

STATE OF
COLORADO

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

West Elk Mine and Abatement of Cessation Order 2020-001 -- MLRB Request

1 message

Drysdale.Michael@dorsey.com <Drysdale.Michael@dorsey.com>

Thu, Sep 3, 2020 at 3:51 PM

To: ginny.brannon@state.co.us

Cc: jim.stark@state.co.us, jason.musick@state.co.us, leigh.simmons@state.co.us, Jeff.Fugate@coag.gov

Ms. Brannon, please see the attached correspondence. Thank you.

Michael R. Drysdale

Of Counsel

.....
WWW.DORSEY.COM :: [MINNEAPOLIS](#) :: [BIO](#) :: [V-CARD](#)
.....**DORSEY & WHITNEY LLP**[Suite 1500, 50 South Sixth Street](#)

Minneapolis, MN 55402-1498

P: 612.340.5652 F: 612.340.8800 C: 612.839.0093
.....**CONFIDENTIAL COMMUNICATION**

E-mails from this firm normally contain confidential and privileged material, and are for the sole use of the intended recipient. Use or distribution by an unintended recipient is prohibited, and may be a violation of law. If you believe that you received this e-mail in error, please do not read this e-mail or any attached items. Please delete the e-mail and all attachments, including any copies thereof, and inform the sender that you have deleted the e-mail, all attachments and any copies thereof. Thank you.

5 attachments**Brannon Ginny ltr 9-3-20.pdf**

51K

**Brannon Ginny ltr 8-25-20 final.pdf**

50K

**20.08.25 MCC Response Final.pdf**

264K

**COC1362 USFS Letter.pdf**

179K

**Siple Ltr Re West Elk Mine-CDRMS CO 2020-001.pdf**

53K

MICHAEL DRYSDALE
Of Counsel
(612) 340-5652
FAX (612) 340-8800
drysdale.michael@dorsey.com

September 3, 2020

VIA ELECTRONIC MAIL

Ms. Ginny Brannon
Director
Colorado Division of Reclamation, Mining and Safety
1313 Sherman St., Rm. 215
Denver, CO 80203

Re: Cessation Order No.: CO-2020-001 – Request to be Placed on MLRB Agenda
for September 23-24, 2020 Meeting

Dear Ms. Brannon:

On August 25, 2020, I wrote on behalf of Mountain Coal Company, LLC (“Mountain Coal”) to request that the Colorado Division of Reclamation, Mining and Safety (“CDRMS”) administratively modify Cessation Order CO-2020-001, issued to Mountain Coal and its West Elk Mine on June 17, 2020 (“Modification Request”). (Copy attached). As detailed in my August 25, 2020 letter, the Modification Request arose out of testimony given by CDRMS at the July 23, 2020 meeting of the Mined Lands Reclamation Board (“MLRB”) as to what information would be needed to modify the Cessation Order. Mountain Coal believes that it has satisfied all the requirements to obtain the requested relief.

As reported by the Colorado Attorney General’s office, I understand that the Modification Request is still under consideration at CDRMS and the Department of Natural Resources. At the July 23, 2020 hearing, CDRMS testified that it has the authority to administratively modify the Cessation Order without advance review and approval by the MLRB. At the same time, this authority does not deprive the recipient of an order of the right to seek relief from the MLRB if CDRMS has not acted on a request. As you know, the deadline for matters to be placed on the MLRB’s agenda for its September 23-24 2020 meeting is September 4, 2020. Because CDRMS has not yet made a determination on the Modification Request as of this writing, Mountain Coal requests that the matter be placed on the MLRB agenda, so as to preserve Mountain Coal’s opportunity to be heard and obtain MLRB relief (to the extent necessary) at the September 23-24 meeting. Action on the Modification Request at or before this meeting is critical because of the shortness of the remaining construction season.

In the event that CDRMS modifies the Cessation Order as set forth in the Modification Request, or provides other satisfactory relief, Mountain Coal will withdraw the matter from the MLRB agenda. Given the timing and scope of the Modification Request, it would appear that CDRMS’ decision can be made well in advance of the MLRB meeting date.



