



February 29, 2024

Chris Walker  
New Elk Coal Company, LLC.  
12250 Highway 12  
Weston, CO 81091

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

Dear Mr. Walker,

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 **March 29, 2024**.

The Division has executed a third 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 in red text.**

Rule 2.03.4 Identification of Interests (Preliminary Adequacy Concerns)

1. Please update sections 2.03.4 (1) through (4) of the Permit Application Package (PAP) with current information.
  - NECC – “Section 2.03.4 (1) through (4) has been updated on revised pages 2.03-3 through 2.03-9.”
  - DRMS – “Attached are copies of printouts of NECC’s and Allegiance Coal Limited’s websites. It does not appear the officers, executive directors, etc. for each of the companies identified in NECC corporate hierarchy is accurate for Sections 2.03.4(1)-(4). Please update these sections with accurate information. Please include Board Minutes substantiating the appointment of new directors, officers, etc. Please include Board Minutes substantiating when an officer, director, etc. has ended their appointment. Please include the end dates for any officer, director, etc. in the revised pages.”
  - NECC – “Section 2.03 has been updated. See Attached Documents (2.03\_RN5 & Change of Business Structure”
  - See items 16-17. NECC’s second adequacy response stated that these items were addressed



with the new Section 2.03 submission. However, they were not updated. Please update these portions of Section 2.03 and resubmit the pages.

- The date on the bottom of the revised pages says “Revised (02/20/2023)”. Please update the year to 2024 and resubmit the section.
  - On page 3 of the newly submitted Section 2.03 (page 2.03-3):
    - i. Right above the heading for “2.03.4 Identification of Interest” the sentence begins with “NEWW believes that this information...”. Please edit NEWW to instead read ‘NECC’ and resubmit the page.
  - On page 7 of the newly submitted Section 2.03 (page 2.03-7):
    - i. Under (3)(a)(ii), Chris Walker’s title is listed as CEO. Earlier in the section, and on the letter indicating the change in business structure submitted as part of the second adequacy response, his title is listed as CFO. Please clarify if whether Chris Walker acts as both CFO and CEO, or if the information of page 2.03-7 is an error. If it is an error, please edit and resubmit this page to reflect the correct title.
    - ii. Under (3)(a)(iv), the DRMS Permit number for the New Elk Mine is listed as #C-81-012. Please update this to reflect “#C-1981-012” and resubmit the page.
  - On page 8 of the newly submitted Section 2.03 (page 2.03-8):
    - i. Under (4)(a), the information mostly corresponds with the information for the New Elk Mine, except the State Permit Number is for Lorencito Canyon Mine. Please update this portion to reflect only information for Lorencito Canyon Mine and resubmit the page.
    - ii. Please see item #18 below for additional edits for Pages 2.03-8 and 2.03-10.
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).*
    - DRMS – “This issue has been resolved.”
  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)*
    - DRMS – “This issue has been resolved.”
  4. *Please update Map 2.03.4-1, the Surface Ownership Map.*
    - DRMS – “This issue has been resolved.”
  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).

- *NECC — “Subsurface Ownership is also shown on Map 2.03.4-1 since it is the same as the surface ownership.”*
- *DRMS — “In section 2.03.4, page 2.03-10 from the adequacy response, 2.03.4(6) 46.5% of subsurface ownership is held jointly by Hill Ranch and F.E Hill Company and 53.46% is held by MGP Enterprises. This information is not reflected on Map 2.03.4-1. Please include all Subsurface Ownership on Map 2.03.4-1 or submit an additional map with this information in accordance with Rule 2.10.3(1)(a).”*
- **This issue has been resolved**

Rule 2.03.5 Compliance Information

6. *Please update to section 2.03.5 of the PAP.*
  - *DRMS — “This issue has been resolved.”*

Rule 2.03.6 Right of Entry and Operation Information

7. *Please update section 2.03.6 of the PAP as necessary.*
  - *DRMS — “This issue has been resolved.”*

Rule 2.03.9 Personal Injury and Property Damage Insurance Information (Preliminary Adequacy Concerns)

8. *Please update Exhibit 3 with the most current certificate of insurance for personal liability.*
  - *NECC — “An updated certificate of insurance for personal liability has been put in the revised Exhibit 3.”*
  - *DRMS — “An expired insurance certificate was submitted with the adequacy response. Please provide the Division a copy of the current insurance certificate.”*
  - **This issue has been resolved**

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).*
  - *DRMS — “This issue has been resolved.”*

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>.

