



STATE OF  
COLORADO

Simmons -, Leigh <leigh.simmons@state.co.us>

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## SL-2 OSMRE Inspection Report

1 message

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**Belka, Christine** <cbelka@osmre.gov>

Thu, Jul 16, 2020 at 2:43 PM

To: "Simmons -, Leigh" <leigh.simmons@state.co.us>, Doug Smith <doug.smith@oxbow.com>, "Dyer, Desty D"

<ddyer@blm.gov>, "degray@fs.fed.us" <degray@fs.fed.us>

Cc: "Strand, Howard" <HStrand@osmre.gov>

Gentlemen,

My inspection report from last week is attached. Please let me know if you have any questions. It was good to see you all.

Christine Belka

*Senior Regulatory Program Specialist*

OSMRE Denver Field Branch

(303) 236-4682



**Elk Creek SL-2 OSMRE Inspection Report 7-7-2020 signed.pdf**

2770K



U.S. DEPT. OF THE INTERIOR  
OFFICE OF SURFACE MINING  
Mine Site Evaluation  
State Program



<b>1. Permittee/Person</b> OXBOW MINING LLC		<b>9. Permit Number</b> C1981022		<b>10. Permit Type</b> PP	
<b>2. Address</b> 1601 FORUM PLACE SUITE 1400		<b>11. Field Visit Date</b> 7/7/2020 <small>mm - dd - yyyy</small>		<b>12. Purpose</b> OB2	
<b>3. City</b> WEST PALM BEACH		<b>4. State</b> FL		<b>13. SRA Present</b> Y	
<b>5. Zip Code</b> 33401		<b>6. Phone Number</b> (561) 697-4300		<b>14. Permit Status</b> A	
<b>7. Operator Name, if Different than Permittee</b> OXBOW MINING LLC		<b>15. Site Status</b> MC		<b>16. Facility Type</b> BE	
<b>8. Mine Name</b> ELK CREEK/SANBORN CRK/SOMMERSET		<b>17. OSM Office #</b> 140		<b>18. CCID #</b> 	
		<b>19. Land Code</b> SF		<b>20. M.S.H.A. ID #</b> 05-04674	
		<b>21. State Abbrev.</b> CO		<b>22. County/Burrough</b> GUNNISON	
		<b>23. AVS Permittee Entity ID Number</b> 151178		<b>24. State Office</b> 	

<b>25. Hours</b> <table border="1"><tr><td>2.0</td><td>a. Permit Review</td></tr><tr><td>23.0</td><td>b. Site Visit Time</td></tr><tr><td>8.0</td><td>c. Travel Time</td></tr><tr><td>3.0</td><td>d. Report Writing</td></tr></table>	2.0	a. Permit Review	23.0	b. Site Visit Time	8.0	c. Travel Time	3.0	d. Report Writing	<b>26. Signature Block</b>  Signature:  Christine Belka, ID#182 Inspector's Name:  Date: 7/16/2020	<b>27. Reviewing Official:</b>  Signature:  Howard Strand Reviewer's Name:  Date: 7/16/2020
2.0	a. Permit Review									
23.0	b. Site Visit Time									
8.0	c. Travel Time									
3.0	d. Report Writing									

**Permit Type - Item 10** IP = Interim Program PP = Permanent Program NP = No Permit

**Purpose Type Codes - Item 12**  
Oxx...Oversight Rfx...Reclamation Fees CCR...Citizen Complaint Referral (non-site visit)  
Axx...Assistance Fxx...Federal Actions CC...Citizen Complaint (initial site visit)  
CCF...Assistance

**Joint Inspection - Item 13** A joint inspection is when a state inspector accompanies an OSM inspector at any time during the review of the mine site

**Permit Status - Item 14**  
A Active: Coal mining activities occurring or permitted but not yet disturbed.  
IN Inactive (Permanent Program Permit): Phase II completed or Temporary Cessation of Operations. (Interim Program Permit): Coal mining completed and reclamation activities initiated.  
BR Bond Release: Reclamation completed and State Regulatory Authority(RA) has released all of the bond (Phase III Release).  
AB Abandoned: All surface and underground coal mining activities have ceased and operator has left the site without completing reclamation as defined in 30 CFR 840:11(g).  
AB1 Bond Forfeiture: Bond forfeiture officially in process or completed and reclamation in progress or not yet commenced.  
AB2 Partially Reclaimed Forfeiture: Forfeited site where all bonds have been used to reclaim site, but site not reclaimed to Program standards.  
AB3 Reclaimed Forfeiture: Forfeited site that has been reclaimed to Program standards.  
NA Not Applicable: When site is unpermitted.

