

STATE OF
COLORADO

Musick - DNR, Jason <jason.musick@state.co.us>

Follow up on West Elk Mine Inspection, PR-15 Process Concerns

1 message

Jeremy Nichols <jnichols@wildearthguardians.org>

Mon, Jun 25, 2018 at 5:02 PM

To: jim.stark@state.co.us

Cc: "Musick, Jason" <jason.musick@state.co.us>, leigh.simmons@state.co.us, hstrand@osmre.gov, Alli Melton <AMelton@biologicaldiversity.org>, Shannon Hughes <shughes@wildearthguardians.org>, Matt Reed <matt@hccacb.org>, Jeff.Fugate@coag.gov

Hi Jim -

Attached is a follow up letter on last week's visit to the West Elk mine and our conversations with you and your staff. Again, we greatly appreciated your time. However, we all remain greatly concerned that the PR-15 process is moving forward without sufficient information and opportunity for meaningful public involvement.

We look forward to following up soon to further discuss our request for informal conference in light of our concerns and the current circumstances.

Thank you.

Sincerely,

Jeremy Nichols



2 attachments

2018-6-25 Follow up to DRMS on West Elk.pdf
230K **Exhibit 1 - Adequacy Review Letter.pdf**
360K



June 25, 2018

BY ELECTRONIC MAIL

Jim Stark
Coal Program Director
Colorado Division of Reclamation, Mining and Safety
1313 Sherman St., Suite 215
Denver, CO 80203
Jim.stark@state.co.us

Re: Following up on Informal Conference Request, Site Visit on June 21 and 22

Dear Jim:

Thank you and your staff for your time and insight on June 21 and 22 as we visited and inspected lands above the West Elk coal mine in order to gather information to support our June 1, 2018 Request for Informal Conference related to the Division of Reclamation, Mining and Safety's ("DRMS's") proposal to approve Mountain Coal Company's PR-15 permit application.

While our visit and inspection were enormously valuable, as you know, we were also barred from gathering necessary information related to our concerns over the necessity of certain access roads. Specifically, we were unable to access private land within the proposed permit boundary for purposes of ascertaining the condition of potential access roads, and the potential to use shorter roads through private land to prevent damage to, and the need to reclaim, National Forest land. The reason cited by the applicant for denying access was that the company lacked any right of entry to access private lands that would be utilized to access the PR-15 area. Furthermore, you and your staff indicated the PR-15 application submitted by Mountain Coal is preliminary and subject to amendment throughout the DRMS review process, and that it would preclude any meaningful assessment of whether access via private lands would be less damaging than new construction within National Forest lands.

This situation raises serious concerns that DRMS's April 5, 2018 completeness finding for Mountain Coal's PR-15 application was in error and that the agency should immediately issue a finding of incompleteness. In particular, based on our site visit and DRMS's statements during our visit, the PR-15 application is incomplete for the following reasons:

- **No Valid Right of Entry:** Colorado Mined Land Reclamation Board ("MLRB") regulations state that permit applications "shall contain [] a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area[.]" MLRB Regulations Section 2.03.6(1). Here,

based on our understanding of your statements, Mountain Coal apparently failed to provide any documents upon which the company was basing any legal right to enter and conduct surface coal mining operations on private lands within the PR-15 boundaries. If Mountain Coal did assert a right of entry in their PR-15 permit application, based on our understanding of your representations, this assertion appears to be false and DRMS must take action accordingly.¹

- Inadequate Operation Plan: MLRB regulations require applications to provide “detailed” information regarding the location of roads and support facilities, including methane drainage wells. MLRB Regulations Section 2.05.3. Based on our site visit and on DRMS’s statements during our visit, Mountain Coal has not provided “detailed” information regarding the location of roads and methane drainage wells. Although Mountain Coal did provide a map showing the potential location of access roads and methane drainage wells pads, DRMS staff indicated these locations will likely change in response information gathered by Mountain Coal via recent coal exploration activities. Accordingly, Mountain Coal’s application is incomplete. The application does not (and apparently cannot yet) provide detailed information regarding the location of roads and support facilities that would be constructed, maintained, and utilized as part of the PR-15 revision.