- NECC — *“The New Mexico meadow jumping mouse (Zapus hudsonius luteus) has been added to the endangered species list and is now mentioned in the Threatened and Endangered Species portion of the PAP. The New Mexico meadow jumping mouse was already part of Exhibit 11 and 12 of the PAP.”*
- DRMS — *“The New Mexican meadow jumping mouse (Zapus hudsonius luteus) is not listed in Exhibit 11 of the current PAP. Please submit an updated Exhibit 11. Exhibit 12 is an aquatic technical report and although it also does not contain the New Mexican meadow jumping mouse it will not need to.”*
- The subspecies name is misspelled on the supplied page. Please revise “leteus” to ‘luteus’. Please also edit the common name to read “New Mexican Meadow Jumping Mouse” and resubmit the page.

DRMS — *“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.”*

DRMS — *“This issue has been resolved.”*

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).

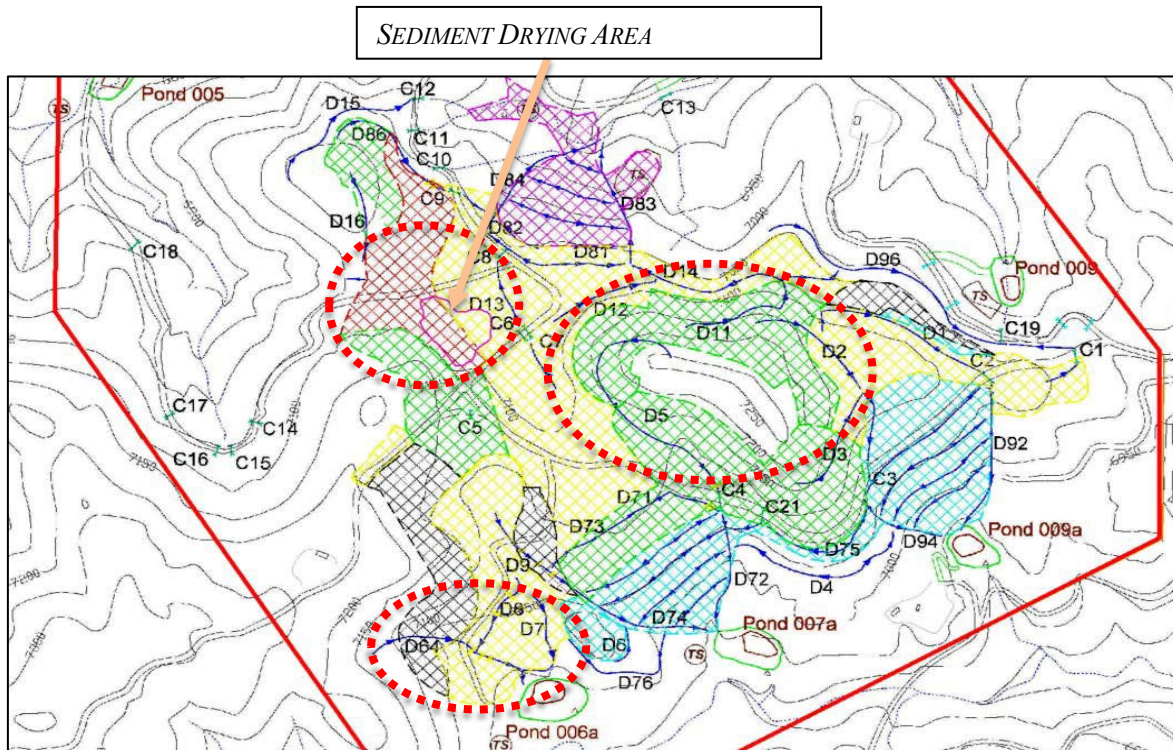


FIGURE 1. AREAS WHERE RILLS, GULLIES AND SPARSE VEGETATION HAS BEEN FOUND TO BE A PERSISTENT PROBLEM AT THE SITE ARE WITHIN THE DOTTED CIRCLE AREAS. BACKGROUND IMAGE IS THE 2020 ANNUAL REPORT MAP.

