



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

June 28, 2022

Mark Gray
New Elk Coal Company, LLC.
12250 Highway 12
Weston, CO 81091

Re: Lorencito Canyon Mine (Permit No. C-1996-084)
Preliminary Adequacy Review of Permit Renewal Application No. 5 (RN-5)

Dear Mr. Gray,

New Elk Coal Company, LLC. (NECC) submitted an application to Colorado Division of Reclamation, Mining and Safety (DRMS or Division) for a permit renewal of the Lorencito Canyon Mine permit (C-1996-084) on April 27, 2022. The application was deemed complete by the Division on April 29, 2022. The Division is required to issue a decision on the application by August 27, 2022. The Division requests that NECC responds to this initial review of the permit with ample time before the decision due date for the Division to review the response and reply as necessary.

The Division has executed a preliminary adequacy review of the application with regards to the Colorado Surface Coal Mining Reclamation Act (Act), the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining (Regulations; Rules). Items that will need to be addressed by NECC are shown below.

Rule 2.03.4 Identification of Interests

1. Please update sections 2.03.4 (1) through (4) of the Permit Application Package (PAP) with current information.
2. Please update the current surface and coal owners of record on Page 2.03-5 as necessary in accordance with Rule 2.03.4(6).
3. Please update the adjacent owners of record of surface and subsurface rights on pages 2.03-6 and 2.03-7 as necessary in accordance with Rule 2.03.4(7)
4. Please update Map 2.03.4-1, the Surface Ownership Map.
5. Please provide a map that shows the present subsurface owners of record for areas within and contiguous to the permit area in accordance with Rule 2.10.3(1)(a).

Rule 2.03.5 Compliance Information

6. Please update to section 2.03.5 of the PAP.



Rule 2.03.6 Right of Entry and Operation Information

7. Please update section 2.03.6 of the PAP as necessary.

Rule 2.03.9 Personal Injury and Property Damage Insurance Information:

8. Please update Exhibit 3 with the most current certificate of insurance for personal liability.

Rule 2.03.12 Newspaper Advertisement and Proof of Publication:

9. Please update Exhibit 4 to include a copy of the newspaper advertisement of the RN5 application and proof of the publication of the advertisement. DRMS must receive the proof of publication no later than 4 weeks after the last date of publication as required under 2.07.3(2).

Rule 2.04.11 Fish and Wildlife Information:

10. Per Rules 2.04.11(4), please update the Threatened and Endangered (“T&E”) species included in the narrative on Page 2.04-59 and discuss potential impacts to current State and Federal Threatened and Endangered plant and animal species lists. The Federal and State listed species of concern may have changed since the last revision. To find the most up to date lists, the following websites may be helpful: <https://www.fws.gov/program/endangered-species/species> and <https://cpw.state.co.us/learn/Pages/SOC-ThreatenedEndangeredList.aspx>

Also based on the review of the T&E species list and potential impacts, in accordance with 2.05.6(2), please update the Fish and Wildlife Plan.

Rule 2.05.4 Reclamation Plan:

11. Significant rills, gullies, and areas with sparse vegetation have been noted in the reclaimed areas around the “Knob”, areas reported to have been reclaimed in 2006 and 2005 located above the area where pond and ditch cleanings are being stored, and areas reported to have been revegetated in 2007/2004 above Pond 006a. These areas are shown in the figures below. NECC has utilized several erosion control methods including the placement of straw waddles perpendicular to some of the eroded slopes, and the placement of brush within rills and gullies. The brush does seem to help prevent the rills from growing, and the brush seems to catch and hold soil and growth medium. Given the age of the reclamation of these areas in question, NECC will need to evaluate these areas to determine the best methods to fill, regraded, or otherwise stabilized these areas from erosion in accordance with Rule 4.14.6. Also, it is likely these areas will need to be reseeded in places given the sparse nature of the vegetation that has established. Please update the rill and gully plan to address how these areas will be stabilized in accordance with Rule 2.05.4(2)(c).