On this latter concern, even DRMS appears to agree that Mountain Coal’s application is deficient. In a June 19, 2018 “adequacy review” letter, DRMS commented that the application failed to provide a “coherent mine plan.” See Exhibit 1. Unfortunately, an adequacy review cannot be used to cure an incomplete application. In this case, it is not a matter of Mountain Coal submitting an inadequate application. Rather, the company did not provide the complete information required in the first place.

In light of the aforementioned deficiencies, it makes no sense for DRMS to continue processing Mountain Coal’s PR-15 application. This is especially true given that the public has not been given a chance to meaningfully engage in the application process in an informed manner, as contemplated by MLRB Rules and the Colorado Surface Coal Mining Reclamation Act. As we stated to you at the conclusion of our site visit on June 22, we were unable to gather information to support our Request for Informal Conference due to Mountain Coal’s lack of right of entry and due to the fact that we lack detailed information regarding the location of roads and support facilities. What’s worse, all of the public has been denied information that is requisite for meaningful involvement in the PR-15 application process.

Given this situation, we are hesitant to participate in any Informal Conference at this point. Although we did submit a request on June 1, we submitted the request with the understanding that the PR-15 application was complete. Given that the application is not

¹ It is important to note that MLRB Regulations at Section 2.03.3(9) require that “a responsible official of the applicant [] certify that the information contained in the application is true and correct to the best of the official’s information and belief.” Here, it does appear as if Mountain Coal may have falsely certified it had the right to enter private lands for purposes of conducting surface coal mining activities associated with the PR-15 revision. This further underscores the need for DRMS to deem the application to be incomplete.

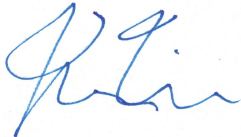
complete and we lack critical information, our participation will be severely prejudiced. MLRB Rules and the Colorado Surface Coal Mining Reclamation Act do not allow this.

At this point, the only path forward we see for resolving these issues and ensuring the integrity of the PR-15 permitting process is to deem Mountain Coal's application to be incomplete. Although we understand that DRMS could also propose to deny the proposed permit, we feel that any further processing of the application would be unfair to the public given the lack of basic information and assurances.

Again, we greatly appreciate your time and insight during our June 21 and 22 site visit. However, it is clear that the current application for PR-15 is so inadequate and incomplete as to preclude meaningful review by the public. Please deem the application to be incomplete so that we can be assured of a meaningful opportunity to engage in the PR-15 permitting process. Not only is this required, but it will also ensure the public can engage in an informed and useful manner.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Nichols" or similar, written in a cursive style.

Jeremy Nichols and
Shannon Hughes
WildEarth Guardians

Matt Reed
High Country Conservation Advocates

Alli Melton
Center for Biological Diversity

Cc: Howard Strand, OSMRE, hstrand@osmre.gov



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

Kathleen G. Welt
Mountain Coal Company, LLC
5174 Highway 133
Somerset, CO 81434

June 19, 2018

Re: West Elk Mine (Permit No. C-1980-007)
Permit Revision No. 15, (PR-15)
Initial Adequacy Review

Dear Ms. Welt,

The Colorado Division of Reclamation, Mining and Safety (Division) is in the process of reviewing materials submitted by Mountain Coal Company, LLC (MCC) in support of the PR-15 application. This letter is an initial adequacy review; additional adequacy issues may be identified during the continued review of documents already submitted and those submitted in response to this letter.

Rule 2.02 – General Requirements for Coal Exploration

1. Proposed revised page 2.02-1 provides a description of exploration activity completed to date.
Please update page 2.02-1 as further exploration is completed during the PR-15 review period.