- NECC — “Page 2.04-59 has been revised to mention if more drastic erosion problems need to be addressed. For the areas mentioned in the adequacy review, NECC does plan on either addressing the rills and gullies by regrading and reseeding actions as noted in the plan. NECC is also thinking considering making revisions to the PAP to cut ditches in some areas that are steep and have tough time slowing water. NECC is planning on addressing these in 2023.”
- DRMS — “Page 2.04-59 corresponds with issue #10 from the preliminary adequacy review. Page 2.05-69 submitted with the adequacy response corresponds with this issue. The page 2.05-69 submitted with the adequacy response is the same as page 2.05-68 in the current PAP, but it is missing Table 2.05 4-4. If this is a mistake, please let the Division know and we will disregard the new 2.05-69 submitted with the adequacy response and refer to the current pages 2.05-68 and 2.05-69 within the PAP.”
- NECC – “Please disregard the new page 2.05-69 and refer to the original page 2.05-69”.
- Thank you for the clarification. The Division will not replace the current 2.05-68 and 2.05-69 in the PAP. This issue is resolved.

- *DRMS — “NECC states that NECC plans on addressing the rills and gullies by regrading or reseeding actions, and that this is planned to be addressed in 2023. NECC has a limited rill and gully plan included in the current page 2.05-69 of the PAP. In accordance with Rules 2.05.4(2)(c) and 4.14.6, please expand on this plan to include a proposal for addressing the specific areas highlighted in Figure 1. Be sure to identify these areas in the PAP as needing to be treated during this permit term. The Division requires NECC to create and submit a formal plan for addressing these issues at this time. This plan needs to be created and reviewed prior to approval of the permit renewal RN-5.”*

**i. This adequacy item was removed from the second adequacy requirements in a letter from the Division dated November 30, 2023.**

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

- *NECC — “Page 2.05-33 has been revised to describe how material/sediment cleaned from sediment control structures are handled. Page 2.05-33a describes a temporary area that is no longer applicable.”*
- *DRMS — “Page 2.05-32 in the current PAP does not correspond with the beginning of page 2.05-33 submitted with the adequacy response. Please consult the current PAP page 2.05-32 and restructure page 2.05-33 to be congruous with page 2.05-32 of the PAP.”*
- *NECC — “Page 2.05.32 has been revised (2.05-33\_RN5) and 2.05-30a has been revised”*
- **The Division would like to correct an error in the second adequacy item mentioned above. The referenced page in the PAP was 2.05-33, since a page 2.05-32 does not exist.**
- **Additionally, NECC submitted a new page 2.05-33 and 2.05-33a in response to the second adequacy review.**
  - i. The revisions to page 2.05-33 look good, except see bulleted item iii below.**
  - ii. However, please address the following for the new page 2.05-33a:**
    - 1. After the paragraph above the “(5) Topsoil) section. The following sentence from the PAP seems to have been removed – “As part of Technical Revision 21, runoff from drill location LC-17-20 will be filtered**

through a sediment fence before reporting to Pond 007 vi Ditch D9 as shown on Map 2.05.3-7.”

- a. Was this removed purposefully? If so, please explain why. If not, please add this sentence back into Page 2.05-33a and resubmit the page.
  2. After the last paragraph on the new page 2.05-33a, the partial sentence “As part of Technical Revision 21, Topsoil will be salvaged from drill site LC-17-20 prior to construction. Salvaging will include removing the top 12 inches of soil or the amount available and stockpiling this” has been removed. Due to this, the newly submitted page 2.05-33a no longer corresponds to page 2.05-33b in the PAP.
    - a. If this was intentionally removed, please explain why and also revise page 2.05-33b. If not, please add this partial sentence back into page 2.05-33a and resubmit the page.
  - iii. The date on the bottom of the revised pages says “Revised (02/20/2023)”. Please update the year to 2024 and resubmit the section.
- DRMS — “NECC states that page 2.05-33a describes a temporary area that is no longer applicable. Upon reviewing the PAP, it appears that this was meant to say Page 2.05-30a describes a temporary area. Please update the page and section describing the temporary area to include language that this area is no longer applicable, or remove the description from the PAP.”
  - NECC — “Page 2.05.32 has been revised (2.05-33\_RN5) and 2.05-30a has been revised”
  - NECC submitted a new page 2.05-30 and 2.05-30a in response to the second adequacy review.
    - i. The revisions to page 2.05-30 look good, except see bulleted item iii below.
    - ii. However, please address the following for the new page 2.05-30a:
      1. In the third paragraph, NECC states “Clean out of ponds and other sediment controls will require a small area located directly below Fill 8...”.
        - a. The sediment drying area is above Fill 8. Please revise the text on Page 2.05-30a and resubmit the page.
      2. In the fourth sentence in the third paragraph, NECC states “This storage area will be graded and seeded, once no more sediment cleaning is anticipated and vegetation on the mine site has begun to look successful.” Which was changed from the PAP’s sentence that states “The dried sediment will be transported to areas of mine reclamation to be used, as determined by soil analysis, as either soil or cover material.”
        - a. Please clarify to the Division if NECC no longer intends to use the sediment cleaned from the ponds for mine reclamation after soil analysis. If so, the language in the new Page 2.05-30a can remain.



