



United States Department of the Interior  
OFFICE OF SURFACE MINING RECLAMATION AND  
ENFORCEMENT

Regions 5, 7-11  
1 Denver Federal Center, Bldg #41  
Lakewood, CO 80225



January 19, 2024

CO-0021

Mr. Jason Musick  
Coal Program Manager  
Colorado Division of Reclamation, Mining and Safety  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

Re: The Office of Surface Mining Reclamation and Enforcement's Mine Plan Determination for West Elk Mine, State Permit No. C-1980-007, TR-152, Federal Coal Lease COC-1362.

Mr. Musick,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) determines that Mountain Coal Company, LLC's (MCC) proposed revision to Permit No. C-1980-007, Technical Revision No. 152 (TR-152) at West Elk Mine *does not* constitute a mine plan modification requiring approval from the Assistant Secretary for Land and Minerals Management (ASLM).

**Proposed Action**

MCC plans to reduce the total amount of coal extracted from longwall panels in Sections 10 and 15 of Township 14S, Range 90W, due to unfavorable mining conditions. Approximately 3.2 million tons of Federal coal will be bypassed as a result. To make up for this loss, MCC proposes to mine coal in Section 9 by pillar extraction. Pillar extraction is the process of extracting coal from the remaining pillars created during the mining development process. Pillar extraction from the Federal portion of the project area will yield approximately 200,200 tons of Federal coal. The U.S. Forest Service (FS) is the surface landowner and Federal land management agency for Section 9.

**Location**

Pillar extraction activities will occur in the southwest portion of Federal Coal Lease COC-1362 and portions of private leases. The location of the Federal coal to be extracted is:

Township 14 South, Range 90 West, 6<sup>th</sup> Principal Meridian  
Section 9: SE¼ NE¼

Pillar extraction activities will be conducted within approximately 20 acres.

**Prior ASLM Approvals**

There are two prior mining plan approvals from the ASLM related to Federal coal in Sections 9, 10, and 15 of Township 14S, Range 90W:

1. The ASLM approved a mining plan for Federal Coal Lease COC-1362 in 2006. The 2006 mining plan approval, administered by your office as Permit Revision No. 10 (PR-10), authorized

the mining of approximately 3,430 acres and 66 million tons of recoverable Federal coal in areas including Section 9 of Township 14S, Range 90W.

2. The ASLM approved a mining plan modification for Federal Coal Lease COC-67232 for portions of Sections 10 and 15 of Township 14S, Range 90W, in 2020. The 2020 mining plan modification approval, administered by your office as PR-15, authorized the mining of approximately 920 acres and 10.1 million tons of recoverable Federal coal.

### **Determination Criteria and Decision**

Based on OSMRE's review of the materials submitted by MCC and by the Colorado Division of Reclamation, Mining and Safety (DRMS), OSMRE determines that the proposed TR-152 *does not* constitute a mining plan modification requiring approval by the ASLM. The OSMRE has considered the criteria described in the Federal regulations at 30 CFR 746.18(d)(1) through (d)(6) defining when a permit revision constitutes a mining plan modification:

*1. Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than SMCRA.*

TR-152 does not change the mining plan that would affect the conditions of its approval pursuant to Federal law or regulation.

*2. Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining.*

TR-152 does not include any land, facility, or place designated unsuitable for mining.

*3. Any change in the location or amount of coal to be mined, except where such change is the result of: (i) A minor change in the amount of coal actually available for mining from the amount estimated; or (ii) An incidental boundary change<sup>1</sup>.*

TR-152 proposes to reduce the amount of coal mined from previously approved PR-15 by 3.2 million tons while increasing the amount of coal mined from previously approved PR-10 by 20,200 tons. Overall, it is a net decrease of approximately 3 million tons of Federal coal.

*4. Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time.*

TR-152 would not extend coal mining and reclamation operations onto leased Federal coal lands for the first time.

*5. Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.*

TR-152 is not a major action<sup>2</sup> normally requiring the preparation of an Environmental Impact

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<sup>1</sup> OSMRE Directive REG-19 establishes the agency-wide policy for determining when an extension of the area covered by a Federal permit constitutes an incidental boundary revision.

<sup>2</sup> Major actions requiring the preparation of an EIS are described in the DOI Department Manual, Managing the NEPA Process – Office of Surface Mining (516 DM 13).

Statement.

*6. Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is federally-owned.*

TR-152 does not propose any change in the post-mining land use.

### **Consultations**

The Federal Regulation at 30 CFR 740.13(d)(3) requires that the regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations, and executive orders for which it is responsible.

On December 28, 2023, OSMRE consulted with the FS about this determination. On January 19, 2024, the FS responded via email that activities related to TR-152 will not affect resources on Federal surface lands and the proposed activities are consistent with their Forest Land Management Plan. The FS concurs with OSMRE's determination that TR-152 for Permit No. C-1980-007, Federal Coal Lease COC-1362 at West Elk Mine *does not* constitute a mining plan modification requiring approval by the ASLM.

On January 10, 2024, OSMRE consulted with the Bureau of Land Management (BLM) about this determination. On January 16, the BLM responded via email that they concur with OSMRE's determination that TR-152 does not constitute a mining plan modification requiring approval by the ASLM.

The OSMRE's decision does not relieve DRMS from coordinating with other Federal agencies as required.

Please contact Federal Lands Coordinator Charlie Kwak at [ckwak@osmre.gov](mailto:ckwak@osmre.gov) for any questions.

Sincerely,

Marcelo Calle,  
Program Support Division Manager

cc: Amy Eschberger – Colorado DRMS  
Leigh Simmons – Colorado DRMS  
Jessica Wilczek – Arch West Elk  
Daniel Gray – U.S. Forest Service  
Suzanne Copping - BLM  
Howard Strand – OSMRE