



# United States Department of the Interior

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Western Region Office  
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### Memorandum

To: Lanny E. Erdos  
Director,  
Office of Surface Mining Reclamation and Enforcement

Through: Sterling Rideout  
Assistant Director, Program Support

From: David Berry  
Regional Director, Interior Regions 5, 7, 8, 9, 10 and 11

Subject: Recommendation for Approval, Without Special Conditions, of the Mining Plan Modification for Federal Lease COC-78825 at GCC Energy, LLC's King II Mine, located in La Plata County, Colorado

#### I. Recommendation

I recommend approval of, without special conditions, the mining plan modification for Federal Lease Modification COC-78825 at the King II Mine. This is a mining plan modification for an underground coal mine that is permitted under the Office of Surface Mining Reclamation and Enforcement's (OSMRE) Federal Indian Lands Program Permit CO-0106C and the State of Colorado Division of Reclamation, Mining and Safety (DRMS) State Permit C-1981-035.

My recommendation to approve this mining plan modification is based on:

- (1) GCC Energy, LLC's complete permit application package (PAP);
- (2) Compliance with the National Environmental Policy Act of 1969;
- (3) Documentation ensuring compliance with applicable requirements of other Federal laws, regulations, and executive orders;
- (4) Comments and recommendations or concurrence of other Federal agencies, and the public;

(5) The findings and recommendations of the Bureau of Land Management (BLM) regarding the Resource Recovery and Protection Plan (R2P2), the Federal lease requirements, and the Mineral Leasing Act; and,

(6) The OSMRE's Technical Analysis for Federal Indian Lands Permit CO-0106C and DRMS State Permit C-1981-035 pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977, 30 U.S.C. §§ 1201-1328.

If you concur with this recommendation, please sign the attached memorandum to the Assistant Secretary, Land and Minerals Management recommending approval.

## II. Background

The King Coal Mine Complex consists of the King I and II Mines located in La Plata County, Colorado, approximately 4 miles southwest of the town of Hesperus, Colorado. Room and pillar mining at the King Coal Mine Complex began in 1938 and was mined until 2009 from a single mine portal. The GCC Energy acquired ownership of the King Coal Mine Complex in 2005 from National King Coal, LLC. The King II Mine portal was constructed in 2007.

The King II Mine contains Indian, private, state and Federal land. The State of Colorado is the regulatory authority responsible for permitting, inspection and compliance on private, state and Federal lands, while OSMRE is the regulatory authority on Indian Lands.

The original mining plan for Federal Leases C-29125 and P-058300 at the King Coal Mine Complex was approved on June 20, 1982. Since that approval there have been 7 mining plan modifications. A mining plan modification to add Federal Lease COC-49465 was approved on July 22, 1992. A mining plan modification for Federal Leases COC-49465 and C-29125 was approved on October 22, 1997. A mining plan modification to add Federal Lease COC-60941 was approved on December 28, 1998. A mining plan modification for Federal Lease COC-60941 was approved on March 23, 2001. A mining plan modification to add Federal Lease COC-62920 was approved on August 9, 2006. A mining plan modification for Federal Lease COC-62920 was approved on May 21, 2007. A mining plan modification for Federal Lease COC-62920 was approved on March 27, 2017.

The current life-of-mine is anticipated to be approximately 2-3 years at an average mining rate of 629,785 tons per year from the coal remaining in the currently approved OSMRE and State permits within the Upper Menefee Coal Seam (approximately 2.3 million tons remain).

The permitted maximum mining rate is 1.3 million tons a year.

The mining operation uses room and pillar mining methods.

The OSMRE permit includes lands that are "split-estate" where the Federal government has retained ownership of the subsurface coal (and other minerals) but has disposed of the surface estate. The Ute Mountain Ute (UMU) Tribe owns much of the surface estate in this

area. While the surface estate owned by the UMU Tribe is not within a designated Indian Reservation, it does meet the definition of “Indian Lands” as defined by the SMCRA, and thus the primary regulator of coal mining operations pursuant to SMCRA for those lands is OSMRE. There are approximately 14 acres of approved disturbance in the OSMRE permit area and approximately 53 acres in the State permit.

