

**STATE OF  
COLORADO****Simmons - DNR, Leigh** <leigh.simmons@state.co.us>

---

**CO-2020-001, C-1980-007 Mountain Coal Co., LLC**

1 message

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

Mon, Oct 12, 2020 at 12:52 PM

To: Jim Stark - DNR &lt;jim.stark@state.co.us&gt;

Cc: Leigh Simmons - DNR &lt;leigh.simmons@state.co.us&gt;, Jason Musick - DNR &lt;jason.musick@state.co.us&gt;, Jeff Fugate &lt;jeff.fugate@coag.gov&gt;, Charles Kooyman &lt;Charles.Kooyman@coag.gov&gt;, Michael Drysdale &lt;Drysdale.Michael@dorsey.com&gt;, Scott Schultz &lt;Scott.Schultz@coag.gov&gt;, "DRMSMinAdmin - DNR, DNR\_" &lt;dnr\_drmsminadmin@state.co.us&gt;, Daniel Timmons &lt;dtimmons@wildearthguardians.org&gt;, "Poulos, John" &lt;JPoulos@archrsc.com&gt;

Hi Jim,

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

--

*Camille Mojar*  
*Executive Assistant/MLRB Administrator*  
*Division of Reclamation, Mining and Safety*  
*Department of Natl Resources***COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources**P 303.866.3567 x 8136 | F 303.832.8106****1313 Sherman Street, Suite 215****Denver, CO 80203****<https://www.colorado.gov/drms>**

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient you are not authorized to disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail and any attachments from your system.

**CO-2020-001, C-1980-007 Mountain Coal Co., LLC.pdf**

207K



**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. CO-2020-001, 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 Nojar  
Board Administrator

Enclosure(s)

Certified Mail  
7018 2290 0001 8923 1243

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



**BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO**

---

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

---

**IN THE MATTER OF CESSATION ORDER No. CO-2020-001, MOUNTAIN  
COAL COMPANY, LLC, File No. C-1980-007**

---

THIS MATTER came before the Mined Land Reclamation Board ("Board") on July 23, 2020 via video conference for a hearing on Cessation Order CO-2020-001 issued to Mountain Coal Company, LLC ("Operator"), Permit No. C-1980-007. James Stark and First Assistant Attorney General Jeff Fugate appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Michael Drysdale, Esq. and John Poulos, P.E., appeared on behalf of Operator. 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 "Intervenors").

The Board, having considered the presentations, testimony, and evidence of the Division, Operator, and Intervenors, and being otherwise fully informed of the facts in the matter, enters the following:

**FINDINGS OF FACT**

1. Operator 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 10, 2020, the Division conducted an inspection of the site.
3. On June 17, 2020, the Division issued Operator Cessation Order CO-2020-001 (the "Cessation Order"). The Cessation Order noted that the federal district court for the District of Colorado had vacated the North Fork Exception to the Colorado Roadless Rule and that the invalidation meant that Operator had failed to maintain its legal right to enter the Sunset Roadless area. The Division ordered Operator to cease all surface disturbing activities in the Sunset Roadless area, all travel on roads and drill pads constructed in longwall panels LWSS-2, LWSS-3, and LWSS-4 that are within the Sunset Roadless area, and remove all equipment in the Sunset Roadless area. The Cessation Order allowed Operator to continue to access certain areas for stabilization activities necessary to prevent offsite impacts in the Sunset Roadless area. The Division found that the Cessation

Order was necessitated by the potential for the prohibited activities to "cause[ ] or ... reasonably be expected to cause significant imminent environmental harm to land, air, or water resources."

4. The Cessation Order also required Operator to provide the Division with detailed information regarding its assertion that it maintained legal right of entry to the Sunset Roadless area and how that was not in direct conflict with the federal district court's vacatur of the North Fork Exception to the Colorado Roadless Rule.

5. Operator responded to the Cessation Order through a letter dated July 2, 2020, arguing that the Cessation Order exceeded the Division's authority under state and federal law as well as Colorado's Cooperative Agreement with the federal Office of Surface Mining (OSM). Operator requested that the Division terminate the Cessation Order and, in the alternative, requested a hearing before the Board at its next scheduled meeting.

6. At the Board's July 23, 2016 hearing, the Division presented testimony regarding the Cessation Order and the history of site and federal litigation involving the North Fork Exception to the Colorado Roadless Rule. The North Fork Exception had allowed surface activities on federal land that would otherwise be subject to prohibitions on roadbuilding. Operator has a lease for coal mining on federal lands in the Sunset Roadless area, which was covered by the North Fork Exception. With the vacatur of the North Fork Exception, the Division concluded that Operator had lost its legal right of entry to build roads and pads in the Sunset Roadless area.

