



SL-8, Partial Phase III Bond Release

Proposed Decision
and
Findings of Compliance
for the

Elk Creek Mine

PERMIT NUMBER C-1981-022

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Introduction

This document is the proposed decision of the Colorado Division of Reclamation, Mining and Safety (the Division) in response to a request for Partial Phase III bond release at the Elk Creek Mine, Division file number C-1981-022. The package contains four parts. These include: 1) procedures and summary of the bond release process; 2) criteria and schedule for bond release; 3) observations and findings of the Division regarding compliance with the bond release requirements of the Colorado Surface Coal Mining and Reclamation Act and regulations promulgated thereunder; and 4) the Division's proposed decision on the request for bond release.

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. 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 the Division offices, located at 1313 Sherman Street, Room 215, in Denver, Colorado.

The Elk Creek Mine is an underground mine which is permitted and operated by Oxbow Mining, LLC. The ownership of the land for which bond release has been requested is federal and private, and the coal ownership was federal and private. Reclamation for which bond release has been requested was conducted during 2010-12.

I. PROCEDURES AND SUMMARY OF THE REVIEW PROCESS

Oxbow Mining, LLC (Oxbow) applied for Partial Phase III bond release (SL-8) under the Colorado Surface Coal Mining and Reclamation Act following reclamation of portions of the Elk Creek Mine. The mine is located in Delta and Gunnison Counties. The legal description of the lands included within the permit area is:

Township 12 South, Range 90 West, 6th PM –

- Sec. 27: S $\frac{1}{2}$ SW $\frac{1}{4}$
- Sec. 28: S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 29: S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 30: S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 31: All
- Sec. 32: All
- Sec. 33: All
- Sec. 34: NW $\frac{1}{4}$ + Lots 3, 4, 5, 6, 11, 12, 13, 14, 19 and 20

Township 12 South, Range 91 West, 6th PM –

- Sec. 25: S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 26: S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 27: SE $\frac{1}{4}$ SE $\frac{1}{4}$
- Sec. 34: Lots 8, 9, 15, 16, E $\frac{1}{2}$ NE $\frac{1}{4}$
- Sec. 35: All
- Sec. 36: All

Township 13 South, Range 89 West, 6th PM –

- Sec. 6: Lots 17, 21, 22
- Sec. 7: Lots 1, 2, and 3 North of the Centerline of the River

Township 13 South, Range 90 West, 6th PM –

- Sec. 1: All
- Sec. 2: All
- Sec. 3: Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, S $\frac{1}{2}$ SW $\frac{1}{4}$
- Sec. 4: Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, S $\frac{1}{2}$ S $\frac{1}{2}$
- Sec. 5: All
- Sec. 6: All
- Sec. 7: All
- Sec. 8: All North of the Centerline of the River and Town of Somerset
- Sec. 9: All North of the Centerline of the River
- Sec. 10: All North of the Centerline of the River
- Sec. 11: Lots 1, 2, 3, 4, 5, 6, 7, 8, Lot 9 North of the Centerline of the River, NW $\frac{1}{4}$ SE $\frac{1}{4}$ North of the Centerline of the River, N $\frac{1}{2}$ SW $\frac{1}{4}$ North of the Centerline of the River, NW $\frac{1}{4}$ SW $\frac{1}{4}$ North of the Centerline of the River
- Sec. 12: Lots 1, 2, 3, 4, 5, 6, 7, and 8 North of the Centerline of the River, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ North of the Centerline of the River
- Sec. 17: NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ NE $\frac{1}{4}$, North of the Centerline of the River and

Town of Somerset

Township 13 South, Range 91 West, 6th PM –

Sec. 1: All

Sec. 2: Lots 1, 2, 3, 4, S½ NW¼, S½ NE¼, SE¼, N½ SW¼

Sec. 3: Lots 1, 2, 3, S½ NE¼, N½ SE¼

Sec. 11: E½ NE¼

Sec. 12: All

Sec. 13: Lot 1, N½ NE¼

Summary of Previous Bond Releases

Partial Phase I bond release SL-1 was received on February 27, 2019 and requested a release of 19.4 acres located on the Lower and Middle Pads of the Elk Creek Mine facilities area and a portion of the East Yard area. The Division approved the Partial Phase I bond release SL-1 on October 18, 2019 and released \$210,404.76

