



STATE OF  
COLORADO

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

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## MR-446, C-1980-007 Mountain Coal Co., LLC

1 message

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**Mojar - DNR, Camille** <camille.mojar@state.co.us>

Mon, Oct 12, 2020 at 12:49 PM

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

Cc: Jim Stark - DNR <jim.stark@state.co.us>, Jason Musick - DNR <jason.musick@state.co.us>, Jeff Fugate <jeff.fugate@coag.gov>, Scott Schultz <Scott.Schultz@coag.gov>, Charles Kooyman <Charles.Kooyman@coag.gov>, Michael Drysdale <Drysdale.Michael@dorsey.com>, Daniel Timmons <dtimmons@wildearthguardians.org>, "DRMSMinAdmin - DNR, DNR\_" <dnr\_drmsminadmin@state.co.us>

Hi Leigh,

Attached is the board order that's going out today, October 12th, via certified mail.

Please let me know if you have any questions or concerns.

Thanks,  
Camie

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**Camille Mojar**  
**Executive Assistant/MLRB Administrator**  
**Division of Reclamation, Mining and Safety**  
**Department of Natl Resources**

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**P 303.866.3567 x 8136 | F 303.832.8106**

**1313 Sherman Street, Suite 215**

**Denver, CO 80203**

**<https://www.colorado.gov/drms>**

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**MR-446, C-1980-007 Mountain Coal Co., LLC.pdf**

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

October 12, 2020

Mountain Coal Company, LLC  
5174 Highway 133  
Somerset, CO 81434

Re: Findings of Fact, Conclusions of Law, and Order, Mountain Coal Company, LLC  
File No. MR-446, C-1980-007

On October 8, 2020 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,

  
Camille Mojar  
Board Administrator

Enclosure(s)

Certified Mail  
7018 2290 0001 8923 1250

cc:  
Leigh Simmons  
Jason Musick  
Jim Stark  
Jeff Fugate  
Scott Schultz  
Charles Kooyman  
Michael Drysdale, Esq.  
Dan Timmons, Esq.



BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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**IN THE MATTER OF THE APPLICATION OF MOUNTAIN COAL COMPANY,  
LLC FOR A MINOR PERMIT REVISION, File No. C-1980-007**

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on July 23, 2020 via video conference for a hearing to consider the application for a minor revision to permit number C-1980-007 filed by Mountain Coal Company, LLC ("Applicant"). First Assistant Attorney General Jeff Fugate, James Stark, Jason Musick, and Leigh Simmons appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Michael Drysdale, Esq. appeared on behalf of Applicant. Dan Timmons, Esq. appeared on behalf of Wild Earth Guardians, High Country Conservation Advocates, Sierra Club, the Center for Biological Diversity, and Wilderness Workshop (collectively "Objectors").

The Board, having considered the presentations, testimony, and evidence of the Division<sup>1</sup>, Applicant, and Objectors, and being otherwise fully informed of the facts in the matter, enters the following:

**FINDINGS OF FACT**

1. Applicant holds reclamation permit number C-1980-007 for an underground coal mine located in Section 16, Township 13 South, Range 90 West, 6th Principal Meridian, Gunnison County, Colorado. The site is known as the West Elk Mine.

2. On June 13, 2020, Applicant submitted an application for Minor Revision No. MR-446 (the "Application"). The Application proposed reducing the total number of methane ventilation borehole pads by seven, move another fourteen pads, and eliminate approximately 17,000 feet of road that were included in the previously approved Permit Revision 15.

3. The Division reviewed the Application and approved it on June 15, 2020.

4. On June 25, 2020, Objectors submitted objections to the Application and a timely request for an adjudicatory hearing on the Application pursuant to

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<sup>1</sup> The Division was advisory staff to the Board, not a party, in this proceeding.

Rule 2.08.4(6)(c)(iii) of the Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining (the "Rules"). The objections to the Application raised issues with the completeness of the Application, Applicant's lack of legal right of entry, newly-approved roads are not necessary, and that the proposed roads violate Applicant's lease because they cross floodplains and riparian areas.

5. At the Board hearing on July 23, 2020, the Division presented testimony regarding its review of the Application and the issues raised by Objectors. Regarding completeness, the Division explained that its determination on completeness was a finding that the Application contained the required information to be complete and did not reflect a decision to approve an application.

6. Regarding Objector's argument that Applicant lacked a legal right of entry, the Division presented testimony that this concern was moot. The Division issued its decision on the Application the same day as an order of the federal court for the District of Colorado invalidated an exception to the federal "roadless" rule for coal mining and three days before the Division issued a cessation order requiring Applicant to cease activities on federal land within the Roadless area. The Division explained that approval of the Application was effectively paused while its cessation order was in effect. The cessation order prevents all work on the federal lands at issue, including the changes made under the Application. If the right to entry issues are resolved and the cessation order is lifted or modified, the Application would apply to any future work done by Applicant. MR-446, however, does not supersede the cessation order.