**Site Status - Item 15**  
ND No Disturbance: No coal mining and reclamation operations have been started.  
EX Coal Exploration: Coal exploration operations have started and where coal mining operations have not begun.  
AP Active Coal Producing: Coal surface mining activities are occurring.  
AN Active Non-Producing: Active non-producing facility such as tipple or preparation plant.  
NM No Mining: The Permit Status is active, site is not in Temporary Cessation, no surface coal mining activity, and site not regraded.  
MC Mining Complete: No mining activity on site, site regraded and awaiting bond release.  
TC Temporary Cessation: The RA has granted cessation of mining pursuant to 30 CFR 816/817:13(b).  
P1 Phase I Release: At least Phase I bond release granted for entire permitted area. For interim permits, partial bond release.  
P2 Phase II Release: At least Phase II bond release for the entire permitted area.  
P3 Phase III Release: Reclamation completed and the RA has released all bond.  
NS Non-Site Visit: Status of site not determined.  
FP Forfeiture Pending: The RA is pursuing actions to revoke the permit, collect the performance bond(s), and/or reclamation of forfeited site is in progress.  
FR Forfeited and Reclaimed: Forfeiture reclamation completed.  
FO Abandoned Site: Abandoned site that is permitted but there is no bond.  
WC Wildcat: Coal mining and reclamation operations have or are taking place and the activity is not covered by the required permits from the RA.

**Facility Type Codes - Item 16**  
A....Surface D....Ancillary (Haulroad, Conveyor, and/or Rails) H....Exploration Permits K....Government Financed Construction Exemption  
B....Underground E....Refuse and/or Impoundment I....Notice of Intent to Explore L....Remining site permitted under 30 CFR 785.25  
C....Preparation Plant F....Loading Facility and/or Tipple J....Exempt 16 and 2/3  
G....Stockpiles

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**  
**Your Comments are Important**

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).

U.S. DEPT. OF THE INTERIOR  
OFFICE OF SURFACE MINING  
Mine Site Evaluation

Permittee/  
Person **OXBOW MINING LLC**

Permit  
Number **C1981022**

Field Visit  
Date **7/7/2020**

State Program  
Continuation Page

## 28. Performance Standard Categories

Codes: 1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited, 7=Permit Defect

### A. Administrative

1.        Mining within Valid Permit
2.        Mining within Bonded Area
3.   1   Terms & Conditions of Permit
4.        Liability Insurance
5.        Ownership and Control
6.        Temporary Cessation
7.        AML Rec. Fees - Non-Respondent
8.        AML Rec. Fees - Failure to Pay

### B. Hydrologic Balance

1.   1   Drainage Control
2.        Inspections & Certifications
3.        Siltation Structures
4.        Discharge Structures
5.   1   Diversions
6.        Effluent Limits
7.        Ground Water Monitoring
8.        Surface Water Monitoring
9.        Drainage - Acid-Toxic Materials
10.   1   Impoundments
11.        Stream Buffer Zones

### C. Topsoil & Subsoil

1.        Removal
2.        Substitute Materials
3.        Storage and Protection
4.   1   Redistribution

### D. Backfilling & Grading

1.   1   Exposed Openings
2.   1   Contemporaneous Reclamation
3.   1   Approximate Original Contour
4.        Highwall Elimination
5.        Steep Slopes (includes downslope)
6.        Handling of Acid and Toxic Materials
7.   1   Stabilization (rills and gullies)

### E. Excess Spoil Disposal

1.        Placement
2.        Drainage Control
3.        Surface Stabilization
4.        Inspections & Certifications

### F. Coal Mine Waste (Refuse Piles/Impoundments)

1.   1   Drainage Control
2.   1   Surface Stabilization
3.   1   Placement
4.        Inspections & Certifications
5.        Impounding Structures

### G. Use of Explosives

1.        Blaster Certification
2.        Distance Prohibitions
3.        Blast Survey/Schedule
4.        Warnings & Records
5.        Control of Adverse Effects