If instead that is still NECC's intention, please add this sentence back into Page 2.05-30a and resubmit the page.

3. The illustration/map on Page 2.05-30b of the PAP no longer correlates with the information provided on the new page 2.05-30a in regard to the sediment drying area.

a. Please submit a replacement page with a new figure indicating the current sediment drying area, that retains any of the relevant information on the current page 2.05-30b of the PAP, to the Division with your next adequacy response.

- iii. The date on the bottom of the revised pages says "Revised (02/20/2023)". Please update the year to 2024 and resubmit the section.

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.

- DRMS – "This issue has been resolved."

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.

- NECC — "NECC accepts the reclamation cost estimate and the updated RCE will be placed in Exhibit 23 when the bond is increased."
- DRMS — Thank you for accepting the Division's cost estimate. Please submit additional bond and update Exhibit 23.

#### 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.

- DRMS – "This issue has been resolved."

#### Additional Adequacy Concerns

#### Rule 2.03.4 Identification of Interests



16. On page 2.03-8 submitted with the adequacy response, under 2.03.4(4)(a) an MSHA identification number, is provided for New Elk Coal Company, LLC and Black Warrior Minerals, LLC. Please also include a date of issuance of the MSHA numbers pursuant to rule 2.03.4(4)(a).
- NECC – “This item has been addressed with item number 1 above.”
  - See red text in item 1 above.
17. On page 2.03-8, under 2.03.4(3)(a)(iv) the first paragraph refers to ‘New Elk Mine’ as the name of the mine, followed by information pertaining to the New Elk Mine. This should instead provide information for the Lorencito Canyon Mine. Also, on page 2.03-10 of the submitted pages, under 2.03.4(6), the applicant states that the MSHA identification number for Lorencito Canyon Mine, 05-04712, has been deactivated by MSHA. This information should be removed from page 2.03-10 and placed within 2.03.3(a)(iv). Please submit updated pages 2.03-8 and 2.03-10 reflecting these changes.
- NECC – “This item has been addressed with item number 1 above”
  - DRMS is revising this requirement as it had an error, to instead be: On page 2.03-10 of the submitted pages, under 2.03.4(6), the applicant states that the MSHA identification number for Lorencito Canyon Mine, 05-04712, has been deactivated by MSHA. This information should be removed from page 2.03-10 and placed in an annotation under Lorencito’s information in 2.03.4(4)(a).
  - Please revise pages 2.03-8 and 2.03-10 to reflect these changes.

#### Rule 2.03.8 Permit Term

18. On page 2.03-13 of the adequacy response, under 2.03.8, the permittee states the “Operation is in final reclamation. A second five year permit term began November 7, 2002”. Please update this information.
- NECC – “Item 2.03.8 on page 2.03-11 has been updated to show the new start of the five year permit term.”
  - See red text in item 1 above.

This concludes the Division’s third adequacy review for the RN5 application. The Division is required to issue a decision on the RN5 application by **March 29, 2024**. 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 [amber.gibson@state.co.us](mailto:amber.gibson@state.co.us) or at (720) 836-0967.

Sincerely,



Amber M. Gibson  
Environmental Protection Specialist

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Jared Ebert; DRMS, [jared.ebert@state.co.us](mailto:jared.ebert@state.co.us)