7. At the hearing, the Division explained that if Operator continued construction of roads in an area that was required by federal law to remain roadless, those actions would result in significant harm to the environment. The Division described discussions with the Operator, the federal Bureau of Land Management ("BLM"), and the U.S. Forest Service ("USFS"). During those conversations, the Operator indicated that it would continue building roads and well pads, and that the BLM and USFS did not take a definitive position.

8. The Division also discussed its authority to issue the Cessation Order, including that Colorado had gained primacy for regulating coal mining under federal law in 1980. Under Colorado's cooperative agreement with OSM, the Division has primacy for enforcement and issuing orders of cessation. The Division explained that it was not adjudicating the validity of Operator's lease with the federal government or Operator's rights under the lease, an issue where the federal government retains primacy. Rather, the Division is questioning the Operator's legal right of entry in the roadless areas now that the North Fork Exception has

been vacated. The Division also explained that it had discussed the Cessation Order with the OSM. During that discussion, OSM did not raise any issue of whether the Division had exceeded its authority in issuing the Cessation Order.

9. At the hearing, Operator argued that the Cessation Order exceeded Colorado's authority and that its past and future work were lawful under the Colorado Roadless Rule. Regarding the federal litigation that led to the vacatur of the North Fork Exception, Operator explained that its federal lease modifications had been affirmed. It constructed the roads that are subject to the Cessation Order before the Roadless Rule was vacated, and, according to Operator, it was allowed to build those roads at the time it did under both its lease and the then-in-effect North Fork Exception.

10. Operator also argued that even with the North Fork Exception's vacatur, it is allowed to construct well pads for mine ventilation boreholes. That work, according to Operator, involves cutting trees, which is an "approved management activity" under its leases. Drilling bore holes on the pads is also not prohibited. Accordingly, Operator argued that it is authorized to complete the drill pads and use the roads it constructed under its federal lease and applicable federal rules.

11. Intervenors argued at the hearing that the vacatur of the North Fork Exception eliminated Operator's right to build roads or cut trees for drill pads. Intervenor also argued that if Operator's federal lease provided a separate authority for roadbuilding in the Sunset Roadless Area, it would not have needed to rely on the North Fork Exception in the first place. Intervenors also argued that Operator's filings in the Tenth Circuit indicated that it knew the vacatur of the North Fork Exemption would eliminate its ability to build roads and, as a practical matter, continue mining in new panels. According to Intervenors, Operator assumed the risk that the North Fork Exception could be invalidated when it entered into the federal lease at issue here.

## CONCLUSIONS OF LAW

12. The Board has jurisdiction over this matter pursuant to section 34-33-124(1) of the Colorado Surface Coal Mining Reclamation Act ("Act") and Rule 5.01.3(2)(6) of the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining ("Rules").

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 34-33-110(2)(j), C.R.S., and Rule 2.03.6, a permittee must establish that it has a legal right to enter and commence coal mining operations. An operator must maintain its legal right to enter throughout the life of the permit. Vacatur of the federal North Fork Exception to the Colorado Roadless Rule, caused Operator to lose its legal right to enter and build roads on lands within the Sunset Roadless Area.

15. Section 34-33-123(1), C.R.S. requires the Division to issue cessation orders whenever an inspection allows it to determine that any violation of the Act or Rules causes or can reasonably be expected to cause "significant imminent environmental harm to land, air, or water resources." Continued roadbuilding and other surface disturbances in the Sunset Roadless Area without an exemption or other right to enter and conduct those operations causes or can be reasonably expected to cause significant environmental harm to land resources.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby AFFIRMS the Division's Cessation Order CO-2020-001.

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 1243

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)

John Poulos, PE  
[JPoulos@archrsc.com](mailto:JPoulos@archrsc.com)

*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  
1313 Sherman Street, Room 215  
Denver, CO 80203

Jim Stark  
Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

Charles J. Kooyman  
Assistant Attorney General  
Office of the Attorney General  
1300 Broadway, 8<sup>th</sup> Floor  
Denver, CO 80203

Jeff Fugate  
First Assistant Attorney General  
Department of Law  
Natural Resources Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10<sup>th</sup> floor  
Denver, CO 80203

Scott Schultz  
Assistant Attorney General  
Department of Law  
Natural Resources Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10<sup>th</sup> floor  
Denver, CO 80203



---

Camille Mojar, Board Administrator