to \$250 million. Subject to the satisfaction of certain conditions, we may elect to increase the size of the revolving credit facility and/or request the addition of one or more new tranches of term loans in an amount up to the greater of (i) \$200 million or (ii) our EBITDA (which is defined in the Credit Agreement) for the preceding four fiscal quarters. The Credit Agreement provides for the designation of a foreign restricted subsidiary as a borrower, subject to certain conditions and approvals.

On September 5, 2014, we entered into the First Amendment to the Credit Agreement (the Amendment). The Amendment adjusted the financial covenants under the Credit Agreement, which now require us to maintain (a) a ratio of EBITDA (as defined in the Credit Agreement) to consolidated net cash interest expense equal to or greater than 1.50 to 1 from September 30, 2014 to maturity (reducing this from the prior requirement under the Credit Agreement to maintain a ratio equal to or greater than 2.00 to 1), and (b) a ratio of senior secured funded debt less unrestricted cash and marketable securities (net secured debt) to EBITDA equal to or less than 4.00 to 1 from September 30, 2014 to maturity (increasing this from the prior requirement under the Credit Agreement to maintain a ratio equal to or less than (i) 3.00 to 1 through December 31, 2015, (ii) 2.75 to 1 from January 1, 2016 to December 31, 2016, and (iii) 2.50 to 1 from January 1, 2017 to maturity). This credit facility and capital leases are considered senior secured funded debt under the covenant calculations whereas federal coal lease obligations, accounts receivable securitizations, and senior notes are not considered senior secured funded debt.

The Credit Agreement replaced our previous \$500 million amended and restated credit agreement dated June 3, 2011. There were no borrowings outstanding under the previous credit facility at the time of replacement or at December 31, 2013. At the time of replacement, we recorded a charge of \$2.2 million in interest expense to write off certain deferred financing costs as certain banks of the syndicate changed. We recorded \$9.7 million of new deferred financing costs related to the new Credit Agreement and related Amendment. The aggregate deferred financing costs are being amortized on a straight-line basis to interest expense over the five-year term of the Credit Agreement.

The Credit Agreement also contains other non-financial covenants, including covenants related to our ability to incur additional debt or take other corporate actions. The Credit Agreement also contains customary events of default with customary grace periods and thresholds. Our

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ability to access the available funds under the credit facility may be prohibited in the event that we do not comply with the covenant requirements or if we default on our obligations under the Credit Agreement.

Loans under the Credit Agreement bear interest at LIBOR plus an applicable margin of 2.00% to 2.75%, depending on our net total leverage to EBITDA ratio. We pay the lenders a commitment fee between 0.375% and 0.50% per year, depending on our net total leverage to EBITDA ratio, on the unused amount of the credit facility. Letters of credit issued under the credit facility, unless drawn upon, will incur a per annum fee from the date at which they are issued between 2.00% and 2.75% depending on our net total leverage to EBITDA ratio. Letters of credit that are drawn upon are converted to loans. In addition, in connection with the issuance of a letter of credit, we are required to pay the issuing bank a fronting fee of 0.125% per annum.

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Our obligations under the Credit Agreement are secured by substantially all of our assets and substantially all of the assets of certain of our subsidiaries, subject to certain permitted liens and customary exceptions for similar coal financings. Our obligations under the Credit Agreement are also supported by a guarantee by Cloud Peak Energy Inc. and our domestic restricted subsidiaries.

Under the Credit Agreement, the subsidiaries of Cloud Peak Energy Inc. are permitted to make distributions to Cloud Peak Energy Inc. to enable it to pay (i) federal, state and local income and certain other taxes it incurs that are attributable to the business and operations of its subsidiaries and (ii) amounts on the tax agreement liability, which was terminated in August 2014. In addition, as long as no default under the Credit Agreement exists, the subsidiaries of Cloud Peak Energy Inc. also may make annual distributions to Cloud Peak Energy Inc. to fund dividends or repurchases of Cloud Peak Energy Inc.'s stock and additional distributions in accordance with certain distribution limits in the Credit Agreement. Finally, the subsidiaries of Cloud Peak Energy Inc. may make loans to Cloud Peak Energy Inc. subject to certain limitations in the Credit Agreement.

