



STATE OF  
COLORADO

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

---

## Fwd: Amended CO C-2020-001

1 message

**Stark - DNR, Jim** <jim.stark@state.co.us>

Thu, Sep 17, 2020 at 3:01 PM

To: Ginny Brannon - DNR <ginny.brannon@state.co.us>, Jeff Fugate <Jeff.Fugate@coag.gov>, Jason Musick <jason.musick@state.co.us>, Leigh Simmons <leigh.simmons@state.co.us>

This just went out. Please let me know if you have any questions.

James R Stark  
Coal Program Director



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

P 303.866.3567 | C 720.724.0486 | F 303.832.8106  
1313 Sherman Street St., Suite 215, Denver, CO 80203  
[jim.stark@state.co.us](mailto:jim.stark@state.co.us) | <http://mining.state.co.us>

----- Forwarded message -----

From: **Stark - DNR, Jim** <[jim.stark@state.co.us](mailto:jim.stark@state.co.us)>  
Date: Thu, Sep 17, 2020 at 3:00 PM  
Subject: Amended CO C-2020-001  
To: Norris, Weston <[WNorris@archcoal.com](mailto:WNorris@archcoal.com)>

Please find attached the amended Cessation Order CO-2020-001. Please let me know if you have any questions.  
Thanks.

James R Stark  
Coal Program Director



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

P 303.866.3567 | C 720.724.0486 | F 303.832.8106  
1313 Sherman Street St., Suite 215, Denver, CO 80203  
[jim.stark@state.co.us](mailto:jim.stark@state.co.us) | <http://mining.state.co.us>



**CO-2020-001 Amendment - 9-1-2020 FINAL.docx.pdf**  
171K



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

1313 Sherman St. Room 215 Denver, CO 80203  
P (303) 866-3567 F (303) 832-8106  
<https://colorado.gov/drms>

**CESSATION ORDER**  
**MODIFIED EFFECTIVE SEPTEMBER 17, 2020**

Cessation Order No.	<b>CO-2020-001</b>	Mine:	<b>West Elk Mine</b>
Permit No.:	<b>C-1980-007</b>	County:	<b>Delta, Gunnison</b>
Type of Mine:	<b>Underground</b>	Permittee:	<b>Mountain Coal Company, LLC</b>
Operator (If Other than Permittee):	<b>Mountain Coal Company, LLC</b>	Mail Address:	<b>5174 Highway 133 Somerset, CO 81434</b>
Mail Address:	<b>5174 Highway 133 Somerset, CO 81434 Somerset, CO 81434</b>	Date/Time of Inspection:	<b>June 10, 2020</b>
Inspector:	<b>James Stark</b>	Served by:	<b>James Stark</b>
Person Served:	<b>Weston Norris</b>		

*(Signature of Authorized Representative of the  
Division of Reclamation, Mining and Safety)*

*(Signature of Person Served)*

*(Please Print Name and Title)*

**CERTIFIED MAIL NO.**

**Date and Time of Service:**

The Division of Reclamation, Mining and Safety has conducted an inspection of the above mine, has made the findings stated in the attached schedule and hereby finds, for good cause shown, that a Cessation Order must be issued with respect to each of the conditions, practices, or violations listed in the attached schedule. This Order constitutes a separate Cessation Order for each condition, practice, or violation listed.

In accordance with Section 34-33-123 of the Colorado Surface Coal Mining Reclamation Act, you are ordered to CEASE IMMEDIATELY the operations described in the attached schedule and to perform the affirmative obligations (if applicable) described in the attached schedule within the designated time for abatement. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe manner in compliance with applicable laws and regulations.

The undersigned finds that cessation of mining is \_\_\_\_ is not \_\_\_\_ expressly, or in practical effect, required by this Notice. For this purpose, "mining" means extracting coal from the earth or from a waste pile and transporting it within or from the mine site.

This Order shall remain in effect until the condition, practice, or violation has been abated, or until it is modified, terminated or vacated in writing by an authorized representative of the Division, or by the Mined Land Reclamation Board.

1. **Expiration Date of Notice - Informal Hearing at Site.** If this Order requires cessation of mining, expressly or in practical effect (but not otherwise), it will expire automatically 30 days after service upon you, unless, within that time, (a) an informal hearing on the cessation has been held at or near the site, or (b) the operator has waived the holding of such a hearing. The informal hearing will be presided over by representatives of the Division other than the representative who issued the Order. Temporary relief from the Order may be requested at such hearing. Your right to a formal review is not affected by any waiver on your part of an informal hearing.
2. **Formal Review and Temporary Relief.** The Operator has the legal right to a review of this Order or Violation in a formal public hearing before the Colorado Mined Land Reclamation Board. You may apply for review by submitting a Request for Review within 90 days of the issuance of this Order. The Request for Review must be submitted to:

Mined Land Reclamation Board  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

If you request a formal hearing, you may request temporary relief from this Order, pending hearing, but the filing of a request for review does not operate as a stay of any Order or Notice. Procedures in this regard are found in C.R.S. 1973, 34-33-124.

3. **Mandatory Minimum Penalties.** C.R.S. 1973, 34-33-123(8)(1) requires that a mandatory minimum penalty of \$750.00 or more must be assessed for each day during which the violation(s) continues beyond the abatement period set forth in this Order or in any Notice of Violation.

If you willfully and knowingly fail or refuse to comply with this Order, you will be subject to criminal prosecution and will, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than one year, or both.

4. **Effect on Permit.** In addition, if it is determined that a pattern of violations exists, and that the violations were caused by unwarranted failure to comply, or were willful, your permit may be suspended or revoked.

