

STATE OF
COLORADO

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West Elk Mine -- MLRB Meeting of 9/23/20 and Cessation Order CO-2020-001

1 message

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Fri, Sep 18, 2020 at 9:53 AM

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 regarding the upcoming MLRB meeting. Thank you.

Michael R. Drysdale

Of Counsel

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**Brannon Ginny ltr 9-18-20.pdf**

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September 18, 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 – Withdrawal of Request to be Placed on
MLRB Agenda for September 23-24, 2020 Meeting

Dear Ms. Brannon:

On September 3, 2020, I wrote on behalf of Mountain Coal Company, LLC (“Mountain Coal”) to request that Mountain Coal’s application to the Colorado Division of Reclamation, Mining and Safety (“CDRMS”) to administratively modify Cessation Order CO-2020-001, issued to Mountain Coal and its West Elk Mine on June 17, 2020 (“Modification Request”), be placed on the September 23-24, 2020 agenda for the Mined Lands Reclamation Board (“MLRB”). The request was placed on the September 23, 2020 MLRB agenda. I further noted that if CDRMS granted the request for administrative modification in advance of the meeting, Mountain Coal would withdraw the item from the MLRB agenda.

On September 17, 2020, CDRMS modified the Cessation Order. Mountain Coal has reviewed the modified Cessation Order and has one point of clarification as to which I have already spoken with Mr. Fugate. The last sentence of the bolded update language on page three of the Cessation Order states:

The letter from USFS further stated that construction of roads in the Sunset Roadless area for longwall panels SS3 and SS4 is not allowed because of the vacatur of the North Fork Exception.

This is an incomplete characterization of the USFS letter. The letter states that construction of new roads is not allowed, following vacatur of the North Fork Exception, “unless exceptions apply.” See USFS Letter at 4 (emphasis added). As Mountain Coal indicated in its request to the USFS and has stated to the Division, Mountain Coal believes another exception does apply, specifically 36 C.F.R. 294.43(c)(1)(i). However, Mountain Coal did not request a statement from the USFS on the applicability of that exception at the present, so as to streamline the timing and efficiency of the USFS and BLM’s responses to Mountain Coal’s request. Mountain Coal intends to revisit that issue at a later date after further administrative and litigation proceedings. I note that the modified Cessation Order appears to contemplate potential further abatement



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proceedings related to roads for longwall panels SS3 and SS4. Consequently, subject to Mountain Coal's reservation of rights to present such information, Mountain Coal does not believe that the modified Cessation Order need immediately be corrected.

For these reasons, Mountain Coal hereby withdraws the request to be on the September 23, 2020 MLRB agenda. As noted, there remain components to the Cessation Order that Mountain Coal will revisit for abatement at a later date after further administrative and litigation developments, but they do not need to be addressed at the September 23, 2020 MLRB meeting. Mountain Coal and its 300+ employees thank the Division for its efforts in considering the request and modifying the Cessation Order.

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