



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

November 15, 2018

Mountain Coal Company, LLC
5174 Highway 133
Somerset, CO 81434

Re: Findings of Fact, Conclusions of Law, and Order, Mountain Coal Company, LLC
File No. C-1980-007

On November 14, 2018 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain deadlines for corrective actions, civil penalties, cease and desist orders or other actions that may require your immediate attention to avoid future board actions.

Sincerely,



Camille Mojar
Board Administrator

Enclosure(s)

Certified Mail

7017 2400 0000 9205 7288

cc:

Leigh Simmons
Jason Musick
Jim Stark
Jeff Fugate
Scott Schultz
Charles Kooyman
Jeremy Nichols
Shannon Hughes
Allison Melton
Nathaniel Shoaff
Matt Reed
Michael Drysdale



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**IN THE MATTER OF THE APPLICATION OF MOUNTAIN COAL COMPANY,
LLC FOR A PERMIT REVISION, File No. C-1980-007**

THIS MATTER came before the Mined Land Reclamation Board ("Board") on October 24, 2018 in Denver for a hearing to consider the application for a revision to permit number C-1980-007 filed by Mountain Coal Company, LLC ("Applicant"). Assistant Attorney General Jeff Fugate, James Stark, Jason Musick, and Leigh Simmons appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Michael Drysdale, Esq. appeared on behalf of Applicant. Shannon Hughes Esq. and Jeremy Nichols appeared on behalf of Wild Earth Guardians, High Country Conservation Advocates, Sierra Club, and the Center for Biological Diversity (collectively "Objectors").

The Board, having considered the presentations, testimony, and evidence of the Division¹, Applicant, and Objectors, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. Applicant holds reclamation permit number C-1980-007 for an underground coal mine located in Section 16, Township 13 South, Range 90 West, 6th Principal Meridian, Gunnison County, Colorado. The site is known as the West Elk Mine.
2. On March 29, 2018, Applicant submitted an application for Permit Revision 15 (the "Application"). The Application proposed increasing the permitted area by 2,620 acres, the affected area by 1,503 acres, and the disturbed area by 53.63 acres.
3. The Division reviewed the application and requested additional materials from Applicant on March 30, 2018. Pursuant to Section 34-33-118(1) of the Colorado Surface Coal Mining Reclamation Act ("Act") and Rule 2.07.3(1) of the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining

¹ The Division was advisory staff to the Board, not a party, in this proceeding.

("Rules"), the Division deemed the application for Permit Revision 15 complete on April 5, 2018.

4. The Division created a Google Drive folder to share Application materials with Objectors, and shared the initial Application materials on April 12, 2018.

5. On April 11, 2018, public notice of the Application was placed in the Delta County Independent and appeared again on April 18, 25, and May 2, 2018.

6. The public notice stated that the Application was to "expand the permit boundary by adding approximately 2,620 acres of [Operator's] existing fee coal and private surface, along with federal coal and surface lands of modified federal coal leases COC-1362 & COC-67232, provide a proposed area of projected longwall panels, as well as proposed MVB sites and roads."

7. Pursuant to Rule 2.07.3(5) public comment on the Application was due to the Division within thirty days of May 2, 2018, the last date of publication of the public notice.

8. Objectors submitted timely comments to the Division on June 1, 2018 and, pursuant to section 34-33-118(6) and Rule 2.07.3(6), requested an informal conference and site visit to prepare for the informal conference.

9. The Division responded to the Objectors' comments on June 12, 2018.

10. Following its determination that the Application was complete, the Division began an adequacy review of the Application. The Division sent its first adequacy review letter to Applicant on June 18, 2018.

11. The Division and Objectors met on June 18, 2018 to discuss and plan the site visit requested by Objectors. The Division communicated separately with the Applicant regarding the requested site visit.

12. The Division shared a map of the proposed site visit with Applicant and Objectors on June 19, 2018 and stated that the plan for the site visit, as agreed with Applicant, was to tour all or some of the sites marked in purple on the map.

13. The site visit took place on June 21 and 22, 2018, and was attended by representatives of the Division, the Objectors and the Applicant. The site visit included all areas on the map circulated with the parties on June 19. The site visit did not include areas of private property, but Objectors were taken to an overview area that looked over the private property.

14. The Division received additional comments from Objectors on June 25, 2018 and responded to those comments on July 6, 2018.

15. Applicant submitted an adequacy response to the Division on July 6, 2018, which included revised and updated maps. The Division shared Applicant's adequacy response materials with Objectors on the same day and sent a response to Applicant regarding the adequacy review. The July 6, 2018, responses shared with Objectors included copies of the final maps.

16. On July, 12, 2018, the Division sent notice to Objectors regarding the informal conference and provided public notice of the informal conference on July 18, 2018.

17. Additional updated adequacy response materials were shared with Objectors by the Division on July 25, 2018.

18. The informal conference was held on August 1, 2018 in Hotchkiss, Colorado.

19. Pursuant to section 34-33-119(1) and Rule 2.07.4(2)(a), Objectors submitted additional comments to the Division on August 20, 2018.

20. The Division proposed a decision approving Permit Revision 15 on September 4, 2018 and shared final revised pages, maps, and exhibits with Objectors on the same day.

21. Public notice of the Division's decision was published in the Delta County Independent newspaper on September 5, 2018 and again on September 12, 2018.

22. Pursuant to section 34-33-119(4) and Rule 2.07.4(3), Objectors submitted comments to the Division on September 30, 2018 and requested a formal hearing before the Board.

