

July 26, 2022

Zach Trujillo
Environmental Protection Specialist
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

Re: New Elk Mine
Permit C-1981-012
TR-76

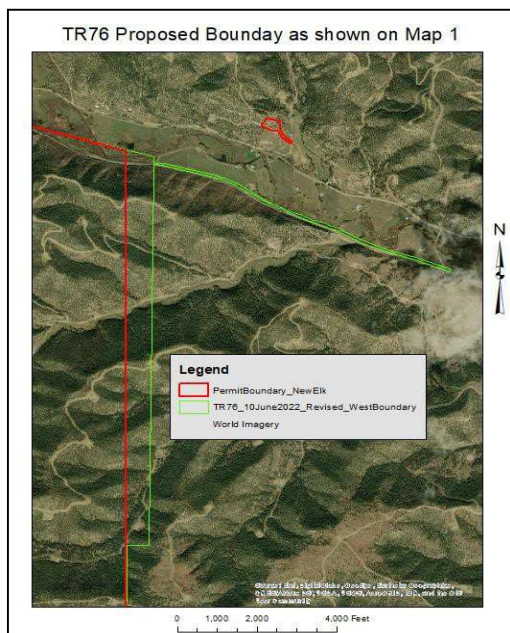
Dear Mr. Trujillo,

Please find response to the Colorado Division of Reclamation, Mining and Safety (DRMS or Division) Adequacy Review comments dated July 11, 2022, on the New Elk Coal Company, LLC's (NECC) Technical Revision 76 (TR76).

NECC Response to DRMS comments:

PROPOSED REVISED SECTION 2.03

1. Proposed revised Map 1, New Elk Mine Surface Ownership does not appear to accurately depict the proposed expansion of the permit boundary. Based on the revised map, the Division estimates the permit boundary to be about 168 acres larger than the currently approved permit boundary. See the Figure below that depicts the permit boundary expansion as shown on proposed Map 1. Please revise the map to correctly depict the permit boundary to only include the 11.3 acre proposed expansion.



NECC Response: *The permit boundary presented on Map 1 was not correct and has been clipped to the*

township/range line. Please see the new version of Map 1.

2. Please revise the permit boundary on Map 1 so it is clearly distinguishable from the lease boundaries shown on the map.

NECC Response: *The permit boundary has been illustrated differently to make it more distinguishable.*

3. Proposed revised Page 15 of Section 2.03, does not follow the currently approved text in the Permit Application Package (PAP). Please revise this page to follow the narrative and pagination currently approved in the PAP.

NECC Response: *The narrative and pagination now match the currently approved PAP. It is no longer page 15, but page 9.*

PROPOSED REVISED SECTION 2.04

4. Proposed revised page 2.04-1 includes information and revisions associated with Permit Revision No. 5 (PR5) currently under review by DRMS. The PR5 revision has not been approved, please revise the currently approved PAP with information specific to TR76 and do not include any PR5 related information.

NECC Response: *Reference to PR5 has been removed from this page and acreages updated accordingly in Table 4.*

5. Similar to the item above, proposed revised page 2.04-8 includes a paragraph regarding PR5. The PR5 revision has not been approved, please remove this paragraph from the revised text.

NECC Response: *Paragraph that discusses PR5 has been removed.*

6. Proposed revised page 2.04-8 indicates no new cultural resources were identified in the area of potential disturbance for the road. This statement is incorrect, based on the survey provided by NECC in Exhibit 7, two resources are identified along the road corridor (5LA.14443 and 5LA.14442) and the entire length of the former C&W railroad grade (5LA.7112) is reported to be eligible for listing for the National Register of Historic Places (NRHP). Please specifically identify these resources on page 2.04-8 and provide a description of them.

NECC Response: *We have added language to page. 2.04-8 which follows:*

"The entire length of the former C&W railroad grade (5LA.7112) is previously determined eligible for listing in the National Register of Historic Places (NRHP). In 2021, a cultural resources survey was conducted to record and evaluate the NRHP eligibility of extant bridges and culverts along the former C&W railroad grade. Two features potentially 45 years old or older were identified within the Project area between the mine and the intersection of the CP&W entrance road to the State Wildlife Area. Both features (5LA.14442 and 5LA.14443) are ubiquitous corrugated metal culverts surrounded by riprap. Both were recommended as not individually eligible for NRHP listing, as well as non-contributing features of the NRHP-eligible C&W railroad grade. A description of these sites is provided in the Cultural Resources report contained in Exhibit 7.

