

STATE OF  
COLORADO

Ebert - DNR, Jared &lt;jared.ebert@state.co.us&gt;

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**Notice of Proposed Decision for Permit: C1981012 Revision: SI4**

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**Ebert - DNR, Jared** <jared.ebert@state.co.us>  
To: Nick Mason <nmason@newelkcoal.com>

Mon, Aug 15, 2022 at 9:14 AM

Hello Nick,

Attached is the findings document for SI4. Please let me know if you have any questions or concerns.

Jared

On Mon, Aug 15, 2022 at 9:04 AM Division of Reclamation, Mining and Safety <dnr\_drms\_permitadmin@state.co.us> wrote:

Please see attached correspondence from the Division of Reclamation, Mining and Safety.

**COLORADO**Division of Reclamation,  
Mining and Safety

Department of Natural Resources

**DO NOT REPLY** to this email message. This mailbox is not monitored for incoming messages. Please refer to the attached document to locate the email address of the sender.

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Jared Ebert

Senior Environmental Protection Specialist

**\*I am working remotely, please feel free to call my cell at (720) 413-6466**

**COLORADO**  
Division of Reclamation,  
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Department of Natural Resources

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[jared.ebert@state.co.us](mailto:jared.ebert@state.co.us) | <https://drms.colorado.gov/>**SI4\_C1981012\_FindingsDoc15Aug2022.pdf**  
158K

# Surety Increase No. 4 (SI4)

Proposed Decision

## **New Elk Mine** PERMIT NUMBER C-1981-012



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

Division of Reclamation, Mining and Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203  
303-866-3567  
Virginia Brannon, Director

Prepared by  
Jared Ebert  
Environmental Protection Specialist

August 15, 2022

## Introduction

This document is the proposed decision of the Colorado Division of Reclamation, Mining and Safety (the Division) for Surety Increase No. 4 (SI4) at the New Elk Mine, Division file number Permit No. C-1981-012. The package contains three parts. These include: 1) procedures and summary of the bond increase process; 2) observations and findings of the Division regarding compliance with the performance bond requirements of the Colorado Surface Coal Mining and Reclamation Act (Act) and regulations promulgated thereunder; and 3) the Division's proposed decision on the surety increase.

Detailed information about the review process can be found in the Act and the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining (Rules). All Rules referenced within this document are contained within the Regulations. Detailed information about the mining and reclamation operations can be found in the permit application on file at on the Division's website (<https://drms.colorado.gov/>).

The New Elk Mine is an underground mine which is permitted and operated by New Elk Coal Company, LLC (NECC). The ownership of the land for which bond increase has been proposed is State and Private. The coal ownership is State and Private.

### **I. PROCEDURES AND SUMMARY OF THE INCREASE PROCESS**

The Division has initiated this surety increase in order to ensure compliance with Rule 3.02.1, which requires a performance bond for all requirements of the Act, Rules, and the approved reclamation plan. Rule 3.02.1(3) requires the performance bond to cover land within the permit area upon which surface coal mining and reclamation operations are to be initiated and conducted. Rule 3.02.1(4) states that liability of the performance bond shall continue until the entire reclamation plan has been completed.

Rule 3.02.2(4) requires the Division to adjust the required performance bond as affected land acreages are increased or decreased or when the cost of future reclamation changes. Procedures for adjustment of the required performance bond include:

- (a) Notification of the permittee of any proposed bond adjustment, providing the permittee with an opportunity for an informal conference on the adjustment.

On August 2, 2022 the Division provided NECC notice of the proposed bond adjustment and provided an opportunity for NECC to request an informal conference. NECC requested an informal conference which was held on August 10, 2022.

- (b) Issuance of a written proposed decision by the Division to adjust the bond amount, publication of notice of the proposed decision in a newspaper of general circulation in the locality of the mining operation once a week for two weeks following issuance of the decision, and notification of the permittee the surety and any person with a property interest in the collateral who has requested notification.

This document serves as the written proposed decision. A publication of the notice of the proposed decision will be initiated.

- (c) An opportunity for a formal hearing pursuant to Rule 2.07.4(3);

## **II. OBSERVATIONS AND FINDINGS**

In conjunction with Midterm Review No. 8 (MT8) and Permit Revision No. 5 (PR5) and in accordance with Rule 3.02.2(4), the Division has reviewed the adequacy of the reclamation bonding instruments and the adequacy of the reclamation cost estimate. There is currently two corporate sureties in place for the New Elk Mine, one in the amount of \$42,842.00 and the other in the amount of \$4,605,014.08, for a total bond in the amount of \$4,647,856.08. Prior to MT8, a compiled reclamation cost estimate was developed by the Division as a part of the Permit Renewal No. 7 (RN7) process that was approved on November 14, 2019. The Division's reclamation unit costs for the tasks identified in the RN7 cost estimate had not been updated until the MT8 review. Also, a number of revisions have been approved since the issuance of RN7 that resulted in an increase in reclamation liability. For the MT8 review, the Division consolidated the reclamation tasks from the RN7 estimate with the tasks associated with the various revisions approved after the issuance of RN7 and thus developed a single consolidated reclamation cost estimate. This reclamation cost estimate was sent to NECC with the MT8 review document on August 29, 2021. On June 24, 2021, NECC submitted PR5. During the review of PR5, the Division and NECC reviewed the reclamation liability at the site and an updated reclamation cost estimate was produced by the Division based on the MT8 estimate and questions raised by NECC. The Division provided a copy of the reclamation cost estimate to NECC on November 2, 2021. NECC subsequently reviewed and accepted the Division's estimate in a letter dated May 5, 2022. However, DRMS issued a proposed decision to deny PR5, and therefore the required surety needs to be updated through the bond adjustment/surety increase process outlined in Rule 3.02.2(4).

The Division proposes to increase the required surety at the site to \$5,218,954.00. The current required surety set for the site is \$4,605,014.08. The net increase in required surety is \$613,939.92. The Division currently holds a surety in the amount of \$4,647,856.08. Therefore, NECC will be required to submit an additional \$571,097.92 in bond.

The Division and NECC met for an informal conference on August 10, 2022. NECC and the Division discussed the reasons for the reclamation cost increase.

## **III. PROPOSED DECISION**

The Division proposes to approve SI4 and increase the reclamation liability amount to \$5,218,954.00. Any person with a valid legal interest which might be adversely affected by this proposed decision may request a formal public hearing before the Mined Land Reclamation Board in accordance with Rule 3.03.2(4). Public notice of this proposed decision will be published twice in *The Chronicle – News* as soon as possible. Requests for public hearing must be submitted to the Division in writing within thirty days of the first publication in *The Chronicle - News*. The request must state with reasonable specificity the reasons for the request and the objections to the proposed decision. If no hearing is requested within that thirty days, the Division's decision will become final.