23. At the Board hearing on October 24, 2018, the Division presented testimony regarding its process for determining whether an application is complete, the subsequent adequacy review, and engaging the public during review of the Application.

24. The Division's review of an application, including the Application for Permit Revision 15, is iterative and intended to allow changes to the mining plan in response to Division concerns and questions or other changed circumstances. Jason Musick testified regarding the meaning of the Division's completeness and adequacy review. The Division's determination that the Application was complete

simply meant that it minimally addressed the requirements of the Act and Rules. The decision to deem the Application complete began the Division's adequacy review, which is more technical in nature and involved several rounds of requests from the Divisions and responses from Applicant. The Division determined that none of the changes to the Application made during the adequacy review process were significant enough to trigger a new public comment period or change Permit Revision 15's fundamental nature.

25. The three comment periods provided during the Division's review amounted to eighty days of comment period. During those periods, the Division received comments and met with the Objectors. In response to Objector's requests for materials and engagement, the Division posted all Application materials in a Google Drive folder, which was accessible by Objectors.

26. The Division presented testimony regarding Objectors' request to access private property during the site visit. In their comments, the Objectors had raised the issue of requiring Applicant to build access roads over private rather than public land. The Division, however, testified that it did not have the authority to dictate where access roads would be placed pursuant to the Application and further testified that, under the Rules and Act, it viewed impacts to public and private land in the same light.

27. Objectors presented testimony at the October 24, 2018 Board meeting. In particular, Objectors argued that by denying them the ability to observe sections of the proposed permitted area that was on private property, they were unable to adequately prepare for the informal conference. According to the Objectors, the denial of their request to visit private property deprived them of the ability to gather information regarding their concerns about impacts to fish and wildlife as a result of the proposed road building on public land, as well as an ability to understand the topography in the region and determine where proposed roads should be located on the private property.

28. Objectors presented testimony that during the site visit, the Applicant denied them access to the private land they wanted to see and that the Division made a determination that the Objectors did not need to see the portions of private land they had wanted to observe.

29. Applicant also presented testimony at the Board meeting. In particular, Applicant stated that it was possible to realign its proposed access roads to put more of the roads on private rather than public property, as Objectors advocated. Applicant provided testimony, however, that the Objectors' proposal was inefficient and undesirable because it would, among other things, increase surface disturbances by abandoning a long-standing road on public property. Likewise,

Applicant testified that the Objectors' proposal would prolong surface disturbances because it would require building and using new roads earlier than necessitated by the progression of mining. According to the Applicant, Objectors' access to private land during the site visit was unnecessary because there was no dispute that Objectors' proposal to relocate roads to private land was feasible, but undesirable for a variety of reasons.

CONCLUSIONS OF LAW

30. The Board has jurisdiction over this matter pursuant to the Act. Sections 34-33-104, 34-33-105, 34-33-115, and 34-33-119, C.R.S, specifically provide the Board with jurisdiction over this matter.

31. The Division and Board have the full power and authority to carry out and administer the provisions of this article. C.R.S. § 34-33-104.

32. Under section 34-33-114(1), C.R.S., the Applicant "for a permit or for a revision of a permit has the burden of establishing that such application is in compliance with all the requirements of [the Act]."

33. No application may be approved unless the application meets the requirements of subsections of sections 34-33-114(2) and 34-33-115(1)(b), C.R.S. The Application is accurate and contains all information required by the Act and Rules.

34. Section 34-33-118, C.R.S. requires public notice of an application for a permit revision and provides a thirty-day period after the last publication of the notice for any person having an interest that is or may be adversely affected by a decision to submit written comments or objections to the Division. Those submitting comments or objections may also request an informal conference and, upon request from those objecting or commenting, the Division may arrange access to the proposed mining area to gather information necessary for the informal conference. *Id.* Rule 2.07.3(6)(b)(iii) also provides that the applicant shall not restrict the visitors' access to "those portions of the proposed mine plan area necessary for the gathering of information relevant to the conference." The Board concludes that Objectors were provided with the opportunity to comment on the Application in accordance with section 34-33-118, and that the Division properly arranged for both an informal conference and a site visit. Further, the Board concludes that the Objectors were not denied access to areas where information necessary to the informal conference could be gathered. It was not necessary for Objectors to access private property during the site visit to assess impacts related to the possible location of access roads.

35. Under section 34-33-119, C.R.S., where an informal conference has been held pursuant to section 34-33-118(6), any party to the informal conference may submit additional comments to the Division within twenty days following the conference. Section 34-33-119, C.R.S. also requires the Division to issue a proposed decision on an application no sooner than twenty days and no later than sixty days from when an informal conference was held and provide public notice of the proposed decision. Any person who may be adversely affected by the proposed decision may, within thirty days of the first publication of the proposed decision, request a formal hearing before the Board and must state the reasons for the request and the objections to the proposed decision. § 34-33-119(4), C.R.S.

36. The Board concludes that the Division provided Objectors with all required opportunities for public engagement required by the Act and Rules. Accordingly, the Board concludes that the Application complies with section 34-33-114(2), C.R.S.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby AFFIRMS the Division's proposed decision to approve the application for Permit Revision 15.

DONE AND ORDERED this 14th day of November 2018.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD


Jill Van Noord, Chair

NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2016) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 15th day of November 2018 addressed as follows:

By certified Mail:
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Camille Mojar, Board Administrator