Ms. Ginny Brannon
September 3, 2020
Page 2

Thank you for consideration, and please contact me with any questions.

Very truly yours,

DORSEY & WHITNEY LLP

Michael Drysdale

Michael Drysdale
Of Counsel

Attorneys for Mountain Coal Company, LLC

MD:aj

Enclosures

Cc: Jim Stark, CDRMS
Jason Musick, CDRMS
Leigh Simmons, CDRMS
Jeff Fugate, Asst. Attorney General



MICHAEL DRYSDALE
Of Counsel
(612) 340-5652
FAX (612) 340-8800
drysdale.michael@dorsey.com

August 25, 2020

VIA ELECTRONIC MAIL

Ms. Ginny Brannon
Director
Colorado Division of Reclamation, Mining and Safety
1313 Sherman St., Rm. 215
Denver, CO 80203

Re: Cessation Order No.: CO-2020-001 – Abatement Information

Dear Ms. Brannon:

On behalf of Mountain Coal Company, LLC (“Mountain Coal”), I write to further address Cessation Order CO-2020-001, issued by the Colorado Division of Reclamation, Mining and Safety (“CDRMS”) to Mountain Coal and its West Elk Mine on June 17, 2020. Mountain Coal initially addressed Cessation Order CO-2020-001 in correspondence dated July 2, 2020, and at a hearing before the Mined Land Reclamation Board (“MLRB”) on July 23, 2020.

At the hearing, the MLRB affirmed the Cessation Order. However, testimony by CDRMS personnel at the hearing was extremely helpful in clarifying what specific information CDRMS needed to abate the Order, as well as CDRMS’ interpretation of its authority to evaluate lessees’ rights-of-entry on federal lands. See testimony in response to question from Board Member Utterback-Normann commencing at 2:57:58 of the hearing, available at <https://www.youtube.com/watch?v=0CTSlkPUk78> (last visited August 25, 2020). Moreover, CDRMS confirmed to the MLRB that upon receipt of sufficient abatement information, CDRMS can administratively withdraw or modify the Cessation Order.

With the clarification provided at the hearing and in subsequent discussions, Mountain Coal made a written request to the United States Bureau of Land Management (“BLM”) and the United States Forest Service (“USFS”) for a written statement addressing a subset of the surface use and access rights Mountain Coal believes it possesses under its valid federal coal leases. Mountain Coal focused its request on the immediate issue of its rights to resume use of the already-completed temporary road to service longwall panel LW-SS2, and to complete drill pad work and drilling of methane ventilation boreholes (“MVBs”) for LW-SS2. Mountain Coal deferred resolution of any federal lease rights it possesses for future longwall panels LW-SS3 and LW-SS4 (the road and pad locations for LW-SS3 and LW-SS4 were approved by CDRMS in Minor Revision 446, and affirmed at the July 23, 2020 MLRB hearing), so as to expedite BLM and USFS consideration, and to facilitate timely modification of the Cessation Order. Before transmittal, Mountain Coal reviewed the substance of the request with CDRMS personnel and the Attorney General’s office. The request is attached.



Ms. Ginny Brannon
August 25, 2020
Page 2

Earlier today, the BLM responded, enclosing correspondence from the USFS as well. The BLM and USFS correspondence are also attached. The letters are self-explanatory, and confirm that Mountain Coal has the federal lease rights (whether styled as right-of-entry or otherwise) to complete the planned work associated with LW-SS2. As anticipated, the USFS makes clear that new road construction in the Sunset CRA (i.e., roads to be constructed after the June 15, 2020 vacatur of the North Fork Exception; the temporary road servicing LW-SS2 was entirely constructed before June 15, 2020) is prohibited “unless other exceptions under the CRR apply.” USFS does not address whether other exceptions apply, because Mountain Coal did not request such an analysis at this time.

