



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

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MINING PERMIT - COAL

Permit Date: December 19, 2019

Permit No. C-1981-012

Permit Commencement Date: February 28, 2019

Permit Expiration Date: February 28, 2024

THIS PERMIT is issued by the Division of Reclamation, Mining and Safety, Department of Natural Resources, State of Colorado.

RECITALS

- I. New Elk Coal Company, LLC ("operator") desires to conduct a mining operation known as the New Elk Mine for the purpose of extracting coal.
- II. On December 19, 2019 the Division of Reclamation, Mining and Safety ("the Division") approved the operator's application for this permit, fixed the amount of bond and directed that this permit be issued upon the filing with the Division of bond in the amount so fixed in form and substance approved by the Division, and such bond has been so furnished.
- III. On November 14, 2019 the Division made the following findings:
 - (a) The permit application is accurate and contains all information required under C.R.S., 34-33-101 *et seq.* and regulations promulgated thereunder and that all the requirements of Article 33 of Title 34, C.R.S. ("such article") for the issue of a permit have been complied with;
 - (b) The applicant has demonstrated that reclamation as required by such article can be accomplished under the reclamation plan contained in the permit application;
 - (c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 34-33-110(2)(l) has been made by the Division and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area;

- (d) Granting the permit will not conflict with any designation decision issued pursuant to Section 522 of the Federal "Surface Mining Control and Reclamation Act of 1977," as amended, (P.L. 95-87), nor is the area proposed to be mined within an area under study for unsuitability designation in an administrative proceeding commenced pursuant to Section 34-33-126 or Section 522 of said P.L. 95-87.
- (e) (I) Unless the proposed operation was an operation which produced coal in commercial quantities in the year preceding August 3, 1977 and at that time was located within or adjacent to alluvial valley floors, the proposed surface coal mining operations would:
 - (A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands upon which the Board has found that the farming which will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on said land's agricultural production; or
 - (B) Not materially damage the quantity or quality of surface water or ground water systems that supply the alluvial valley floors described in sub-subparagraph (A) of this subparagraph (I).
- (f) To the extent that the applicant proposes to extract coal by surface methods, and where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Division:
 - (I) The written consent of the surface owner to the extraction of coal by surface coal mining; or
 - (II) A conveyance that expressly grants or reserves the right to extract the coal by surface coal mining, or, if the conveyance does not expressly grant the right to extract coal by surface coal mining, other legal documentation supporting applicant's right of entry in accordance with State law. (Nothing in the permit shall be construed as an adjudication of any property right.)
- (g) Subject to valid rights existing as of August 3, 1977, and with the further exception of those surface coal mining operations which were in existence on August 3, 1977, the application:
 - (I) Does not include any lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under said act, and national recreation areas designated by act of the United States Congress;
 - (II) Does not include any federal lands within the boundaries of any national forest,

except to the extent that the Secretary of the United States Department of Agriculture has found that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and:

- (A) Surface operations and impacts are incident to an underground coal mine; or
 - (B) Where the Secretary of the United States Department of Agriculture has determined, with respect to lands in national forests which do not have significant forest cover, that surface mining is in compliance with the "Multiple-Use Sustained-Yield Act of 1960," as amended, the "Federal Coal Leasing Amendments Act of 1975," as amended, the "National Forest Management Act of 1976," as amended, and the provisions of Article 33 of Title 34, C.R.S.
- (III) Will not adversely affect any publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the Division and Federal, State, or local agency with jurisdiction over the park or the historic site;
- (IV) Does not include lands within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line, except to the extent that the Division has permitted such roads to be relocated or the area affected to lie within one hundred feet of such road after public notice and opportunity for public hearing in the locality and a written finding has been made by the Division that the interest of the public and the landowners affected thereby will be protected; and
- (V) Does not include lands within three hundred feet of any occupied dwelling, unless with the consent of the owner thereof, nor within three hundred feet of any public building or school, church, community, or institutional building or any public park, nor within one hundred feet of a cemetery.
- (h) To the extent, if any, that the surface area proposed to be affected by the operation contains prime farmland and is not exempt from the special requirement of such article regarding reclamation of prime farmlands, the Division has, after consultation with the Secretary of the United States Department of Agriculture, and pursuant to regulations issued by the Secretary of the United States Department of the Interior with the concurrence of the Secretary of the United States Department of Agriculture, determined that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and that the operator can meet the soil reconstruction standards in C.R.S., 34-33-120(2)(g).
- (i) The proposed postmining land use of the permit area has been approved by the Division in accordance with the requirements of 4.16.
- (j) The Division has made all specific approvals required under Rule 4.

- (k) The Division has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC Sec. 1531 *et seq.*) or the Nongame, Endangered or Threatened Species Conservation Act (Section 33-8-101 *et seq.*, C.R.S.).
 - (l) The applicant has submitted proof that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid for all coal mining operations.
- IV. A copy of the operator's application, as amended and supplemented, has been approved by the Division and is by this reference incorporated herein.