Rule 2.03.4 – Identification of Interests

2. An initial check of the AVS database was made on receipt on the PR-15 application, with reference to the Officers and Directors information in Exhibit 1 of the currently approved PAP, revealing no issues.
Please verify that the information in Exhibit 1 is up to date.

Rule 2.03.10 – Identification of Other Licenses and Permits

3. A revised copy of Table 1 – Permits and Licenses for West Elk Mine has been submitted with the PR-15 application packet, with the only apparent change from the version of Table 1 in the currently approved PAP being the dates of issuance and renewal of the USFS road use permit.
Please ensure that the information in table 1 remains up to date during the PR-15 review period.



Rule 2.04.4 – Cultural and Historic Resource Information

4. Cultural and Historic Resource information for the permit area is given on pages 2.04-7 through -10 and in Exhibits 10 and 11 of the currently approved PAP.
Please update the text and Exhibits 10 and 11 with information pertaining to the permit area expansion proposed with PR-15.

Rule 2.04.11 – Fish and Wildlife Resources Information

5. Fish and wildlife resources information for the permit area is given on pages 2.04-162 through -180 and in Exhibits 34 through 38A of the currently approved PAP.
Please review the text of pages 2.04-162 through -180 and associated exhibits, and update as necessary.

Rule 2.05.3 – Operation Plan

6. Rule 2.05.3(2)(b) requires a detailed narrative, cross section, map(s) and timetable(s) sufficient to describe the areal extent of the proposed underground workings.
Please update Map 51 E-Seam Projected Operations. The map should present a coherent mine plan including identifiable panels, shaded to indicate the time at which they are projected to be mined. The feature “Area of Potential Longwall Panels Extensions Based on Future Additional Exploration” should be removed from the map. The features “Approximate Limit of the Maximum Predicted 19° E-Seam Angle of Draw”, “Maximum Projected Areal Extent of Potentially Mineable E-Seam” and “Projected E-Seam Mining” should be updated.
7. On proposed page 2.05-4, in the fourth paragraph, the final sentence reads “The overall recovery of the mine layout has not been calculated, because it varies continuously with changes in mine plans.”
Please replace the sentence on page 2.05-4 with a narrative estimate of the coal to be recovered, including all assumptions, using a range of values if necessary, based on the mine plan proposed with PR-15.
8. Table 28 – Estimate of Recoverable Coal Reserves at the West Elk Mine, and Table 32 – Projected Employment Needs at West Elk Mine for the Life of Mine provide important information about the mine plan.
Please review tables 28 and 32 in the light of responses to items (6) and (7) of this letter, and update as necessary.

Rule 2.10 – Maps and Plans

9. The majority of maps submitted with the PR-15 application are drawn at a scale of 1”=2,000’ (or 1:24,000) which is acceptable.

Rule 2.10.1(1) requires that maps of the disturbed area be drawn at a scale of 1:6,000 or larger. The map titled Proposed MVB's – PR-15 does not include a scale bar, and the title box indicates a scale of "NTS" (presumably this stands for "not to scale")

Please update the map titled Proposed MVB's – PR-15, showing the scale on the map.

Rule 3.02.2 - Determination of Bond Amount

10. The Reclamation Cost Estimate (RCE) is currently being recalculated under RN-07. It is anticipated that RN-07 will be approved during the course of the review of PR-15. A separate RCE will be calculated for disturbances associated with PR-15.

It is anticipated that the PAP will be updated with RN-07 with tables detailing boreholes, pads and associated roads. These tables will be an important reference for tasks in the RCE, and should be updated with PR-15. Since the tables do not exist in the currently approved PAP, this adequacy item should be considered a placeholder for the time being.

No action is currently required.

The Division received a number of comments during the public comment period, which ended on June 1, 2018, all of which were passed on to MCC for informational purposes. The comments fall under several different categories, but are perhaps best grouped under the heading "Failure to mitigate the impacts of mining operations". The comments will be considered during the review process.

The proposed decision due date for PR-15 is August 3, 2018.

Yours sincerely,



Leigh Simmons
Environmental Protection Specialist