Importantly, the communications provide *exactly* the information stated in the Cessation Order and that CDRMS personnel testified under oath to the MLRB was needed to administratively modify the Cessation Order with respect to work related to LW-SS2. Under CDRMS’ *own* interpretation of its authority, there is no colorable basis to maintain the Cessation Order’s restrictions on surface use related to LW-SS2. Continuance of the restrictions would directly contradict CDRMS’ sworn testimony and the Cooperative Agreement with the Department of the Interior.

Mountain Coal therefore respectfully requests that CDRMS administratively modify Cessation Order CO-2020-001 to withdraw all restrictions imposed by the Order on the use of the temporary road servicing LW-SS2, completion of MVB drill pads associated with LW-SS2, and drilling of MVBs on the LW-SS2 drill pads. Mountain Coal requests that the modification occur as quickly as possible, so that this critically important and time-sensitive work can proceed.

DORSEY & WHITNEY LLP

Michael Drysdale

Michael Drysdale
Of Counsel

Attorneys for Mountain Coal Company, LLC

Enclosures

Cc: Jim Stark, CDRMS
Jason Musick, CDRMS
Leigh Simmons, CDRMS
Jeff Fugate, Asst. Attorney General
Douglas Siple, BLM
Edith Burkett, USFS



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7210



In Reply Refer To:
3432 (CO-921)
COC1362, COC67232

Michael Drysdale
Attorney for Mountain Coal Company, LLC
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

RE: Re: Federal Coal Lease COC-1362 and COC-67232

Dear Mr. Drysdale:

The Bureau of Land Management (BLM) has received your July 28, 2020 letter in which Mountain Coal Company, LLC (MCC) requested confirmation of certain rights to access and construct facilities on the surface of Leases COC-1362 and COC-67232 in light of the vacatur of the North Fork Exception to the Colorado Roadless Rule. *See High Country Conservation Advocates et al. v. United States Forest Service*, 1:17-cv-03025-PAB (D. Colo. June 15, 2020); *see also High Country Conservation Advocates et al., v. U.S. Forest Serv.*, 951 F.3d 1217 (10th Cir. 2020). The leases contain United States Forest Service (USFS) special stipulations, because the USFS manages the surface of the leases and administers the Colorado Roadless Rule. The BLM sent your letter to the USFS for input, and the USFS response to your letter is attached and incorporated herein.

MCC's letter requested confirmation of the following subset of rights to access and construct facilities on the surface of the leases related to mining longwall panel LW-SS2 (permitted by the Colorado Division of Reclamation Mining and Safety through Permit Revision 15 (PR-15) and Minor Revision 441 (MR-441)):

1. Mountain Coal may travel on, maintain, and otherwise use the temporary road and already completed drill pads for LW-SS2 as permitted by PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception;
2. Mountain Coal may construct the remaining drill pads approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception. This includes tree-cutting as needed for the drill pads, as provided in 36 C.F.R. § 294.42(c)(5), or other authority; and
3. Mountain Coal may drill the [Methane Vent Boreholes] approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception.

Section 2 of the modified coal leases, as authorized under the Mineral Leasing Act of 1920 (30 U.S.C. § 181 *et seq.*) granted the Lessee the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits in, upon, or under the lands in the Leases; and construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted.

The USFS consented to the lease modifications and included special stipulations in its Record of Decision, Federal Coal Lease Modifications COC-1362 & COC-67232, signed December 11, 2017. The BLM formally adopted the USFS Supplemental Final Environmental Impact Statement for Federal Coal Lease Modifications COC-1362 and COC-67232 and authorized the lease modifications in its December 15, 2017 Record of Decision. Per requirements set forth in the Mineral Leasing Act, BLM's lease modifications included the USFS Special Stipulations pertaining to surface uses (as explained in more detail in the attached USFS Letter). *See also* 30 U.S.C. § 201. On August 19, 2020, the BLM received a letter from the USFS confirming that the USFS Special Stipulations, lease notices, and the Colorado Roadless Rule do not prohibit MCC from travelling on and maintaining or using existing roads, nor do they prohibit construction and use of drill pads for LW-SS2 (authorized under PR-15 and MR-441), nor do they prohibit tree cutting or drilling of methane ventilation boreholes. *See Attached USFS Letter.*

Based on the above information, BLM confirms that MCC is not prohibited from conducting the activities described in 1 - 3 above.