C.R.S. 1973, 34-33-123(8) provides for imposition of civil penalties of up to \$5,000.00 for each violation listed in the schedule and provides that each day of continuing violation may be deemed a separate violation.

Cessation Order No.: **CO-2020-001**

Nature of Condition, Practice, or Violation:

On April 24, 2020 the United States Court of Appeals for the Tenth Circuit issued a mandate ordering the United States District Court for the District of Colorado to vacate the North Fork Exception to the Colorado Roadless Rule. On June 15, 2020 the United States District Court for the District of Colorado entered an order vacating the North Fork Exception to the Colorado Roadless Rule, 81 Fed. Reg. 91,811 (Dec. 19, 2016). Notwithstanding BLM coal leases C-1362 and COC-67232, after reviewing the relevant facts and Orders from the 10th Circuit and the United State District Court, the Division has determined that Mountain Coal has failed to maintain its legal right to enter the Sunset Roadless area at the West Elk Mine. Mountain Coal must immediately cease all surface disturbing activities in longwall panels LWSS-1, LWSS-2, LWSS-3, and LWSS-4 at the West Elk Mine. If Mountain Coal is currently conducting any surface disturbing activities, it must immediately stop and stabilize the area(s) to prevent any off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act. The Division further determines that a condition of significant imminent environmental harm exists.

**On August 25, 2020 Mountain Coal Company provided the requested abatement documentation from the US Forest Service and the Bureau of Land Management. The letters from USFS and BLM, the Federal land management agencies, provided clarity regarding their interpretation of the Colorado Roadless Rule and associated rights under the Federal leases related to work associated with panel SS2. Specifically, the letters clarified Mountain Coal's right of entry to access and use the existing road in longwall panel SS2, which was constructed prior to the Federal District Court's vacatur of the North Fork Exception; right of entry to access the two drill pads constructed prior to the vacatur of the North Fork Exception; right of entry to construct two additional drill pads in the Sunset Roadless area for longwall panel SS2; and right of entry to drill mine ventilation boreholes on the drill pads constructed for longwall panel SS2. The letter from USFS provided its determination that the activities outlined herein are consistent with exceptions to the Colorado Roadless Rule, 36 C.F.R. § 294.42(c)(5). 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.**

ACT, REGULATION, OR PERMIT PROVISION(S) VIOLATED:

ACT SECTION(S): **C.R.S. 34-33-110(2)(j)**

REGULATIONSECTION(S): **Rules 2.03.6**

PERMIT SECTION(S): **Permit Section 2.03 and Exhibit 4**

Portion of the Operation to which Order applies:

This order applies to all surface disturbing activities in the Sunset Roadless area, including longwall panels LWSS-1, LWSS-2, LWSS-3, and LWSS-4, except as expressly permitted herein. Mountain Coal may access and continue current operations in longwall panel LWSS-1 and may conduct maintenance and surface stabilization activities in longwall panel LWSS-1 to prevent any off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act. Mountain Coal may conduct ground stabilization activities in longwall panels LWSS-2, LWSS-3, and LWSS-4.

**Cessation Order CO-2020-001 is modified on September 17, 202 as follows: Mountain Coal Company (MCC) is permitted access and use of the existing, temporary road constructed in the Sunset Roadless area for longwall panel SS2 prior to the vacatur of the North Fork Exception, and authorized under PR-15. MCC is permitted to access the two drill pads that were constructed in the Sunset Roadless area for longwall panel SS2 prior to the vacatur of the North Fork Exception. MCC is permitted to construct two additional drill pads in the Sunset Roadless area for longwall panel SS2. MCC is permitted to drill mine ventilation boreholes on the drill pads constructed in the Sunset Roadless area for longwall panel SS2.**

**MCC is not permitted to construct any additional roads in the Sunset Roadless area for longwall panel SS2. MCC is not permitted to conduct any ground disturbing activities in the Sunset Roadless area for longwall panels 3 or 4, or any area not discussed above.**

Findings - (Check the appropriate blank):

_____	The condition, practice, or violation is creating an imminent danger to the health or safety of the public.
<u>  X  </u>	The condition, practice or violation is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources.
_____	The Permittee or Operator has failed to abate violation(s) No. _____ included in Notice of Violation No. _____ within the time for abatement originally fixed or subsequently extended.

Operation(s) to be Ceased Immediately (**Amended on 9/17/2020**):

1. All surface disturbing activities in the Sunset Roadless area must cease immediately, except as expressly permitted herein.
2. **Mountain Coal may not conduct any ground disturbing activities in the Sunset Roadless area for longwall panels SS3 and SS4.**

STEPS NECESSARY TO ABATE VIOLATION (REMEDIAL ACTION):

Abatement Step #	Description
1	Abated on 9/14/2020.
2	<b>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. This abatement step is specific to longwall panels SS3 and SS4 in the Sunset Roadless area.</b>

TIME FOR ABATEMENT (NOT MORE THAN 90 DAYS):

ON OR BEFORE last abatement due date

Abatement Step #	Due Date
1	September 17, 2020
2	December 11, 2020

Affirmative Obligation(s) to Abate Imminent Danger or Harm, if Applicable\*:

Mountain Coal must immediately cease all surface disturbing activities in the Sunset Roadless area at the West Elk Mine. Mountain Coal may conduct surface stabilization activities as necessary to prevent off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act. **Cessation Order CO-2020-001 is modified on September 17, 2020. This modification allows for access for limited activities in the Sunset Roadless area for panel SS2 as described above and more fully described in abatement documentation letters provided to DRMS on August 25, 2020. No additional surface disturbing activities in the Sunset Roadless area, including for panels SS3 and SS4, are allowed and are still subject to this CO.**

\* If imminent danger to public health and safety or imminent environmental harm is found to exist.