GRANTS, CONDITIONS AND AGREEMENTS

- A. The Division, in reliance upon the representations and promises made in such application, as amended and supplemented, and based upon the foregoing findings, hereby issues this permit to New Elk Coal Company, LLC, to engage in the operations described in the application on the following lands lying in Las Animas County, State of Colorado:

Due to the lack of a U.S. Public Land Survey of the permit area, the legal description of the lands included within the permit area is a metes and bounds description, which is included in Exhibit 34 of the permit. An approximation of the location of the permit area, assuming the sections are partially or fully projected in T33S, R68W, is as follows: T33S, R68W, Portions of Sections 13, 14, 21, 22, 23, 24, 27, 28, 35 and 36

- B. The term of this permit will expire on February 28, 2024.
- C. This permit is issued subject to the following conditions and agreements:
- 1. Operator agrees to be bound by all lawful requirements of the Colorado Surface Coal Mining Reclamation Act (C.R.S. 34-33-101 *et seq.*) ("the Act"), all lawful rules and regulations thereunder, as amended from time to time, and all provisions of this permit.
 - 2. Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
 - a. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - b. Immediate implementation of measures necessary to comply; and

- c. Warning as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
3. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Rule 4 and which prevents violation of any other applicable State or Federal law.
4. The permittee shall conduct its operations:
 - a. In accordance with any measures specified in the permit as necessary to prevent significant environmental harm to the health or safety of the public; and,
 - b. Utilizing any methods specified in the permit by the Division in approving alternative methods of compliance with the Act and in accordance with the provisions of 2.07.6(2)(m) and Rule 4.
5. The operator shall pay all reclamation fees required by 30 CFR, Chapter VII, Subchapter R(1989), for coal produced under the permit for sale, transfer or use, in the manner required by that Subchapter.
6. Within thirty days after a cessation order is issued under 5.03.2(1), for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the Division the following information, current to the date the cessation order was issued, or notify the Division in writing that there has been no change since the immediately preceding submittal of such information:
 - a. Any new information needed to correct or update the information previously submitted to the Division by the permittee under 2.03.4(3); or
 - b. If not previously submitted, the information required from a permit applicant by 2.03.4(3).
7. The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps and in the legal description submitted with the application. Areas disturbed and affected by surface coal mining and reclamation operations shall be contained within the boundaries authorized on permit application maps for the term of this permit and shall be limited to those areas subject to the performance bond in effect pursuant to these rules.
8. The permittee shall conduct all surface coal mining and reclamation operations only

as described in the approved application, except as otherwise directed by the Division in this permit.

9. The permittee shall comply with the terms and conditions of this permit, all applicable performance standards of the Act, and the requirements of these Rules.
10. Continuous, uninterrupted bond coverage shall be in effect at all times, and an adequate bond amount shall be maintained pursuant to the requirements of Rule 3.02.2. Operating without a bond is a violation of a condition upon which this permit is issued.
11. If analyses of the mining and reclamation operation and the data collected through monitoring and experimentation by the operator or monitoring by the Division indicate in the judgment of the Division that the operation will not be able to comply with the requirements of the Act and lawful rules and regulations thereunder, operator hereby agrees to exercise its best efforts, after consulting with the Division, to modify the plans prospectively to correct such deficiencies. Such modifications may require technical revisions or amendments to the permit.
12. This permit may be revoked or suspended for non-compliance with the Act or lawful rules or regulations promulgated by the Board.
13. No coal mining operations shall be conducted on Federal surface or coal until the Secretary of the Interior has approved the mining plan. The Division reserves the right to modify the permit, when appropriate, in order to resolve conflicts between the permit requirements and the requirements of other laws, rules and regulations administered by the Secretary of the Interior.
14.
 - a. Operator hereby bargains, sells and conveys unto the State of Colorado the right to enter upon the lands above described and to accomplish thereon the reclamation of such lands as required by this permit and by applicable law.
 - b. Such right to enter shall be exercisable only if the Board or the Division shall have lawfully determined:
 - i. that reclamation required by law to have been performed upon such lands has not been performed, and that
 - ii. the bond or surety forfeiture proceedings described in the Act or similar provisions of subsequent laws, if any, have been initiated.
 - c. Such right to enter shall be exercisable only within the period of time expiring twenty-one (21) years after the death of all the individuals whose names appear on this permit on the date of its issuance. Such right shall automatically expire when reclamation has been completed and sureties released.

- d. Such right to enter is in addition to other lawful rights of the State to enter upon such lands.
15. The additional stipulations set forth in the attached rider, if any, are incorporated herein by reference.

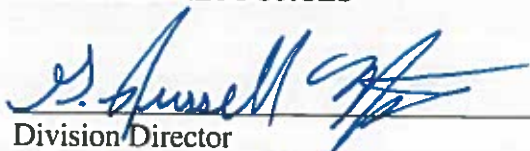
 / / a) Rider is attached.

 / X / b) No rider is attached.

ACCEPTED AND AGREED:

DIVISION OF RECLAMATION, MINING & SAFETY
COLORADO DEPARTMENT OF
NATURAL RESOURCES

By _____
Operator Title


Division Director
for GINNY BRANNON

STATE OF _____) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by
_____ as _____
of _____, operator.

NOTARY PUBLIC

My Commission expires:

AG Alpha No. NR LR TYB
AG File No. PNR/3928/JD

C-RN-18