As of September 30, 2014, no borrowings or letters of credit were outstanding under the credit facility, and we were in compliance with the covenants contained in the Credit Agreement. Our aggregate borrowing capacity under the Credit Agreement and the A/R Securitization Program was approximately \$541 million at September 30, 2014.

13. Interest Expense

Interest expense consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Senior notes	\$ 9,563	\$ 12,563	\$ 31,140	\$ 37,688
Credit facility unutilized fee	614	726	1,836	2,116
Federal coal lease obligations imputed interest	1,478	2,748	6,702	10,590
Amortization of deferred financing costs and original issue discount	1,021	1,148	3,185	3,351
Other	64	99	209	173
Subtotal	12,740	17,284	43,072	53,918
Premium on early retirement of debt			13,837	
Write-off of deferred financing costs and original issue discount			7,338	
Other			364	
Subtotal - cost of early retirement of debt and refinancings			21,538	

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Total interest expense	12,740	17,284	64,610	53,918
Less interest capitalized	(39)	(8,264)	(102)	(24,099)
Net interest expense	\$ 12,701	\$ 9,020	\$ 64,508	\$ 29,819

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We had outstanding purchase commitments consisting of the following (in thousands):

	September 30, 2014	December 31, 2013
Capital commitments		
Equipment	\$ 12,422	\$ 5,851
Land	24,663	23,700
Supplies and services		
Coal purchase commitments	\$ 2,475	\$
Transportation and handling agreements (1)	688,100	226,006
Materials and supplies	11,496	18,060

(1) As a result of amending our agreement with Westshore to increase our committed capacity, we substantially increased our rail and terminal take-or-pay commitments.

*Contingencies**Litigation*

WildEarth Guardians and Northern Plains Resource Council's Regulatory Challenge to OSM's Approval Process for Mine Plans

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Background On February 27, 2013, WildEarth Guardians (WildEarth) filed a complaint in the United States District Court for the District of Colorado (Colorado District Court) challenging the federal Office of Surface Mining s (OSM) approvals of mine plans for seven different coal mines located in four different states. The challenged approvals included two that were issued to subsidiaries of Cloud Peak Energy: one for the Cordero Rojo Mine in Wyoming and one for the Spring Creek Mine in Montana.

On February 7, 2014, the Colorado District Court severed the claims in WildEarth s complaint and transferred all the claims pertaining to non-Colorado mines to the federal district courts for the states in which the mines were located. Pursuant to this order, the challenge to Cordero Rojo s mine plan approval (along with challenges to two other OSM approvals) was transferred to the U.S. District Court in Wyoming (Wyoming District Court) and the challenge to Spring Creek s mine plan approval was transferred to the United States District Court for the District of Montana (Montana District Court). On February 14, 2014, WildEarth voluntarily dismissed the case pending in the Wyoming District Court, thereby concluding its challenge to OSM s approval of the Cordero mine plan. WildEarth has continued to pursue its challenges to mine plan approvals pending in district courts in Colorado, New Mexico, and Montana.

On March 14, 2014, WildEarth amended its complaint in the Montana District Court to reflect the transfer order from the Colorado District Court. WildEarth has asked the Montana District Court to vacate OSM s 2012 approval of the Spring Creek mine plan and enjoin mining operations at the Spring Creek Mine until OSM undertakes additional environmental analysis and related public process requested by WildEarth.

On August 14, 2014, Northern Plains Resource Council and the Western Organization of Resource Councils (collectively Northern Plains) filed a complaint in the Montana District Court challenging the same OSM approval of

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Spring Creek's mine plan. Northern Plains, like WildEarth, requested that the Montana District Court vacate OSM's 2012 approval of the Spring Creek mine plan and enjoin mining operations at the Spring Creek Mine until OSM undertakes the additional analysis requested by Northern Plains.

Intervention by Cloud Peak Energy and Others By orders dated May 30, 2014, May 9, 2014, and April 28, 2014, the Montana District Court granted intervention to the State of Montana, the National Mining Association, and Spring Creek Coal LLC, a wholly-owned subsidiary of Cloud Peak Energy, respectively. Each of these parties intervened on the side of OSM.