### H.        Subsidence Control Plan

#### I. Roads

1.        Road Construction
2.        Certification
3.   1   Drainage
4.   1   Surfacing and Maintenance
5.   1   Reclamation

#### J. Signs & Markers

1.   1   Signs
2.   1   Markers

#### K.        Distance Prohibitions

#### L. Revegetation

1.   1   Vegetative Cover
2.   1   Timing

#### M.   1   Postmining Land Use

#### N. Other

General  
Performance  
Category

## Performance Standard Categories 30 CFR Counterparts

### A. Administrative

- |                                   |                         |
|-----------------------------------|-------------------------|
| 1. Valid Permit                   | 773.11                  |
| 2. Mining within Bonded Area      | 773.11                  |
| 3. Terms & Conditions of Permit   | 773.17                  |
| 4. Liability Insurance            | 800.60                  |
| 5. Ownership and Control          | 778.13                  |
| 6. Temporary Cessation            | 842.11(e) & 816/817.131 |
| 7. AML Rec. Fees - Non-Respondent | 870.15(b)               |
| 8. AML Rec. Fees - Failure to Pay | 870.15(a)               |

### B. Hydrologic Balance (816/817.41-57)

- |                                     |           |
|-------------------------------------|-----------|
| 1. Drainage Control                 | 45        |
| 2. Inspections & Certifications     | 49(a)(10) |
| 3. Siltation Structures             | 46        |
| 4. Discharge Structures             | 47        |
| 5. Diversions                       | 43        |
| 6. Effluent Limits                  | 42        |
| 7. Ground Water Monitoring          | 41(c)     |
| 8. Surface Water Monitoring         | 41(e)     |
| 9. Drainage--Acid - Toxic Materials | 41(f)     |
| 10. Impoundments                    | 49        |
| 11. Stream Buffer Zones             | 57        |

### C. Topsoil & Subsoil (816/817.22)

- |                           |       |
|---------------------------|-------|
| 1. Removal                | 22(a) |
| 2. Substitute Materials   | 22(c) |
| 3. Storage and Protection | 22(c) |
| 4. Redistribution         | 22(d) |

### D. Backfilling & Grading (816/817.95-107)

- |                                       |                                   |
|---------------------------------------|-----------------------------------|
| 1. Exposed Openings                   | 816/817.13, 14, 15, & 823.11 & 21 |
| 2. Contemporaneous Reclamation        | 100                               |
| 3. Approximate Original Contour       | 102(a)(1)                         |
| 4. Highwall Elimination               | 102(a)(2)                         |
| 5. Steep Slopes (includes downslope)  | 107                               |
| 6. Handling of Acid & Toxic Materials | 102(c)                            |
| 7. Stabilization (rills and gullies)  | 95(b)                             |

### E. Excess Spoil Disposal (816/817.71-74)

- |                                 |       |
|---------------------------------|-------|
| 1. Placement                    | 71(e) |
| 2. Drainage Control             | 71(f) |
| 3. Surface Stabilization        | 71(g) |
| 4. Inspections & Certifications | 71(h) |

### F. Coal Mine Waste (Refuse Piles/Impoundments) (816/817.81-84)

- |                                   |       |
|-----------------------------------|-------|
| 1. Drainage Control               | 83(a) |
| 2. Surface Stabilization          | 83(b) |
| 3. Placement                      | 83(c) |
| 4. Inspections and Certifications | 83(d) |
| 5. Impounding Structures          | 84    |

### G. Use of Explosives (816/817.61-68)

- |                               |         |
|-------------------------------|---------|
| 1. Blaster Certification      | 61(c)   |
| 2. Distance Prohibitions      | 61(d)   |
| 3. Blast Survey/Schedule      | 62-64   |
| 4. Warnings & Records         | 66 & 68 |
| 5. Control of Adverse Effects | 67      |

### H. Subsidence Control Plan (817.121-122)

### I. Roads (816/817.150-151)

- |                              |               |
|------------------------------|---------------|
| 1. Road Construction         | 150(c)        |
| 2. Certification             | 151(a)        |
| 3. Drainage                  | 150(b)-151(d) |
| 4. Surfacing and Maintenance | 150(e)-151(d) |
| 5. Reclamation               | 150(f)        |

### J. Signs & Markers (816/817.11)

- |            |                       |
|------------|-----------------------|
| 1. Signs   | 11(a),(b),(c)         |
| 2. Markers | 11(a),(b),(d),(e),(f) |