Partial Phase I, II and III bond release SL-2 was received on September 16, 2019 and requested a release of 201.85 acres. The areas included in the bond release were reduced during the inspection and review process. The Division approved the Phase I release of 66.05 acres (West Valley Fill, II West Valley Fill, and a portion of the Gob Vent Boreholes and associated pads and roads); the Phase I & II release of 70.36 acres (Bear Creek B-Seam Portal & Fansite (US Steel), Lower Hubbard Creek facilities area, Hubbard Creek Fan #1 Site, and a portion of the Gob Vent Boreholes and associated pads and roads); and the Phase III release of 2.33 acres (Bear Creek Fansite (leased to Vessels Gas)) on March 3, 2021 and released \$1,839,606.71.

Partial Phase II bond release SL-3 was received on August 18, 2020 and requested a release of 56.02 acres of Gob Vent Boreholes and associated pads and roads. The acreage included in the release was slightly reduced during the review process. The Division approved the Phase II release of 50.44 acres on May 5, 2021, and released \$102,847.02.

Partial Phase I, II and III bond release SL-4 was received by the Division on January 5, 2021, and modified on February 24, 2021, reducing the number of sites to be included. The Division approved the Phase I, II and III release of 5.70 acres (Sanborn Creek Mine Portals area and Sanborn Creek Mine Fan Site); and the Phase III release of an additional 10.70 acres (Bear Creek B-Seam Portal & Fansite (US Steel), Lower Hubbard Creek facilities area, and Hubbard Creek Fan #1 Site) on March 16, 2021, and released \$132,051.25.

Following the modification of SL-4 on February 24, 2021, the sites removed from the SL-4 application were carried forward as SL-5. The Division approved the Phase I, II and III release of 2.2 acres (East Yard Refuse Pile, TC1 and TC2) and the Phase III release of an additional 28.92 acres of Gob Vent Boreholes and associated pads and roads on January 19, 2022.

Partial Phase II bond release SL-6 was received by the Division on October 27, 2021 and requested the release of 35.63 acres including: the lower and middle pads of the Elk Creek Mine

facilities area, including part of the East Refuse Pile; the West Valley Fill, including the haul road west of the fill; and the II West Valley Fill. The Division approved the application on September 8, 2022, and released \$63,319.

Partial Phase III bond release (SL-7) was received by the Division on April 26, 2022, and requested the release of 21.24 acres of Gob Vent Boreholes and associated pads and roads. The Division approved the Phase III release of 21.24 acres on January 18, 2023. With SL-7 an error made in SL-3, where 0.62 acres were mistakenly given Phase II release, was also corrected. SL-7 did not release any Phase II acreage. Following the issuance of SL-7, the required surety for the Elk Creek Mine was set at \$1,690,969.00.

An application for Partial Phase III bond release (SL-8) was received by the Division on November 9, 2022. The application was deemed complete on November 21, 2022. Oxbow published notice of the bond release application in *Delta County Independent* once weekly for four consecutive weeks, beginning November 16, 2022. Oxbow also notified land owners within and adjacent to the mine permit area, and other interested parties of the application for bond release, as required by Rule 3.03.2(1).

No comments, written objections, or requests for an informal conference regarding the bond release application were received by the Division.

The Division scheduled a bond release inspection for May 17, 2023, but the inspection was postponed due to damage to access roads caused by unusually high spring run-off. The inspection was eventually conducted on October 25, 2023. The site inspection was conducted in accordance with Rule 3.03.2(2). The inspection was attended by Doug Smith of Oxbow, Dan Gray of the U.S. Forest Service, Paonia Ranger District (USFS), and Tom Medlin of the Office of Surface Mining, Reclamation and Enforcement (OSMRE). The Bureau of Land Management, Uncompahgre Field Office (BLM) was notified but no representative attended the inspection.

The final list of sites to be Phase III released with SL-8 is given in Table 1, below. All of the sites in the table were Phase I and Phase II released with SL-2.