Current Schedule The parties are presently scheduled to submit briefing in the WildEarth case during late 2014 and early 2015. The federal defendants have not yet answered the Northern Plains complaint and the Montana District Court has not set a briefing schedule for this case. Cloud Peak Energy believes WildEarth's challenge and the related Northern Plains' challenge against OSM are without merit.

Montana Environmental Information Center and Sierra Club Regulatory Challenge to Montana DEQ's Coal Permit Program

Background On April 17, 2012, the Montana Environmental Information Center and the Sierra Club (collectively, MEIC) filed a complaint in the Montana District Court against the Director of the Montana Department of Environmental Quality (DEQ Director) alleging that the DEQ Director violated his nondiscretionary duties under the Surface Mining Control and Reclamation Act (SMCRA) by approving state mine permits without establishing numeric water quality standards as part of MT DEQ's cumulative hydrologic impact assessments (CHIAs) for coal mines. MEIC asked the Montana District Court to issue an order directing the DEQ Director to perform CHIAs in a manner requested by plaintiff organizations, and to enjoin the DEQ Director's approval of new mine permit applications until this analysis is completed.

Intervention by Cloud Peak Energy and Others On August 3, 2012, the Montana District Court granted the intervention motion of a number of other companies that own coal mines and/or coal reserves, the Crow Tribe, a labor union representing mine workers, and Spring Creek Coal LLC, a wholly-owned subsidiary of Cloud Peak Energy. All these parties jointly intervened on the side of the DEQ Director.

District Court Rejection of Challenge and MEIC Appeal On January 22, 2013, the Montana District Court dismissed MEIC's challenge on the ground that the action was barred by Montana's 11th Amendment Sovereign Immunity. The Montana District Court also held that the DEQ Director's CHIAs were discretionary actions and therefore not subject to SMCRA's citizen suit provision, and alternatively, that MEIC's claims were not ripe for judicial review. On February 20, 2013, MEIC appealed to the United States Court of Appeals for the Ninth Circuit and asked the Ninth Circuit to reverse the judgment of the Montana District Court dismissing MEIC's case. Spring Creek and the other intervenors in the Montana District Court intervened in this appeal as respondents on the side of the DEQ Director.

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Court of Appeals Rejection of Challenge On September 11, 2014, the Ninth Circuit Court of Appeals issued a unanimous decision affirming the Montana District Court's dismissal of MEIC's complaint. MEIC declined to seek further review in the Ninth Circuit and the Court's mandate was issued on October 6, 2014. The deadline for MEIC to petition the United States Supreme Court to review the Ninth Circuit's decision is November 10, 2014. Cloud Peak Energy believes MEIC's challenge against the DEQ Director is without merit.

Administrative Appeals of BLM's Approval of the Potential West Antelope II South Lease Modification

Background On September 5, 2014, WildEarth filed an appeal with the Interior Board of Land Appeals (IBLA) challenging the Bureau of Land Management's (BLM) August 15, 2014 decision to approve Antelope Coal LLC's proposed modification of Antelope Coal's West Antelope II South lease. Antelope Coal is a wholly-owned subsidiary of Cloud Peak Energy. On September 12, 2014, Powder River Basin Resource Council and Sierra Club (collectively PRBRC) filed an appeal with the IBLA challenging this same BLM decision. The BLM decision that is the subject of both appeals approves the proposed amendment of Antelope Coal's West Antelope II South Lease. If the lease modification is entered into, it would add approximately 15.8 million tons of coal underlying nearly 857 surface acres. WildEarth and

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PRBRC have asked the IBLA to vacate the proposed WAII South lease modification and direct BLM to prepare additional environmental analysis on the impacts of the lease modification.

Intervention by Cloud Peak Energy and State of Wyoming On September 24, 2014 and October 6, 2014, Antelope Coal and the State of Wyoming, respectively, moved to intervene in the WildEarth and PRBRC appeals as respondents to defend BLM's lease modification decision. The IBLA granted these intervention motions.

Current Schedule. The parties are presently scheduled to submit briefing in both appeals during late 2014. Cloud Peak Energy believes the WildEarth and PRBRC appeals challenging BLM's West Antelope II South lease modification decision are without merit.