7. Regarding Objector's argument that the Application's "new" roads are not necessary, the Division presented testimony the approved application does not create any new roads, rather it reduces roads. The roads Objectors take issue with were approved in 2018 through Permit Revision 15. There have been five minor revisions since Permit Revision 15 was issued on October 6, 2018, and none of those increased disturbances. The Application shows a significant decrease in disturbances, and the changes were made in coordination with the U.S. Forest Service.

8. The Division also presented testimony that Objectors' claims that roads in the Application being routed through floodplains or riparian areas violated Applicant's lease with the U.S. Forest Service were not jurisdictional. The Division does not have jurisdiction over federal land leases and cannot find violations of those leases. The Division also presented testimony that the changes to roads in the Application had been made by Applicant with U.S. Forest Service staff, who would be responsible for determining and regulating violations of the lease.

9. At the hearing, Objectors stated that the Application should not have been approved because the federal vacatur of the North Fork Exception to the "roadless" rule meant Applicant had no legal right of entry and that this also meant the Division's completeness determination was premature.

10. Objectors also argued that Applicant had made no showing that the roads were necessary. According to Objectors, the fact that the previous application had different approved roads demonstrated that the new roads are not necessary. Objectors also argued that Applicant's federal coal lease required that roads avoid riparian areas unless there was no practical alternative and that a cooperative agreement between Colorado and the federal government gave the Division and Board authority to review the lease.

11. Applicant also presented testimony at the Board meeting. Applicant argued that the Division's cessation order did not preclude approval of the Application because it is a different procedure and did not invalidate any permit terms. Applicant also stated that all of the proposed road routes, locations, and crossings had been verified by the U.S. Forest Service. According to Applicant, alternative routes for the roads either caused more impact to the land or were not practical. Applicant reiterated that invalidating MR-446 would significantly increase disturbances because the Application resulted in a net reduction in road length of 17,157 feet, seven fewer vent pads, and roads that would have lower impact because they were much less steep than the previously approved roads. Regarding the issue of riparian crossings, the Applicant stated that there was no flow in the branch of South Prong Creek that would be crossed. Applicant also argued that the issue of whether a road was "new" was determined by whether they access the same locations as the previously approved roads. Here, the Application's roads went to the same place as the already approved roads and were therefore not new.

### CONCLUSIONS OF LAW

12. The Board has jurisdiction over this matter pursuant to the Act.

13. The Division and Board have the full power and authority to carry out and administer the provisions of this article. C.R.S. § 34-33-104.

14. Under section 34-33-114(1), C.R.S., the Applicant "for a permit or for a revision of a permit has the burden of establishing that such application is in compliance with all the requirements of [the Act]."

15. Section 34-33-115(1)(b), C.R.S. requires the Board to adopt regulations establishing guidelines for determining the scale or extent of a revision request that

implicates all permit application requirements and procedures. Rule 1.04(73) defines a minor revision as one that, among other factors, "reflects minor alterations in the location of roads or other facilities within the permit area...." The Application reflects a minor revision.

16. No application may be approved unless the application meets the requirements of subsections of sections 34-33-114(2), 34-33-115(1)(b), and 34-33-116(2), C.R.S. Rule 2.08.4(5) also requires that applications for minor revisions include an identification of the permit number, a specific description of the requested changes to the terms of the permit and any changes in the reclamation operation that may affect performance bond requirements, and any other information necessary for the Division to determine if the revision will comply with the Act and Rules. The Application is accurate and contains all information required by the Act and Rules.

17. Under Rule 2.08.4(6)(c), the Division shall issue a decision approving or denying an application for a minor revision within ten days of the filing of a complete application. The Application was complete, and the Division's approval complied with Rule 2.08.4(6)(c).

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby **AFFIRMS** the Division's proposed decision to approve the application for Minor Revision No. MR-446.

DONE AND ORDERED this 8 day of October 2020.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
Nell Wareham-Morris, Chair

### NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2019) and the Colorado

**Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.**

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 12<sup>th</sup> day of October 2020 addressed as follows:

*By certified mail:*

7018 2290 0001 8923 1250

Mountain Coal Company, LLC  
5174 Highway 133  
Somerset, CO 81434

*By electronic mail:*

Michael Drysdale, Esq.  
[Drysdale.Michael@dorsey.com](mailto:Drysdale.Michael@dorsey.com)

Dan Timmons  
[dtimmons@wildearthguardians.org](mailto:dtimmons@wildearthguardians.org)

*By electronic mail:*

Leigh Simmons  
Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

Jason Musick  
Division of Reclamation, Mining & Safety  
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Jim Stark  
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Camille Mojar, Board Administrator