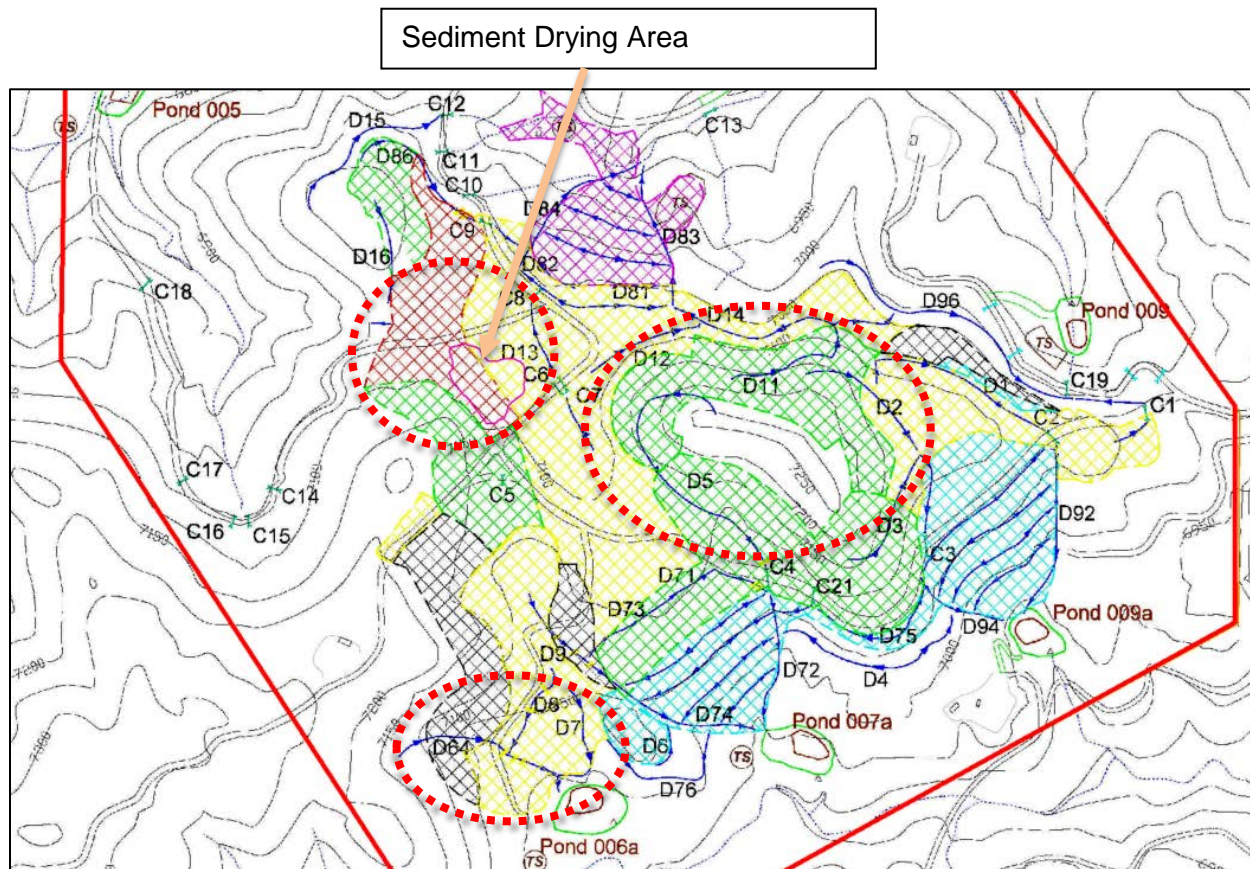


Figure 1. Areas where rills, gullies and sparse vegetation has been found to be a persistent problem at the site are within the dotted circle areas. Background image is the 2020 annual report map.

12. NECC has placed the sediment they have cleaned from the various sumps and ditches in an area northwest of the “Knob” in an area previously reported to have been seeded in 2004/2005 based on the 2020 annual reclamation report map. Page 2.05-30a of the Permit Application Package (PAP) provides a plan for the handling of sediment cleaned from Pond 009 to be placed in a “drying area” and then used for mine reclamation as determined by a soils analysis. PAP page 2.05-33 provides a general plan for handling sediment cleaning from ponds. Please clarify the plan for handling all material/sediment cleaned from all the sediment control structures as this is not clearly discussed in the PAP.
13. The stockpile area used for sediment drying discussed above has been re-affected by the stockpile activity and therefore cannot be considered to have been reclaimed in 2004/2005 as portrayed in the annual report maps. NECC will need to adjust the annual reclamation report to account for this area being re-affected. Please submit a revised annual reclamation report form to account for this area.
14. Enclosed is an updated reclamation cost estimate for the Lorencito Canyon Mine. The Division estimates the liability of the site to be \$1,006,098.00. The Division currently holds a bond of \$927,121.00. The current required surety for the site is \$878,751.00. Please review the

reclamation cost estimate and let DRMS know if you concur with the cost estimate. If so, when RN5 is approved, the required surety will increase to the calculated amount and NECC will need to submit an additional \$78,977.00 in bond. Please revise Exhibit 23 of the PAP to include the RN5 reclamation cost estimate.

Rule 2.05.6(1) Air Pollution Control Plan

15. According to Table 2.03.10-1 a Construction Permit for air quality is no longer required. An Air Pollution control plan is outlined on page 2.05-77 of the permit. Please verify that a construction permit is currently not required.

This concludes the Division's preliminary adequacy review for the RN5 application. The Division is required to issue a decision on the RN5 application by August 27, 2022. If the decision date arrives and there are outstanding adequacy issues, the Division will deny the application. If you need additional time to address the adequacy review items, please request an extension of the decision date. If you have any questions please contact me at Jared.Ebert@state.co.us, or at (303) 866-3567 ext. 8120

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Ebert", with a stylized flourish at the end.

Jared Ebert
Senior Environmental Protection Specialist

Enclosures: 1.) *CIRCES Reclamation Cost Estimate, C-1996-084, RN5*

EC: Nick Mason; NECC, nmason@newelkcoal.com
Connor Drinkard, connor.drinkard@state.co.us