Other Legal Proceedings

We are involved in other legal proceedings arising in the ordinary course of business and may become involved in additional proceedings from time to time. We believe that there are no other legal proceedings pending that are likely to have a material adverse effect on our consolidated financial condition, results of operations or cash flows. Nevertheless, we cannot predict the impact of future developments affecting our claims and lawsuits, and any resolution of a claim or lawsuit or an accrual within a particular fiscal period may adversely impact our results of operations for that period. In addition to claims and lawsuits against us, our leases by application (LBAs), permits, and other industry regulatory processes and approvals, including those applicable to the utility and coal logistics and transportation industries, may also be subject to legal challenges that could adversely impact our mining operations and results.

Tax Contingencies

Our income tax calculations are based on application of the respective U.S. federal or state tax laws. Our tax filings, however, are subject to audit by the respective tax authorities. Accordingly, we recognize tax benefits when it is more likely than not a position will be upheld by the tax authorities. To the extent the final tax liabilities are different from the amounts originally accrued, the increases or decreases are recorded as income tax expense.

Several non-income based production tax audits currently are in progress related to federal and state royalties and severance taxes, including periods back to 2005. We have provided our best estimate of taxes and related interest and penalties due for potential adjustments that may result from the resolution of such tax audits. From time to time, we receive audit assessments and engage in settlement discussions with applicable tax authorities, which may result in adjustments to our estimates of taxes and related interest and penalties. During the three months ended September 30, 2014, we revised our estimates and increased our accruals by \$7.5 million.

Concentrations of Risk and Major Customers

For the nine months ended September 30, 2014 and 2013, there was no single customer that represented 10% or more of consolidated revenue. We generally do not require collateral or other security on accounts receivable because our customers are comprised primarily of investment grade electric utilities. The credit risk is controlled through credit approvals and monitoring procedures.

Guarantees and Off-Balance Sheet Risk

In the normal course of business, we are party to guarantees and financial instruments with off-balance sheet risk, such as bank letters of credit, performance or surety bonds and indemnities, which are not reflected on the consolidated balance sheet. In our past experience, virtually no claims have been made against these financial instruments. Management does not expect any material losses to result from these guarantees or off-balance-sheet instruments.

U.S. federal and state laws require we secure certain of our obligations to reclaim lands used for mining and to secure coal lease obligations. The primary method we have used to meet these reclamation obligations and to secure coal

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lease obligations is to provide a third-party surety bond, typically through an insurance company, or provide a letter of credit, typically through a bank. Specific bond and/or letter of credit amounts may change over time, depending on the activity at the respective site and any specific requirements by federal or state laws. On May 7, 2014, we were granted approval from the state of Wyoming to self-bond \$200 million of our reclamation obligations within the state. As of September 30, 2014, we were self-bonded for \$200.0 million and had \$459.2 million of surety bonds outstanding to secure certain of our obligations to reclaim lands used for mining and to secure coal lease obligations.

On September 12, 2014, we completed the sale of our 50% non-operating interest in the Decker Mine to Ambre Energy. See Note 3. Upon completion, Ambre Energy fully replaced our \$66.7 million in outstanding reclamation and lease bonds related to the Decker Mine.

15. Income Taxes

Our income before income tax provision and earnings from unconsolidated affiliates is earned solely in the U.S. The following table summarizes income taxes (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Income tax benefit (expense)	\$ (40,688)	\$ 785	\$ (30,709)	\$ (10,512)
Effective tax rate	30.9%	(4.6)%	29.7%	21.9%

Our statutory income tax rate, including state income taxes, is 37%. The difference between the statutory income tax rate and our effective tax rate for the three and nine months ended September 30, 2014 and 2013 is due primarily to the release of our deferred tax valuation allowances due to the termination of the TRA and permanent differences between book and tax treatments.