Table 1

Phase	Site	Landowner/manager	Reclamation Date	Phase I Release	Phase II Release	Acreage
III	GVB-LW-8-03, pad only	BLM	2010	SL-2	SL-2	0.16
III	GVB-LW-9-05, pad plus 1300' road	Hotchkiss Ranches	2012	SL-2	SL-2	1.15
III	GVB-LW-10-05, pad plus 896' road	Hotchkiss Ranches	2012	SL-2	SL-2	0.79
III	GVB-LW-12-03, 2013' road only	Hotchkiss Ranches	Road remains at landowner request	SL-2	SL-2	0.83
III	GVB-LW-15-02, -01A, -01B, pad (and road)	Hotchkiss Ranches	2012	SL-2	SL-2	1.77
III	GVB-LW-15-08, pad plus 200' road	BLM	2012	SL-2	SL-2	0.91
III	GVB-LW-17-01A, -01B, pad plus 319' road	Hotchkiss Ranches	2012	SL-2	SL-2	1.09
III	GVB-LW-17-03, pad plus 500' road	Hotchkiss Ranches	2012	SL-2	SL-2	0.86
III	GVB-LW-17-04, -04B, -04C	Hotchkiss Ranches	2012	SL-2	SL-2	0.96
III	GVB-LW-17-09, pad only	USFS	2012	SL-2	SL-2	0.98
	Toal Acreage for SL-8					9.5

II. CRITERIA AND SCHEDULE FOR BOND RELEASE

PHASE III

Rule 3.03.1(2)(c) states that the final portion of performance bond, "shall be released when the permittee has successfully completed all surface coal mining reclamation operations in accordance with this approved reclamation plan, and the final inspection procedures of 3.03.2 have been satisfied. This shall not be before the expiration of the period specified for revegetation responsibility in 3.02.3." Rule 3.03.1(4) states, "No bond shall be fully released until all reclamation requirements of these Rules and the Act are fully met...". The same rule goes on to state, "No acreage shall be released from the permit area until all surface coal mining and reclamation operations on that acreage have been completed in accordance with the approved reclamation plan."

The sites included in the SL-8 application were disturbed post-law and have been approved for a post-mining land use of "Undeveloped Land". Topsoil was salvaged at the time of disturbance and conserved in stockpiles and windrowed berms (along roads). The specific reclamation plan for the borehole pads and roads requires that:

Topsoil and suitable soil material stockpiled and/or windrowed in berms on the perimeter of the disturbed areas will be redistributed at uniform thickness and reseeded in accordance with the revegetation plan presented in Exhibit 2.05-E6, Revegetation Plan.

Herbaceous production (defined as current year above-ground biomass of herbaceous vegetation) of reclaimed areas will be successful when reclaimed area total herbaceous production is equal to or greater than 90 percent of the total herbaceous production of the approved extended reference area with 90 percent statistical confidence.

Species composition and a demonstration of the adequacy of the seasonal nature and support of the post-mining land use of the reclaimed area vegetation will be successful when there are three or more perennial or biennial plant species of which two are graminoids and one is a perennial or biennial forb or shrub. No one component of the above three species should comprise greater than 60% relative cover nor less than 2% relative cover, during a given year's quantitative sampling.

III. OBSERVATIONS AND FINDINGS

Vegetation on the sites included in Table 1 was sampled in June 2021, and again in June 2022. Cover and species composition were determined using the point-intercept method. Herbaceous production was estimated by harvesting a 0.5 m² plot at the origin of each cover transect, with the material dried in air until the difference in weight between successive measurements varied by no more than 0.1 g. A minimum of 15 samples were taken for each sample set, and sample adequacy was demonstrated.

The extended reference area was sampled immediately adjacent to the reclaimed area sample site.

Cover and production of the reclaimed area exceeded that of the extended reference area in both the sampling years: total vegetative cover in the reclaimed area was 60.53% vs. 11.74% in the reference area in 2021, and 73.47% vs. 19.20% in 2022; total herbaceous production in the reclaimed area was 172.73 g/m² vs. 64.91 g/m² in the reference area in 2021, and 172.54 g/m² vs. 82.25 g/m² in 2022.

In 2021 six cool season grass species (*Agropyron smithii* – western wheatgrass, *Poa sandbergii* – sandberg bluegrass, *Bromus marginatus* – mountain brome, *Elymus cinereus* – basin wildrye, *Carex geyerii* – Elk sedge, and *Agropyron trachycaulum* – slender wheatgrass); and four forb/shrub species (*Achillea lanulosa* - yarrow, *Astragalus cicer* – cicer milkvetch, *Aster glaucodes* – aster, and *Erigeron flagellaris* - Fleabane) were found with 2% < relative cover < 60%.