The currently approved Federal mining plan area includes approximately 1,936 acres, of which approximately 81 acres are Federal and 1,855 are private.

The State’s permit includes approximately 2,705 acres. Of those total permitted acres, approximately 81 acres are Federal, 1,930 acres are private, and 694 acres are state.

The OSMRE’s permit includes approximately 1,975 acres, all of which are owned by UMU.

The number of people employed at the mine is 86 people.

The post-mining land uses within the currently approved permit and mining plan areas are rangeland and wildlife habitat.

Currently, an appeal filed on July 27, 2017, is pending before the Interior Board of Land Appeals. The appeals challenges and Informal Review Decision related to a Citizen Complaint alleging that the mine is violating its 2007 mining plan. WildEarth Guardians, IBLA Docket No. 2017-239. Also, on December 15, 2020, two groups filed a lawsuit in the United States District Court for the District of Colorado asserting that OSMRE’s previous authorizations at the mine violated the Stream Protection Rule (rescinded by the Constitutional Review Act). The United States has not been served with that lawsuit yet. Citizens for Constitutional Integrity et al. v. United States of America et al., 1:20-cv-03668-MSK (D. Colo.).

### III. The Proposed Action

This mining plan action consists of a mining plan modification to the approved mining plan to add Federal Lease COC-78825 to OSMRE and DRMS permits. The mining plan action proposed by GCC Energy is for both the State permit C-1981-035 and OSMRE permit CO-0106C and will add approximately 2,462 acres of leased Federal coal from the Upper Menefee Coal Seam at the King II Mine.

Specifically, the mining plan modification proposed includes:

New Mexico Principle Meridian, Colorado:

**Township 35 North, Range 11 West, N.M.P.M.**

sec. 18, lots 2 thru 5, 8, 9, and 10, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
sec. 19, lots 1, 2, 6, and 7, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

**Township 35 North, Range 12 West, N.M.P.M.**

sec. 13, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 14, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 15, SE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
sec. 22, N $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 23, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 24, N $\frac{1}{2}$ , SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 26, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

The lease contains a total of approximately 2,462 acres.

Attachment A of the Mining Plan Approval document shows where the 2,462 acres are located. Approval of this mining plan modification will allow room and pillar mining methods to begin in Federal Lease COC-78825 and will authorize the removal of approximately 9.5 million tons of recoverable Federal coal.

The Federal mining plan area will increase by 2,462 acres totaling 4,398 acres, of which approximately 120 surface acres are Federal, and 4,278 surface acres are private.

The maximum production rate of 1.3 million tons per year will not change due to transportation constraints. The average production rate of 629,785 tons per year could increase to approximately 1 million tons per year.

Coal from Federal Lease COC-78825 would be mined for approximately 9.5 to 15 years. Receiving Secretarial authorization to mine coal within Federal Lease COC-78825 would extend the life-of-mine until approximately 2032 to 2039 depending on the production rate GCC Energy is able to achieve. If Secretarial authorization is not received, mining could end as soon as 2023.

The number of people employed at the mine will increase from 86 to approximately 92 people.

The State approval of DRMS Permit Revision (PR) 10 will increase the permit area by approximately 398 acres totaling approximately 3,103 acres, of which approximately 120 acres are Federal, 2,289 acres are private, and 694 acres are state. The total disturbance area approved within the State permit will remain at approximately 53 acres.

The OSMRE approval of OSMRE Permit Revision No. UM.CO.0106.2946 will increase the permit area by approximately 2,425 acres totaling approximately 4,399 surface acres, of which all are owned by UMU. The total disturbance area approved within the OSMRE permit area will increase by approximately 10 acres for a total of approximately 24 acres.

The OSMRE approval of revision UM.CO.0106.2946 not only added COC-78825 to the existing permit CO-0106C, but also included the Huntington/Pyle Lease which consists of 360 acres of UMU owned private surface and 1.3 million tons of private coal.