16. Postretirement Medical Plan

We maintain an unfunded postretirement medical plan to provide certain postretirement medical benefits to eligible employees. Net periodic postretirement benefit costs included the following components (in thousands):

Three Months Ended September 30,	Nine Months Ended September 30,
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	2014		2013		2014		2013	
Service cost	\$	1,038	\$	1,238	\$	3,113	\$	3,713
Interest cost		464		418		1,393		1,255
Amortization of prior service cost		247		444		741		1,331
Net periodic benefit cost	\$	1,749	\$	2,100	\$	5,247	\$	6,299

17. Related Party Transactions

Related party activity consists of coal sales to our 50% owned coal marketing company and equity method investment, Venture Fuels Partnership, as follows (in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2014		2013		2014		2013	
Sales of coal to Venture Fuels Partnership	\$	6,392	\$	7,881	\$	15,444	\$	12,957

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18. Accumulated Other Comprehensive Income (Loss)

The changes in Accumulated Other Comprehensive Income (Loss) (AOCI) by component, net of tax are as follows (in thousands):

	Nine Months Ended September 30,					
	Post-retirement Medical Plan	2014 Decker Defined Benefit Pension	Total	Post-retirement Medical Plan	2013 Decker Defined Benefit Pension	Total
Beginning balance, January 1	\$ (8,242)	\$ (2,038)	\$ (10,279)	\$ (16,409)	\$ (4,052)	\$ (20,461)
Other comprehensive income (loss) before reclassifications				19		19
Amounts reclassified from accumulated other comprehensive income (loss)	474	2,038	2,511	852		852
Net current period other comprehensive income (loss)	474	2,038	2,511	871		871
Ending balance, September 30	\$ (7,768)	\$	\$ (7,768)	\$ (15,538)	\$ (4,052)	\$ (19,590)

The reclassifications out of AOCI are as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Postretirement Medical Plan (1)				
Amortization of prior service costs included in cost of product sold (2)	\$ 209	\$ 371	\$ 626	\$ 1,111
Amortization of prior service costs included in selling, general and administrative expenses (2)	38	73	115	220
Write-off of Decker pension prior service costs included in gain on sale of Decker Mine interest	3,183		3,183	
Total before tax	3,430	444	3,924	1,331
Tax benefit	(1,235)	(160)	(1,413)	(479)
Amounts reclassified from accumulated other comprehensive income (loss)	\$ 2,195	\$ 284	\$ 2,511	\$ 852

(1) See Note 16 for the computation of net periodic postretirement benefit costs.

(2) Presented on the consolidated statements of operations and comprehensive income.

19. Earnings (Loss) per Share

Dilutive potential shares of common stock may include restricted stock and units, options, and performance units issued under our Long Term Incentive Plan (LTIP). We apply the treasury stock method to determine dilution from restricted stock and units, options, and performance units.

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The following table summarizes the calculation of diluted earnings (loss) per share (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Numerator for calculation of diluted earnings per share:				
Net income	\$ 91,069	\$ 17,966	\$ 73,295	\$ 38,070
Denominator for basic income per share weighted- average shares outstanding	60,850	60,658	60,803	60,632
Dilutive effect of stock equivalents	283	503	394	501
Denominator for diluted earnings per share	61,133	61,161	61,197	61,134
Diluted earnings per share	\$ 1.49	\$ 0.29	\$ 1.20	\$ 0.62

For the periods presented, the following items were excluded from the diluted earnings (loss) per share calculation because they were anti-dilutive (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Restricted stock and units	256		215	159
Options outstanding	770	605	662	489
Employee stock purchase plan	10	22	11	7

20. Segment Information

We have reportable segments of Owned and Operated Mines; Logistics and Related Activities; and Corporate and Other.

Our Owned and Operated Mines segment is characterized by the predominant focus on thermal coal production where the sale occurs at the mine site and where title and risk of loss pass to the customer at that point. This segment includes our Antelope Mine, Cordero Rojo Mine, and Spring Creek Mine. Sales in this segment are primarily to domestic electric utilities, although a portion is made to our Logistics and Related Activities segment. Sales between reportable segments are based on prevailing market prices. Our mines utilize surface mining extraction processes and are all located in the PRB. The gains and losses resulting from our domestic coal futures contracts and WTI collar derivative financial instruments are reported within this segment.

