



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



May 21, 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 Determination for West Elk Mine, State Permit C-1910-007, Technical Revision No. 154, Federal Coal Lease C-1362.

Mr. Musick,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) determines that Mountain Coal Company's (MCC) proposed revision to Permit C-1981-010, Technical Revision No. 154 (TR-154) at West Elk Mine *does not* constitute a mine plan modification requiring approval from the Assistant Secretary for Land and Minerals Management (ASLM).

On May 1, 2024, the Colorado Division of Reclamation, Mining, and Safety (DRMS) requested OSMRE's decision on whether West Elk Mine's TR-154 constitutes a mining plan modification requiring ASLM approval. Mining plan approvals by the Secretary of the Interior are required under the Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.* before coal mining can occur on Federal lands.

Proposed Action

MCC plans to reduce the total amount of coal extracted from longwall panels in Sections 4, 5 and 9 of Township 14S, Range 90W, due to unfavorable mining conditions. Sections 4 and 9 contain Federal coal, whereas Section 5 does not. 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 Sections 4 and 9 by pillar extraction in the area referred to as "Sunset South Mains". 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 250,200 tons of Federal coal. The U.S. Forest Service (FS) is the surface landowner and Federal land management agency for Sections 4 and 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, 6th Principal Meridian
Section 9: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
Section 4: S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Pillar extraction activities will be conducted within approximately 28 acres.

Prior ASLM Approval

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 4 and 9 of Township 14S, Range 90W.

Determination Criteria and Decision

Based on OSMRE's review of the TR-154 materials submitted by MCC, OSMRE has determined that the proposed action *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-154 does not affect the conditions of the mining plan approval pursuant to Federal law or regulation other than SMCRA.

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

TR-154 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 change¹.*

TR-154 proposes to recover 250,200 tons of coal from Sections 4 and 9 through pillar extraction. Previously, TR-152 was approved by DRMS to recover approximately 200,000 tons in the Sunset South Mains area through pillar extraction, bringing the total recovered from both revisions to 450,200 tons. The combined coal tonnage from the two technical revisions does not exceed the approximately 3.2 million tons of Federal coal that will be bypassed and the result is a net reduction in the amount of Federal coal approved to be mined by the ASLM in 2006 for Federal Coal Lease COC-1362.

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

TR-154 does 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 or 1969, 42 U.S.C. 4321 et seq.*

TR-154 is not a major action normally requiring the preparation of an Environmental Impact Statement².

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-154 does not propose any change in the post-mining land use.

Consultation

The Federal Regulation at 30 CFR 740.13(d)(2) requires that the OSMRE “shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary’s approval under § 746.18 of this chapter.”

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 May 17, 2024, OSMRE consulted with BLM about the proposed action. On May 20, 2024, BLM responded via email that they concur with OSMRE’s determination that TR-154 for West Elk Mine, Permit C-1981-007, *does not* constitute a mining plan modification requiring approval by the ASLM.

On May 17, 2024, OSMRE consulted with FS about the proposed action. On May 17, 2024, FS responded via email that they concur with OSMRE’s determination that TR-154 for West Elk Mine, Permit C-1981-007, *does not* constitute a mining plan modification requiring approval by the ASLM. The OSMRE's decision does not relieve DRMS from any further coordination with other Federal agencies for compliance as necessary.

Please contact Federal Lands Coordinator Charlie Kwak at ckwak@osmre.gov with any questions.

Sincerely,

Marcelo Calle,
Program Support Division Manager

cc: Amy Eschberger – Colorado DRMS
Leigh Simmons – Colorado DRMS
Jessica Wilczek – Arch Resources, West Elk
Daniel Gray – Paonia Ranger District, U.S. Forest Service
Stanley Foster Beckett – Little Snake Field Office, BLM
Howard Strand – OSMRE

¹ 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.

² 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).