The 2021 cultural resources survey recommended the former C&W railroad grade between Allen Mine and Madrid as eligible for NRHP listing under Criterion A for significance in the areas of Transportation, Commerce, and Industry. The segment of the former C&W between Allen Mine and Weston containing the haul road was found to retain its integrity of location, overall setting, design, materials (in terms of

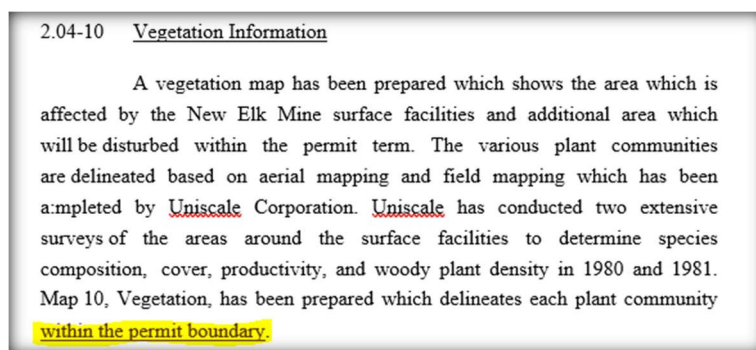
bridges and culverts), feeling, and association. The rail line was removed in 2004 and part of NECC future plan is to reinstall the rail line.

The NRHP-eligible former C&W railroad grade (5LA.7112) was affected by the construction of a haul road between the mine and the intersection of the CP&W entrance road to the State Wildlife Area prior to DRMS approval. Neither the construction of the haul road nor the future reinstallation of the rail line within the former C&W railroad corridor alters or will alter the former C&W's alignment or height. The construction of the haul road and the future reinstallation of the rail line within the former C&W railroad corridor is intended to return the historic resource to its original use, and therefore is consistent with the first two of the Secretary of the Interior's Standards for Rehabilitation: 1) A property will be used as it was historically or be given a new use that requires minimal changes to its distinctive materials, features, spaces, and spatial relationships; and 2) The historic character of a property will be retained and preserved. Any new construction associated with the Project will likewise be consistent with the Secretary of the Interior's Standards for Rehabilitation.

As the construction of the haul road introduces an effect to the resource, the Criteria of Adverse Effects were applied. The construction of a haul road does not cause the physical destruction of or damage to all or part of the property, does not alter the property in a way that is not consistent with the Secretary's standards for the treatment of historic properties, and does not remove the property from its historic location. As the construction of a haul road is consistent with the original use and purpose of the former C&W railroad grade, it does not change the character of the property's use of physical features within the property's setting that contribute to its historic significance, and does not introduce visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features. The construction of a haul road will not lead to the neglect of the property which causes its deterioration but will instead ideally return a neglected and deteriorated historic property to its original use. The preceding application of the Criteria of Adverse Effects also applies to the future reinstallation of the rail line within the former C&W railroad grade (5LA.7112)."

7. Proposed revised page 2.04-42 does not appear to contain any revised information. Please explain?

NECC Response: There was one minor edit (see screenshot below) of what was revised.



8. Proposed revised page 2.04-47 does not appear to contain any revised information. Please explain?

NECC Response: There was one minor edit (see screenshot below) of what was revised.

2.04-11 Fish and Wildlife Resources Information

The mine site occupies land which is immediately adjacent to the Middle Fork of the Purgatoire River in what is locally termed "Stonewall Valley". The physical developments related to the underground mining of coal include the east and west mine portals with accompanying buildings and related activities; and the refuse disposal areas resulting from nearly 30 years of mining. These structures, activities and refuse areas occupy approximately 155 acres within a strip which straddles the Middle Fork for a distance of nearly two miles. The midpoint of mine activity is roughly 1.5 miles west of the confluence of the Middle and North Forks at Vigil, Colorado.

A study of the fish and wildlife and their habitats has been completed by Dwight R. Smith of Colorado State University, Fort Collins, Colorado. This study covers the general permit area which will be affected by the New Elk Mine and reclaimed Golden Eagle Mine through the life of the operation. Site specific information and literature are included as Exhibit 16, Fish and Wildlife Information.

PROPOSED REVISED SECTION 2.05.3

9. Revised page 14 of section 2.05 states that roads constructed at the mine facility were established in the 1950's. This is not correct for the TR76 haul road or the RDA haul road. Please revise this page to distinguish which roads this statement pertain to.