The post-mining land uses of rangeland & wildlife habitat within the permit and mining plan area would not change.

The continuation of operations on Federal Lease COC-78825 does not require any additional special conditions to comply with Federal laws.

#### IV. Review Process

The OSMRE reviewed the PAP under the Federal Indian Lands Program (30 C.F.R. Chapter VII, Subchapter E), and 30 C.F.R. § 783 and § 784. Pursuant to the Federal regulations, OSMRE approved revision UM.CO.0106.2946 to the existing permit CO-0106C on December 8, 2020.

The DRMS reviewed the PAP under the Colorado Regulatory Program, the Federal Lands Program (30 CFR Chapter VII, Subchapter D), and the Colorado cooperative agreement (30 CFR 906). Pursuant to the Colorado State Program and the cooperative agreement, DRMS approved the Permit No. C-1981-035 PR 10 on December 1, 2020.

The OSMRE consulted with other Federal agencies for compliance with the requirements of applicable Federal laws. Their comments and concurrences can be found in the *Documentation of Consultation, Concurrence, and Compliance* section of this mining plan decision document.

The BLM Tres Rios Field Office (TRFO) reviewed the R2P2 for compliance with the Mineral Leasing Act of 1920, as amended, the Federal regulations at 43 C.F.R. Part 3480, and the Federal lease. The BLM TRFO found that maximum economic recovery of the Federal coal will be achieved and recommended approval of the mining plan modification in a memorandum dated July 16, 2020.

The BLM TRFO and OSMRE consulted with the U.S. Fish and Wildlife Service (USFWS) regarding Section 7 of the Endangered Species Act. The USFWS received the request for re-initiation of Section 7 consultation on February 25, 2019 and replied with a concurrence letter on April 29, 2019. In its letter, USFWS concurred that additional activities within Federal Lease COC-78825 does not change its original concurrence that the proposed actions may affect but are not likely to adversely affect the Rio Grande silvery minnow (*Hybognathus amarus*) and its critical habitat, greenback cutthroat trout (*Oncorhynchus clarki stomias*), Colorado pikeminnow (*Ptychocheilus lucius*) and its critical habitat, and the razorback sucker (*Xyrauchen texanus*) and its critical habitat. The USFWS agreed that additional impact areas do not provide habitat for the New Mexico jumping mouse (*Zapus hudsonius luteus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) and, therefore, the proposed action is unlikely to result in take of these species. Two additional species, the Mexican Spotted Owl (*Strix occidentalis lucida*) and Chapin Mesa Milkvetch

(*Astragalus schmolliae*), were listed as potentially occurring in the area but had no critical habitat in the area. The OSMRE found that the action of underground coal mining of COC-78825 would have “no effect” to those two species, which is documented in a memorandum to the file dated December 10, 2020. On December 10, 2020, OSMRE requested and received an official species list from the USFWS. No new species were added since the concurrence April 29, 2019.

In the September 18, 2019 letter to the Advisory Council on Historic Preservations (ACHP), OSMRE elected to affirm the initial agency finding of no historic properties affected. Within Federal Lease COC-78825, four sites were identified as not eligible for the National Register of Historic Places. These sites consist of two temporary camps (5LP10572 and 5LP11383), one artifact scatter (5LP11385), and a ranching facility (5LP11388). Additionally, three sites were considered potentially eligible, requiring more data. These sites consist of three artifact scatters (5LP11384, 5LP11386 and 5LP11387). The OSMRE determined that mining activities would not affect historic properties or potential historic properties and affirms the requirements of 36 C.F.R. § 800.4(d)(2) will be maintained. Subsidence from previous mining at the King I and King II Mines has shown that surficial effects of subsidence only occur under specific geologic conditions. The potentially eligible sites are outside of geologic conditions where subsidence has the potential to cause surficial effects. There is also a concern that gathering additional data on the sites would be, at best, minimally invasive which could cause some degree of destruction. Because the sites are not planned to be affected by surface activities, the best preservation approach is to leave them undisturbed. It is likely the three sites are historic properties and both the ACHP and the State Historic Preservation Office agree the sites may be treated as such.