Sincerely,

Doug Siple
Acting Branch Chief, Solid Minerals
Division of Energy, Lands and Minerals

1 Attachment:

1 - Federal Coal Lease COC-1362 and COC-67232.pdf (5 pp)



United States
Department of
Agriculture

Forest
Service

Rocky Mountain Region

1617 Cole Blvd
Lakewood, CO 80401
303-275-5350
Fax: 303-275-5366

File Code: 2820
Date: August 19, 2020

2020 AUG 20 P 3:05
CO STATE OFFICE
C-200110001
P-1-21-M

Doug Siple
Acting Branch Chief, Branch of Solid Minerals
BLM Colorado State Office
2850 Youngfield St.
Lakewood, CO 80215

Dear

Thank you for your letter of July 30, 2020, in which you requested USDA - Forest Service input regarding the effect of Forest Service special stipulations on federal coal leases COC-1362 and COC-67232. Your letter relays a request from the federal lessees, Mountain Coal Company (MCC) and ArkLand LLC, seeking confirmation of certain rights of access and to construct certain facilities on the surface of its leases. The surface lands are National Forest System lands that lie in whole or in part within the Sunset Colorado Roadless Area (CRA) of the Gunnison National Forest. MCC seeks confirmation of its rights in light of the vacatur of the North Fork Coal Mining Area Exception (North Fork Exception) to the Colorado Roadless Rule (CRR), by the U.S. District Court for the District of Colorado on June 15, 2020¹ pursuant to the mandate issue by the Court of Appeals, and the Cessation Order (CO) issued by the Colorado Division of Mining, Reclamation and Safety (CDRMS) on July 30, 2020, CO 2020-001. MCC holds the coal mining permit issued by the CDRMS.

MCC has requested confirmation of its rights to conduct certain surface activities related to mining longwall panel LW-SS2 under the lease. CDRMS permitted these activities in Permit Revision PR-15 (2018) and Minor Revision MR-441 (2019) to MCC's surface coal mining permit issued pursuant to the Colorado Surface Coal Mining Reclamation Act. MCC's surface operations involve lands in federal coal leases COC-1362 and COC-67232; specifically, these operations would be on lands added to the parent leases through lease modifications made in December 2017. Surface operations approved in PR-15 and MR-441 involve lands within non-upper tier acreage of the Sunset CRA. MCC has been required to provide CDRMS with "detailed information regarding its assertion that it maintains the legal right of entry to the Sunset Roadless area and why it is not in direct conflict with the District Court Order vacating the North Fork Exception to the [CRR]." In addition to providing lease stipulations as a condition of consenting to coal leasing on National Forest System lands under the Mineral Leasing Act (MLA), the Forest Service administers the CRR.

¹ *High Country Conservation Advocates v. United States Forest Service*, 1:17-cv-03025-PAB (D. Colo. June 15, 2020) (entering mandate from the Tenth Circuit Court of Appeals).



Lease No. COC-1362

Lease COC-1362 was issued on September 1, 1967. The lease was readjusted in the 1980s with the following Notice for Lands of the National Forest System Under the Jurisdiction of the Department of Agriculture:

The permittee/lessee must comply with all rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and Management of the National Forest System when not inconsistent with the rights granted by the Secretary of the Interior in the permit.^[2] The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy for the National Forest System prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the National Forest System not authorized by an exploration plan approved by the Secretary of the Interior.

The Bureau of Land Management (BLM) modified lease COC-1362 in October 2001 to add approximately 161 acres. The 2001 lease modification carried forward the original Lease Notice for National Forest System land from the COC-1362 parent lease and added another lease notice applicable to the lands added in the modification. That notice provided that the lease modification lands were subject to Final Roadless Area Conservation Rule published in Federal Register, January 12, 2001. The 2001 lease notice is incorrectly described in the table of stipulations provided by the Forest Service with its stipulations for the 2017 lease modifications, described below. For this item, the BLM should refer to its original leasing documents when administering the leases for operations involving the original leased lands and lands added by the 2001 modification, and not the 2017 table provided by the Forest Service. Still, the operations referred to by MCC in its letter of July 28, 2020, do not involve the lands covered by the 2001 lease modification and Notice. Moreover, the 2001 Roadless Area Conservation Rule was repealed for national forests in Colorado upon promulgation of the CRR in 2012, and therefore the 2001 lease notice no longer has practical effect.