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Our Logistics and Related Activities segment is characterized by the services we provide to our international and domestic customers where we deliver coal to the customer at a terminal or the customer's plant or other delivery point, remote from our mine site. Services provided include the purchase of coal from third parties or from our owned and operated mines as well as the contracting and coordination of the transportation and other handling services from third-party operators, which are typically rail and terminal companies. Title and risk of loss are retained by the Logistics and Related Activities segment through the transportation and delivery process. Title and risk of loss pass to the customer in accordance with the contract and typically occur at a vessel loading terminal, a vessel unloading terminal or an end use facility. Risk associated with rail and terminal take-or-pay agreements is also borne by the Logistics and Related Activities segment. The gains and losses resulting from our international coal forward derivative financial instruments are reported within this segment. Port access contract rights and related amortization are also included in this segment.

Our Corporate and Other segment includes results relating to broker activity, our share of the Decker Mine operations, which was sold on September 12, 2014, and unallocated corporate costs and assets. All corporate costs, except

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Board of Directors related expenses, are allocated to the segments based upon their relative percentage of certain financial metrics.

Eliminations represent the purchase and sale of coal between reportable segments and the associated elimination of intercompany profit or loss in inventory.

Our chief operating decision maker uses Adjusted EBITDA as the primary measure of segment reporting performance. EBITDA represents net income (loss) before (1) interest income (expense) net, (2) income tax provision, (3) depreciation and depletion, (4) amortization, and (5) accretion. Adjusted EBITDA represents EBITDA as further adjusted for specifically identified items that management believes do not directly reflect our core operations. For the periods presented herein, the specifically identified items are: (1) adjustments to exclude the updates to the tax agreement liability, including tax impacts of the IPO and Secondary Offering and the termination of the TRA in August 2014, (2) adjustments for derivative financial instruments, excluding fair value mark-to-market gains or losses and including cash amounts received or paid, (3) adjustments to exclude the gain from the sale of our 50% non-operating interest in the Decker Mine, and (4) adjustments to exclude a significant broker contract that expired in the first quarter of 2010.

Revenue

The following table presents revenue (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2014	2013		2014	2013	
Owned and Operated Mines	\$ 285,983	\$ 304,670	\$	\$ 827,680	\$ 848,419	\$
Logistics and Related Activities	65,640	70,231		178,836	203,171	
Corporate and Other	7,789	15,780		20,429	33,420	
Eliminations of intersegment sales	(17,075)	(15,866)		(44,692)	(42,146)	
Consolidated revenue	\$ 342,337	\$ 374,816	\$	\$ 982,253	\$ 1,042,864	\$

The following table presents revenue from external customers by geographic region (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2014	2013		2014	2013	
United States	\$ 284,843	\$ 307,188	\$	\$ 819,562	\$ 852,237	\$
South Korea	48,945	51,143		127,370	128,775	

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Other		8,549		16,485		35,321		61,851
Total revenue from external customers	\$	342,337	\$	374,816	\$	982,253	\$	1,042,864

We attribute revenue to individual countries based on the location of the physical delivery of the coal. All of our revenue for the nine months ended September 30, 2014 and 2013 originated in the U.S.

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The following table reconciles segment Adjusted EBITDA to net income (loss) (in thousands):

	Three Months Ended September 30,	
	2014	2013
Adjusted EBITDA		
Owned and Operated Mines	\$ 43,589	\$ 65,878
Logistics and Related Activities	1,394	2,097
Corporate and Other	1,040	3,097
Eliminations	(304)	(143)
Consolidated Adjusted EBITDA	45,720	70,929
Interest expense, net	(12,664)	(8,866)
Depreciation, depletion and accretion	(29,664)	(30,913)
Income tax benefit (expense)	(40,688)	785
Tax agreement (expense) benefit (1)	58,595	(10,515)
Derivative financial instruments:		
Exclusion of fair value mark-to-market gains (losses) (2)	\$ 515	\$ (295)
Inclusion of cash amounts (received) paid (3)	(5,007)	(3,160)
Total derivative financial instruments	(4,492)	(3,455)
Gain on sale of Decker Mine interest	74,262	
Expired significant broker contract		
Net income (loss)	\$ 91,069	\$ 17,966