The OSMRE sent letters to 26 tribes with affiliation to Colorado on February 8, 2019 and on July 5, 2019 sent a letter to 32 tribes with affiliation to Colorado. The letters informed the tribes of the environmental assessment (EA) prepared by BLM TRFO and OSMRE, additionally the letters discussed BLM TRFO’s proposed leasing action, the proposed revision to OSMRE’s Permit CO-0106C, and this mining plan decision document. No additional requests for information or meetings were received.

The area included in this mining plan modification has not been designated unsuitable for mining according to section 522(b) of SMCRA.

The mining plan modification is not on any Federal lands within the boundaries of a national forest. Thus, United States Forest Service concurrence is not necessary for this action.

The OSMRE determined that approval of this mining plan modification will not have a significant impact on the quality of the human environment. The EA prepared by OSMRE and BLM TRFO titled: *Dunn Ranch Area Lease-By-Application and Mine Plan Modification, DOI-BLM-CO-S010-2019-0003-EA, September 2019* and other environmental documents noted in the Finding of No Significant Impact (FONSI) describe the impacts that may result from approval of this mining plan modification and its alternatives. The public scoping period began on February 8, 2019 and finished on March 11, 2019. A public notice was posted on BLM’s National NEPA Register, on OSMRE’s website and in the *Durango*

*Herald* newspaper on February 11, 13, and 15, 2019. In addition, a public scoping letter was sent to 289 entities (comprised of individuals, organizations, businesses, and government agencies) with information about the Proposed Action and a request for comments within the 30-day public comment period. A total of 13,050 comments were received during the scoping period, of which 38 submittals included unique comments.

The OSMRE and BLM TRFO considered all comments while creating the EA. The EA was publicly available for a 32-day review period starting on July 5, 2019 and ending on August 5, 2019. The EA and supporting information were available on both BLM and OSMRE webpages. Interested party letters were sent to 253 people/agencies. A legal notice was published in the *Durango Herald* newspaper on July 5 and 12, 2019 informing the public of the availability of the preliminary EA for public comment. The legal notice also informed the public of a public information meeting and public hearing to take verbal comments held on July 24, 2019 at the BLM TRFO. The public hearing was held in accordance with BLM coal regulations at 43 C.F.R. 3425.4. A total of 28 comment letters were submitted during the public review period. Many of the letters contained multiple comments for a total of 127 discrete comments received. The OSMRE and BLM TRFO reviewed and considered all comments.

The OSMRE did not identify any issues that required resolution via the addition of special conditions to the mining plan approval during its review of the proposed action.

The GCC Energy published four consecutive weekly notices in the *Durango Herald* informing the public that they could review the administratively complete PAP. The last publication date was July 22, 2020. The DRMS did not receive any public comments.

The OSMRE has determined that a bond for \$1,053,815 is adequate for the Federal Indian lands permit associated with this mining plan. The OSMRE holds \$22,355.75 in the form of a Surety and \$10,200.00 as a Certificate of Deposit. For the remaining \$1,021,259.25, a bond instrument must be secured before mining occurs. The DRMS has determined that a bond for \$1,017,579.78 is adequate for the State permit associated with this mining plan. The DRMS and OSMRE maintain separate indemnity agreements.

This decision document contains a chronology of events related to the processing of the PAP and the mining plan modification decision.

The content of OSMRE's decision record consists of the following:

- The complete PAP submitted by GCC Energy;
- The OSMRE's Technical Analysis and Findings for Federal Indian lands permit CO-0106C pursuant to the SMCRA, 30 U.S.C. §§ 1201-1328;
- The Environmental Compliance Document titled: *Dunn Ranch Area Lease-By-Application and Mine Plan Modification, DOI-BLM-CO-S010-2019-0003-EA, September 2019*;

- The FONSI of the proposed action and alternatives prepared by OSMRE;
- Other documents prepared by OSMRE; and
- Correspondence developed during the review of the PAP.

Attachment