In December 2017, the BLM again modified the lease to add another 800 acres, including the area for longwall panel LW-SS2. Approximately 786 acres of that lease modification area is within non-upper tier acreage of the Sunset CRA. As conditions of the Forest Service's consent to the lease modification, the original National Forest System lease notice was carried forward from the parent lease, and new stipulations specific to the lease modification were added. Regarding roadless areas, the 2017 lease stipulation provides, in part:³

² This is boilerplate language that was used by the Forest Service for all authorizations and should have referred to the "lease" not "permit." The following sentence in the Notice is explicit as to the types of authorizations to which the rules and regulations of the Secretary of Agriculture apply.

³ Not pertinent here, the 2017 roadless area stipulation also addresses construction and use of linear construction zones.

2020 JUN 20 P 3:05
CO STATE OFFICE
COCOA HILL
DOI-FIM

On the following lands within the Sunset CRA, surface operations incident to underground coal mining are subject to regulations in 36 CFR 294, subpart D:

- All roads that may be constructed must be temporary
- All temporary road construction must be consistent with applicable land management plan direction
- Road construction may only occur if motorized access has been deemed infeasible by the responsible official; unless a temporary road is needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic events that, without intervention, would cause the loss of life or property
- Temporary road construction must be completed in a manner that reduces effects on surface resources and prevents unnecessary or unreasonable surface disturbance
- All temporary roads must be decommissioned, and affected landscapes restored when it is determined that the road is no longer needed for the established purpose
- All temporary roads must prohibit public motorized vehicles (including off-highway vehicles) except
 - I. Where specifically used for the purpose for which the road was established; or
 - II. Motor vehicle use that is specifically authorized under Federal law or regulation.

The referenced regulations generally prohibit road construction and reconstruction in the Sunset CRA, except as needed for coal lease operations, as allowed by the "North Fork Exception." This is the exception in the CRR that was vacated by the ruling of the Tenth Circuit. They are not applicable to lands within the area of the lease modification that are not within the Sunset CRA.

Lease No. COC-67232

The BLM originally issued lease COC-67232 in March 2007 with the same lease notice as was on COC-1362 for National Forest System lands. The lease was also issued with a special lease notice applicable to the West Elk Inventoried Roadless Area (IRA), which provided notice that certain described leases lands were within the IRA and "may be subject to restriction on road-building pursuant to rules and regulations of the Secretary of the Agriculture applicable at the time any roads may be proposed on the lease." As with lease COC-1362, in December 2017, lease COC-67232 was modified to add about 920 acres, including approximately 915 acres within non-upper tier acreage of the Sunset CRA. The 2017 modification added the same roadless rule stipulation as was added to COC-1362 in 2017.⁴ As with COC-1362, they are not applicable to lands within the area of the lease modification that are not within the Sunset CRA.

⁴ The 2007 lease notice for the West Elk IRA was carried forward in the 2017 lease modification to lease COC-67232. Still, the activities approved in PR-15 and MR-441 proposed by MCC in its letter of July 28, 2020 do not involve the lands on lease COC-67232 subject to the 2007 IRA lease notice.

The 2017 roadless area stipulations make clear surface use for operations incidental to federal coal leases COC-1362 and COC-67232 are subject to the CRR, 36 C.F.R. part 294, subpart D. Within designated roadless areas, the CRR primarily prohibits: 1) road construction and reconstruction; 2) tree cutting, sale, and removal; and 3) linear construction zones. 36 C.F.R. §§ 294.42 - 294.44. The prohibition on road construction and reconstruction, however, did not apply to temporary roads for coal-related surface activities within the area covered by the North Fork Exception at the time of the lease modification, when the North Fork exception was in effect. 36 C.F.R. § 294.43(c)(1)(ix).