	Nine Months Ended September 30,	
	2014	2013
Adjusted EBITDA		
Owned and Operated Mines	\$ 126,741	\$ 145,770
Logistics and Related Activities	4,465	6,214
Corporate and Other	593	4,841
Eliminations	(1,503)	(368)
Consolidated Adjusted EBITDA	130,295	156,458
Interest expense, net	(64,286)	(29,476)
Depreciation, depletion and accretion	(94,009)	(87,838)
Income tax benefit (expense)	(30,709)	(10,512)
Tax agreement (expense) benefit (1)	58,595	(10,515)
Derivative financial instruments:		
Exclusion of fair value mark-to-market gains (losses) (2)	\$ 16,052	\$ 25,641
Inclusion of cash amounts (received) paid (3)	(16,905)	(5,689)
Total derivative financial instruments	(852)	19,952
Gain on sale of Decker Mine interest	74,262	
Expired significant broker contract		

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Net income (loss)	\$	73,295	\$	38,070
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- (1) Changes to related deferred taxes are included in income tax expense.
 - (2) Derivative fair value mark-to-market (gains) losses reflected on the statement of operations.
 - (3) Derivative cash gains and losses reflected within operating cash flows.

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The following table presents total assets (in thousands):

	September 30, 2014	December 31, 2013
Owned and Operated Mines	\$ 1,703,342	\$ 1,761,406
Logistics and Related Activities	105,077	55,770
Corporate and Other	303,299	540,432
Eliminations	(256)	(183)
Consolidated assets	\$ 2,111,462	\$ 2,357,425

As of September 30, 2014 and December 31, 2013, all of our long-lived assets were located in the U.S.

Capital Expenditures

The following table presents purchases of property, plant and equipment, investment in development projects, port access contract rights, and assets acquired under capital leases (in thousands):

	Nine Months Ended September 30,	
	2014	2013
Owned and Operated Mines	\$ 16,397	\$ 46,420
Logistics and Related Activities	37,100	337
Corporate and Other	3,014	3,317
Eliminations		
Consolidated	\$ 56,511	\$ 50,074

21. Equity-Based Compensation

The LTIP permits awards to our employees and eligible non-employee directors, which we generally grant in the first quarter of each year. The LTIP allows for the issuance of equity-based compensation in the form of restricted stock, restricted stock units, options, stock appreciation rights, dividend equivalent rights, performance awards, and share awards. Equity-based compensation expense is recorded primarily within

selling, general, and administrative expenses in our consolidated statements of operations. As of September 30, 2014, unrecognized compensation cost related to equity-based compensation was \$10.2 million, which will be recognized over a weighted-average period of 1.9 years prior to vesting.

Generally, each form of equity-based compensation awarded to eligible employees cliff vests on the third anniversary of the grant date, subject to meeting any applicable performance criteria for the award. However, the awards will pro-rata vest sooner if an employee terminates employment with or stops providing services to us because of death, disability, redundancy or retirement (as such terms are defined in the award agreement or the LTIP, as applicable), or if an employee subject to an employment agreement is terminated for any other reason than for cause or leaves for good reason (as such terms are defined in the relevant employment agreement). In addition, the awards will fully vest if an employee is terminated without cause (or leaves for good reason, if the employee is subject to an employment agreement) within two years after a change in control (as such term is defined in the LTIP) occurs.

Restricted Stock and Restricted Stock Units

We granted restricted stock and restricted stock units under the LTIP to eligible employees, and we granted restricted stock units to our non-employee directors. The restricted stock units granted to our directors generally vest upon

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their resignation or retirement (except for a removal for cause) or upon certain events constituting a change in control (as such term is defined in the award agreement). They will pro-rata vest if a director resigns or retires within one year of the date of grant.

A summary of restricted stock and restricted stock unit award activity is as follows (in thousands, except per share data):

	Number		Weighted- Average Grant-Date Fair Value (per share)
Non-vested shares at January 1, 2014	372	\$	18.51
Granted	132		19.01
Forfeited	(10)		18.69
Vested	(74)		20.80
Non-vested shares at September 30, 2014	421	\$	18.26

Performance-Based Share Units

Performance-based share units granted represent the number of shares of common stock to be awarded based on the achievement of targeted performance levels related to pre-established total stockholder return goals over a three-year period and may range from 0% to 200% of the targeted amount. The grant date fair value of the awards is based upon a Monte Carlo simulation and is amortized over the performance period.

A summary of performance-based share unit award activity is as follows (in thousands, except per share data):