NECC Response: *We have revised the previous sentence. See screenshot below with proposed revisions.*

(c) Road, Conveyor and Rail System

Map 11 New Elk Mine Site Plan East Portal Sheet 3 Facilities, Map 12 Surface Facilities and Roads - West Portal, and Map 11-5 New Elk Mine Haul Road showing the locations of all roads necessary for operation of the New Elk Mine for the permit term. Roads within the permit boundary are classified as haul roads, access roads, or light use roads. These original New Elk Haul roads were constructed as the mine facilities were established in the 1950's. Road specifications, including typical cross-sections for access and haul roads were provided on Map 11. NECC has revised and updated the road system along with the surface drainage control plan. This revision has incorporated the road and drainage plan system to ensure road stability and prevention of additional sediment contribution to the receiving streams. The road system is part of the New Elk surface disturbance area; therefore, all ditches and culverts have been designed to handle runoff from the roads, which ultimately enter sediment ponds prior to discharge. The west-sloping portion of the RDA access road is maintained in accordance with the mine's Storm Water Monitoring Plan. The mine entrance road and roads that paralleled the railroad will remain for maintenance and access (see Maps 15 & 16) after mine reclamation. Roads classified as haul roads will be examined and certified under the direction of a Register Professional Engineer prior to their use as haul roads.

10. Please provide an updated Map 11 – Sheet 1 and Map 11 – Sheet 4 showing the proposed Haul Road.

NECC Response: *We have added the proposed Haul Road to Map 11 – Sheet 1, Map 11 – Sheet 2, and Map 11 – Sheet 3. Map 11 – Sheet 4 is the RDA – Haul Road Plan and Profile Map so this map was not revised. Because Map 11 – Sheet 1, Map 11 – Sheet 2, and Map 11 – Sheet 3 don't show the entire haul road that is why we created Maps 11-5 and 11-6.*

11. Please provide an updated Map 11 – Sheet 5, Map 11 – Sheet 6, and Map 15A showing the permit boundary.

NECC Response: *Map 11-5, Map 11-6, and Map 15A have been revised to show the permit boundary.*

12. Proposed Map 11 – Sheet 5 provides inconsistent numbering and placement of proposed culverts in comparison to the associated proposed Table 19a and Map 11 – Sheet 6. Please provide an updated Map 11 – Sheet 5 showing the correct culverts.

NECC Response: *Map 11-5 has been revised showing the correct culvert numbering and placement.*

PROPOSED REVISED SECTION 2.05.5

13. Proposed revised page 2.05-69 is missing a page number on the revised document. Please add this page number.

NECC Response: *Page “69” has been added to the document.*

PROPOSED REVISED SECTION 2.05.6

Revised page 110 of section 2.05 states, “Research of the National Register of Historic Places indicates that there are no historic places near the New Elk Mine which will be affected by the mine's operation.” This is incorrect based on information provided in Exhibit 7 for TR76 by NECC. Please address the following:

14. Three Cultural and Historic Resources are located within the affected area associated with TR76 according to Arcadis study proposed to be included in Exhibit 7. According to the report for resources 5LA.14442 and 5LA.14443, no work will be conducted on these features and they are not recommended nor individually eligible for listing in the NRHP. However, the report was originally drafted for the reconstruction of the railroad, not the construction of the haul road. Please confirm that no additional work will be or was done for these features associated with the construction of the haul road and update the Section 2.05.6(4) of the PAP to indicate this.

NECC Response: *Revised the text similarly to comment 6 above.*

15. The haul road proposed with TR76 has already been constructed and was associated with violation CV-2021-001 issued by DRMS. Therefore impacts to the former C&W railroad grade (5LA.7112) has already occurred. The Division is consulting with the State Historic Preservation Officer (SHPO) on how to address this. In accordance with Rule 2.05.6(4)(b), NECC may be required to conduct appropriate mitigation and treatment of this feature. The Division will provide the results of this consultation with SHPO as soon as they are available. For the time being, please update section 2.05.6(4) explaining this resource was affected by the construction of the haul road prior to DRMS approval.

NECC Response: *Section 2.05.6(4) has been updated with an explanation that the former C&W railroad grade (5LA.7112) was affected by the construction of the haul road prior to DRMS approval. A preliminary assessment of the impact of the haul road (and rail line) on the resource using the Criteria of Adverse Effect and the Secretary of the Interior’s Standards for the Treatment of Historic Properties was also provided.*

TABLE OF CONTENTS

16. Please update the PAP table of contents based on the revisions proposed with TR76

NECC Response: *The PAP Table of Contents has been updated based on the revisions for TR-76.*

PROPOSED REVISED SECTION 2.01

In response to the request to update the PAP table of contents, it was noticed that section 2.01 [2 pages], both pages had the same page number -2.01-2.

NECC Response: *The first page of the PAP Section 2.01 has been numbered correctly – 2.01-1.*

NECC anticipates these responses will satisfy these comments. Please call or email if there are any questions or concerns.

Sincerely,



Nick Mason
Engineering Technician

Attachments

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