In March 2020, the Tenth Circuit Court of Appeals ordered the U.S. District Court for Colorado to vacate the North Fork Exception. *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217 (10th Cir. 2020). The District Court entered the vacatur order on June 15, 2020. Due to the vacatur of the North Fork Exception, and under the terms of the 2017 lease modification all coal-related surface operations within the lease modification area are currently subject to the CRR's prohibitions on road construction and reconstruction contained in 36 C.F.R. § 294.43, unless other exceptions under the CRR apply.

As relayed in your letter, MCC first requests clarification as to whether it has a right to "travel on, maintain, and otherwise use the temporary road and already completed drill pads for LW-SS2 as permitted by PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception[.]" The Forest Service lease notices and stipulations applicable to these lands do not prohibit MCC from travelling on, maintaining, and using existing roads, nor from constructing or using drill pads for LW-SS2. This is because the CRR, as referenced in the lease stipulations, does not prohibit travel, maintenance, or use of existing roads, nor construction and use of drill pads for LW-SS2 as permitted by PR-15 and MR-441. Any reconstruction of existing roads and future construction of any unbuilt roads approved by PR-15 and MMR-441 are subject to the CCR prohibitions, unless other exceptions apply.

Second, MCC seeks confirmation as to whether it "may construct the remaining drill pads approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception. This includes tree cutting as needed for the drill pads, as provided in 36 C.F.R. § 294.42(c)(5), or other authority." The applicable lease notices and stipulations and the CRR do not prohibit the construction of well pads authorized under PR-15 and MMR-441. Access within the Sunset CRA to those sites, however, is limited to the existing temporary roads. Nor do the leases or the CRR prohibit incidental tree cutting associated with well pad construction, as a rule excepts tree cutting and removal incidental to not otherwise prohibited management activities from the general prohibition on tree cutting. 36 C.F.R. § 294.42(c)(5).

Third, MCC requests confirmation that it "may drill the methane ventilation boreholes approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception." Neither the applicable lease notices and stipulations nor the CRR prohibit the drilling of methane ventilation boreholes on the well pads approved under PR-15 and MMR-441. However, access within the Sunset CRA to well pads for the methane ventilation drilling purposes is limited to the existing temporary roads.

FOR FILE
CO STATE DISTRICT
CLERK
20 AUG 20 P 3:05

Thank you for consulting with the Forest Service on the special lease notices and stipulations for NFS land. If you have any questions, please contact E. Lynn Burkett at (303) 275-5135 or edith.burkett@usda.gov.

Sincerely,

JASON
ROBERTSON

Digitally signed by JASON
ROBERTSON
Date: 2020.08.19
12:23:41 -0600

JASON ROBERTSON
Deputy Director Recreation, Lands, Minerals, and Volunteers

cc: Arthur Klevin, E. Lynn Burkett, Liane Mattson, Sherri Thompson, Thomas L. Williams

2020 AUG 20 P 3:00
CO STATE DEPT
CO STATE DEPT
CO STATE DEPT

MICHAEL DRYSDALE
Of Counsel
(612) 340-5652
FAX (612) 340-8800
drysdale.michael@dorsey.com

July 28, 2020

VIA ELECTRONIC MAIL

Mr. Douglas Siple
Acting Branch Chief, Solid Minerals
Colorado State Office
United States Bureau of Land Management
2850 Youngfield St.
Lakewood, CO 80215

Re: Federal Coal Leases C-1362 and COC-67232

Dear Mr. Siple:

On behalf of Mountain Coal Company, LLC ("Mountain Coal") and Ark Land LLC ("Ark Land"), I write to request confirmation of certain surface access rights held by Mountain Coal and Ark Land under Federal Coal Leases C-1362 and COC-67232 ("Leases"), following the June 15, 2020 vacatur of the North Fork Coal Mining Area Exception ("North Fork Exception") to the Colorado Roadless Rule ("CRR"), 36 C.F.R. § 294.43(c)(1)(ix).