### K. Distance Prohibitions (761.11)

### L. Revegetation (816/817.111-116)

- |                     |           |
|---------------------|-----------|
| 1. Vegetative Cover | 111 & 116 |
| 2. Timing           | 113       |

### M. Postmining Land Use (816/817.133)

#### OSM Action

- |                             |  |
|-----------------------------|--|
| 1) Deferred to State Action | 6) ID-CO Issued (Imminent Danger to Public)  |
| 2) TDN Issued               | 7) Previously cited by RA, abatement pending |
| 3) NOV Issued               | 8) Abated during or before OSM inspection    |
| 4) FTA-CO Issued            | 9) Follow-up of Federal Action               |
| 5) IH-CO Issued             | 0) Off-site impact with no violation         |

#### Off-Site Impacts

For each type of impact and resource affected, enter "N, D, or J" to describe the degree of off-site impact:  
N - Minor Occurrence  
D - Moderate Occurrence  
J - Major Occurrence

## **Mine Site Inspection**

**Mine Name:** Elk Creek Mine

**Permittee:** Oxbow Mining, LLC

**Permit ID#:** # C-1981-022

**Inspection Date:** July 7 - 9, 2020

**Time:** 8:00 – 5:30; 8:00 – 4:00; 8:00 – 1:20

**Inspection Type:** SL-2 Phase I & II Bond Release Inspection

**Weather Conditions:** Hot (80's - 90's), clear skies, dry

**Participants:**

Christine Belka: Office of Surface Mining Reclamation and Enforcement (OSMRE) #182

Desty Dyer: Bureau of Land Management

Dan Gray: United States Forest Service

Mike Ludlow: Oxbow Mining, LLC

Jason Musick: Division of Reclamation Mining and Safety (DRMS)

Leigh Simmons: DRMS

Doug Smith: Oxbow Mining, LLC

### **Background / General Information**

Elk Creek is an active, non-producing, underground coal mine in Delta and Gunnison Counties. Mining is complete at this site as are most reclamation activities. Buildings, parking spaces, and roads within the main office facilities area remain intact. Oxbow Mining, LLC (“Oxbow”) has requested a change in post mining land use to retain these facilities for industrial use. Oxbow owns the surface and is already leasing space here and in additional locations within the permit area to outside parties.

This was a partial Phase I, II & III bond release inspection focused primarily on Phase I and II at reclaimed gob vent borehole (GVB) pads and associated roads. This is the second bond release application at the Elk Creek Mine, referred to as SL-2. Although Phase I – III release was requested for the general facilities area in this application, a request to change the post-mining land use (PMLU) for that area from undeveloped land to industrial is currently pending. The SL-2 application assumes this change is approved. DRMS recommended to Oxbow that the main facilities area be carved out from SL-2 and resubmitted under a separate bond release application after the Division has reviewed and approved the PMLU change. If included in SL-2, the facilities area would not meet currently approved reclamation standards which require structure removal, grading, topsoil, and revegetation. Excluding the main facilities area from this bond release action would allow SL-2 to progress, including Phase I & II release for reclaimed areas and Phase I, II, & III for the already-approved Industrial PMLU area in Bear Canyon. This is the Vessels methane flaring site which is currently functioning in an approved Industrial PMLU. The main facilities area was not evaluated for compliance with any bond release standards during this inspection.

### **Rule: 4.03: Roads**

All un-reclaimed roads travelled were in good repair. No surfacing or drainage problems were noted. Retained roads are approved to remain un-reclaimed at the landowners’ request.

Reclaimed roads are discussed below.

**Rules: 4.05.5 and 4.05.6: Sediment Control Measures and Sedimentation Ponds**

Sedimentation ponds at Hubbard Creek (Pond F) and II West Coal Refuse Facility (Pond E) areas remain intact. We discussed how ponds are handled from a bond release perspective due to the regulatory requirement that they be retained until after the disturbed area is reclaimed and the operator has demonstrated compliance with Rule 4.05.2(2) [See Rule 4.05.6(7)]. Reclamation earthwork and revegetation efforts within the watershed must therefore be complete and the area must not be contributing suspended solids above natural conditions prior to the Division authorizing removal of ponds. This cannot occur sooner than two years after the last augmented seeding. Ponds are not required to carry their own 10-year revegetation responsibility period and should undergo the bond release process with the larger parcels which they supported.