In 2022 seven cool season grasses (as for 2021, with the addition of *Agropyron dasystachyum* – thickspike wheatgrass, *Poa pratensis* – Kentucky bluegrass, and *Poa sandbergii* – Sandberg bluegrass; but no *Agropyron trachycaulum* – slender wheatgrass) and five forb/shrub species (as for 2021, with the addition of *Vicia Americana* – American vetch) satisfied the significance criteria.

The species diversity of the reclaimed area exceeded the success standard in both of the sampling years.

Summary and Conclusions

Based upon a review of the mine permit, the applicant's bond release application, and site inspections, the Division finds that Oxbow Mining, LLC has successfully completed all surface coal mining reclamation operations in accordance with the approved reclamation plan and met all requirements of the Act and the Rules.

IV. PROPOSED DECISION

Based on the observations above, the Division proposes to approve Oxbow Mining, LLC's request for a Partial Phase III bond release for the Elk Creek Mine. This proposed decision will release the applicant from all reclamation liability for the 9.5 acres identified in Table 1.

The Division currently holds a performance bond of \$2,000,000.00 for the Elk Creek Mine. The most recent update of reclamation liability for the site prior to SL-1 was \$4,323,977.80. This will be the figure used to calculate the maximum dollar amount eligible for release based on the conditions of Rule 3.03.1(2), which states that up to 60% of the bond can be released at Phase I, up to 25% can be released at Phase II, and the remaining 15% can be released at Phase III. Table 2 shows the bond release history at the Elk Creek Mine, with the acres that have achieved each phase of bond release, including a correction that was made with SL-7.

Table 2

Elk Creek Mine C-1981-022 Bond Release History							
Bond Release Acreage							
	Total Disturbed	Phase I Released	Phase I Remaining	Phase II Released	Phase II Remaining	Phase III Released	Phase III Remaining
SL-1	239.2	19.4	219.8	0	239.2	0	239.2
SL-2	239.2	138.74	81.06	72.69	166.51	2.33	236.87
SL-4	239.2	5.7	75.36	5.7	160.81	16.4	220.47
SL-3	239.2	0	75.36	49.82	110.99	0	220.47
SL-5	239.2	2.2	73.16	2.2	108.79	31.12	189.35
SL-6	239.2	0	73.16	35.63	73.16	0	189.35
SL-7	239.2	0	73.16	0	73.16	21.24	168.11
SL-8	239.2	0	73.16	0	73.16	9.5	158.61

The required surety is whichever is greater of (i) the minimum amount of bond to be held based on Rule 3.03.1(2); and (ii) the estimated cost to reclaim the site.

- (i) Table 3 shows the maximum amount of bond eligible for release with SL-8 based on the acreages in Table 2, but also tracks the minimum total bond that must be held by the Division based on Rule 3.03.1(2). Based on the figures shown in Table 3, the minimum amount of bond to be held following the approval of SL-8 is \$1,554,200.67.
- (ii) The site-wide reclamation cost estimate was last recalculated with MT-8/SR-2 in 2021, and subsequently adjusted with SL-6 and SL-7. The approval of SL-8 will impact tasks 121 and 122 from that estimate, as shown in Table 4. Since those tasks were reduced considerably with MT-8/SR-2, the dollar amount associated with them is rather small. The acreage associated with SL-8 (9.5 acres) is less than that associated with tasks 121 and 122 (81.82 acres). For the purposes of SL-8 the Division will subtract a proportional amount from the combined value of tasks 121 and 122, and subtract this value from the estimated cost to reclaim the site calculated with SL-7:

$$SL8 \text{ cost reduction} = \text{Task 121, 122 cost} \times \frac{SL8 \text{ acreage}}{\text{Task 121, 122 acreage}}$$

$$SL8 \text{ cost reduction} = \$2555 \times \frac{9.5 \text{ acres}}{81.82 \text{ acres}}$$

$$SL8 \text{ cost reduction} = \$297$$

$$\text{Reclamation Liability, SL8} = \text{Reclamation Liability, SL7} - SL8 \text{ cost reduction}$$

$$\text{Reclamation Liability, SL8} = \$1,690,969 - \$297$$

$$\text{Reclamation Liability, SL8} = \$1,690,672$$

Based on the above calculation, the estimated remaining cost to reclaim the mine disturbance is \$1,690,672.00, which exceeds the minimum amount of bond to be held from Table 3.