Specifically, the Leases are among several federal coal leases held by Mountain Coal and Ark Land located at the West Elk Mine, operated by Mountain Coal. A portion of the Leases is located in the "Sunset Roadless Area," and subject to the CRR. In March 2020, the Tenth Circuit Court of Appeals ordered the District Court for the District of Colorado to vacate the North Fork Exception in the decision *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217 (10th Cir. 2020) ("*High Country 2020*"). The District Court entered the vacatur order on June 15, 2020.

Prior to the vacatur order, Mountain Coal constructed a temporary road for the purpose of accessing the surface before coal mining begins underground in planned longwall panel LW-SS2, as permitted by Permit Revision PR-15 and Minor Revision MR-441 to Mountain Coal's SMCRA permit. A temporary road is required so that drill rigs can access this area to drill holes for Mine Ventilation Boreholes ("MVBs") needed to safely ventilate coal mine methane pursuant to Mountain Coal's MSHA-approved ventilation plan for the West Elk Mine. As of June 15, 2020, the temporary road to service LW-SS2 had been completed, as had the drill pad for one of five MVBs needed for LW-SS2 within the Leases. A second drill pad for LW-SS2 was commenced before the vacatur order and completed on June 16, 2020.

On June 17, 2020, the Colorado Division of Mining, Reclamation, and Safety ("CDRMS") conducted a site inspection and issued Cessation Order 2020-001 ("CO 2020-001") (attached). CO 2020-001 ordered Mountain Coal to halt all surface activities associated with LW-SS2, as

Mr. Douglas Siple
July 28, 2020
Page 2

well as all other surface activity in that portion of the Leases subject to the CRR, other than use of previously constructed facilities associated with an older temporary road constructed to service longwall panel LW-SS1. As abatement, CO 2020-001 ordered Mountain Coal to provide a statement that:

Notwithstanding BLM leases C-1362 and COC-67232, Mountain Coal must provide the Division with detailed information regarding its assertion that it maintains legal right of entry to the Sunset Roadless area and why it is not in direct conflict with the District Court order vacating the North Fork Exception to the Colorado Roadless Rule.

The Colorado Mined Land Reclamation Board affirmed CO 2020-001 after a hearing conducted on July 23, 2020.

Mountain Coal's overall post-vacatur rights under the Leases are among several issues presently subject to litigation in the federal District Court matter *High Country Conservation Advocates v. United States Forest Service*, 1:17-cv-03025-PAB. However, it is not known when the District Court will rule, or whether the District Court will reach the merits of Mountain Coal's rights.

For this reason, as well as the need to complete construction of the drill pads and MVBs needed for LW-SS2 and abate that portion of CO 2020-001 applicable to LW-SS2, Mountain Coal respectfully requests that the BLM (in consultation with the United States Forest Service, as needed), confirm in writing the following subset of Mountain Coal's rights to access and construct facilities on the surface of the Leases:

- (1). Mountain Coal may travel on, maintain, and otherwise use the temporary road and already completed drill pads for LW-SS2 as permitted by PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception;
- (2). Mountain Coal may construct the remaining drill pads approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception. This includes tree-cutting as needed for the drill pads, as provided in 36 C.F.R. § 294.42(c)(5), or other authority; and
- (3). Mountain Coal may drill the MVBs approved in PR-15 and MR-441, under the Leases following the vacatur of the North Fork Exception.

The foregoing does not exhaust the surface access rights Mountain Coal believes it possesses under the Leases and its SMCRA permit under the post-vacatur CRR, and Mountain Coal reserves all rights as to such surface access. However, at this time Mountain Coal is seeking only to abate CO 2020-001 as it relates to LW-SS2, pending any forthcoming order from the federal District Court.



Mr. Douglas Siple
July 28, 2020
Page 3

Thank you for your prompt attention to this request, and please let me know any questions.

Very truly yours,

DORSEY & WHITNEY LLP

Michael Drysdale

Michael Drysdale
Of Counsel

Attorneys for Mountain Coal Company, LLC

MD:aj

Enclosures

Cc: Ms. Sherri Thompson, USFS