**Rules 4.13, 4.14, 4.15: Contemporaneous Reclamation, Backfilling and Grading, Revegetation**

Reclamation work considered in the SL-2 application was completed during the 1996 – 2017 timeframe, contemporaneously with retirement of specific facilities and overall cessation of mining. Although many areas have fulfilled the 10-year revegetation responsibility period, final vegetation sampling has not yet occurred. Final vegetation sampling could be conducted this year, meaning Oxbow could (but is not obligated to) submit a Phase III bond release application this fall. For the purpose of this inspection, we split into two groups. One covered Bureau of Land Management surface and the other United States Forest Service and privately-owned surface.

Collectively, the group visited all areas proposed for release as identified on permit Drawing 2.05-M1. DRMS representatives used the Collector app to note sites visited along with any required maintenance. Because I only participated in one group, I did not personally visit all sites proposed for bond release. For this reason, I will not attempt to provide a list of all pads requiring weed control or other maintenance. Please see DRMS inspection report and forthcoming bond release findings and decision document for a complete listing of weed control and maintenance items. General notes and comments on sites I personally inspected are as follows:

The Hubbard Creek Fan pad drop outlet has a plastic liner which is approved to remain, per page 2.05-65 of the PAP, and Map 2.05-M6 (sheet 6 of 7). Pad area is well vegetated.

The principal and emergency spillways in Ponds F and E should be removed, and the embankments breached to preclude water retention.

All observed areas were reclaimed according to plan. Roads are reclaimed or retained consistently with approved maps indicating landowner requests. Reclaimed roads were frequently littered with rocks or felled trees to discourage public vehicle (car, truck, or ATV) access and to help stabilize the ground surface. Reclaimed gob vent borehole (GVB) pads are stable and well-vegetated. Generally, more recently reclaimed pads were dominated by grass species while older reclamation exhibited greater diversity of grasses, forbs, and woody perennial species. This is typical of reclamation revegetation patterns. Prominently noted

vegetation species include: Big sage (*Artemisia tridentata*), Woods rose (*Rosa woodsii*), Rubber rabbitbrush (*Ericameria nauseosa*), Snowberry (*Symphoricarpos rotundifolius*), Gambel oak (*Quercus gambelii*), Antelope bitterbrush (*Purshia tridentata*), Western wheatgrass (*Agropyron smithii*), Great Basin wild rye (*Leymus cinereus*), Curlycup gumweed (*Grindelia squarrosa*), Yarrow (*Achillea millefolium*), Rocky mountain penstemon (*Penstemon strictus*), Blue flax (*Linum lewisii*), and Cicer milkvetch (*Astragalus cicer*). Multiple patches of various types of thistle were noted by both inspection groups. DRMS inspectors identified these areas via GPS in the Collector app and will transmit these notations to Oxbow for necessary weed control efforts. This should be conducted prior to Phase III bond release application but does not preclude Phase I or II release.

Although minor maintenance items were noted, observations made during this inspection do not conflict with Phase I and/or II bond release requirements at Rule 3.03.1(2)(a) and (b). The main facilities area, which is currently the subject of a pending revision to its PMLU and the standards which will be used to judge reclamation success, was excluded from consideration during this inspection. That area has not been reclaimed and does not meet currently approved reclamation standards. The permittee / landowner wishes to retain facilities area structures for industrial use.

**Maintenance Items Noted:**

- Weed control (primarily thistle) required at multiple reclaimed GVB pad and road locations.
- The principal and emergency spillways in Ponds F and E should be removed, and the embankments breached to preclude water retention after DRMS approval under Rules 4.05.6(7) and 4.05.2(2).

**Programmatic Compliance:**

No enforcement actions were initiated, and none were pending during this inspection.



### Inspection Photos:



Photo 1: Ditch liner on reclaimed Hubbard Creek Fan pad.



Photo 2: Typical thistle patch, weed control necessary in multiple locations.





Photo 3: Steep slope reclamation stable and well-vegetated.



Photo 4: Typical reclaimed GVB pad area, stable and well-vegetated.





Photo 5: Typical reclaimed road corridor, stable and well-vegetated.



Photo 6: Approved Industrial post-mining land use, Vessels methane flaring site.