Following the issuance of SL-8 the new required surety for the Elk Creek Mine will be \$1,690,672.00

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(6). Public notice of this proposed decision will be published twice in the *Delta County Independent* as soon as possible. Requests for public hearing must be submitted to the Division in writing within thirty days of the day following the first publication in the *Delta County Independent*. If no hearing is requested within those thirty days, the Division's decision will become final.

Table 3

Starting Bond \$4,323,977.80																			Minimum Bond to be held per Rule 3.03.1(2)	
Bond Release	Phase I (60%)						Phase II (25%)						Phase III (15%)							
	Acres	Cum. Acres	Acres remain	\$ Eligible for release	Cum. \$	Minimum \$ to remain	Acres	Cum. Acres	Acres remain	\$ Eligible for release	Cum. \$	Minimum \$ to remain	Acres	Cum. Acres	Acres remain	\$ Eligible for release	Cum. \$	Minimum \$ to remain		
	239.2						239.2						239.2						\$648,596.67	\$4,323,977.80
SL-1	19.4	19.4	219.8	\$210,414.30	\$210,414.30	\$2,383,972.38	0	0	239.2	\$0.00	\$0.00	\$1,080,994.45	0	0	239.2	\$0.00	\$0.00	\$648,596.67	\$4,113,563.50	
SL-2	138.74	158.14	81.06	\$1,504,787.66	\$1,715,201.96	\$879,184.72	72.69	72.69	166.51	\$328,501.20	\$328,501.20	\$752,493.25	2.33	2.33	236.87	\$6,317.85	\$6,317.85	\$642,278.82	\$2,273,956.79	
SL-4	5.7	163.84	75.36	\$61,822.76	\$1,777,024.72	\$817,361.96	5.7	78.39	160.81	\$25,759.48	\$354,260.68	\$726,733.77	16.4	18.73	220.47	\$44,469.00	\$50,786.85	\$597,809.82	\$2,141,905.54	
SL-3	0	163.84	75.36	\$0.00	\$1,777,024.72	\$817,361.96	49.82	128.21	110.99	\$225,146.92	\$579,407.60	\$501,586.85	0	18.73	220.47	\$0.00	\$50,786.85	\$597,809.82	\$1,916,758.62	
SL-5	2.2	166.04	73.16	\$23,861.42	\$1,800,886.14	\$793,500.54	2.2	130.41	108.79	\$9,942.26	\$589,349.86	\$491,644.59	31.12	49.85	189.35	\$84,382.64	\$135,169.50	\$513,427.17	\$1,798,572.30	
SL-6	0	166.04	73.16	\$0.00	\$1,800,886.14	\$793,500.54	35.63	166.04	73.16	\$161,019.37	\$750,369.22	\$330,625.23	0	49.85	189.35	\$0.00	\$135,169.50	\$513,427.17	\$1,637,552.94	
SL-7	0	166.04	73.16	\$0.00	\$1,800,886.14	\$793,500.54	0	166.04	73.16	\$0.00	\$750,369.22	\$330,625.23	21.24	71.09	168.11	\$57,592.78	\$192,762.28	\$455,834.39	\$1,579,960.16	
SL-8	0	166.04	73.16	\$0.00	\$1,800,886.14	\$793,500.54	0	166.04	73.16	\$0.00	\$750,369.22	\$330,625.23	9.5	80.59	158.61	\$25,759.48	\$218,521.76	\$430,074.91	\$1,554,200.68	
Max. bond eligible for release, SL-8 \$25,759.48																				

Table 4

MT8/SR2 Cost Estimate Task Number	Task Description	Task Direct Cost
121	Re-seed Drill Pads, MR's and TR's, 46.23 acres @ 2% failure rate	\$1,033
122	Re-seed Light-Use Roads, MR's and TR's, 35.59 acres @ 2% failure rate	\$1,522
	Total applicable to SL-8	\$297