



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
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MAR 27 2013

Memorandum

To: Joseph G. Pizarchik
Director

Through: *for* Sterling Rideout *Andrew J. DeVito*
Assistant Director, Program Support

MAR 29 2013

From: Allen D. Klein *Allen D. Klein*
Regional Director

Subject: Recommendation for Approval, Without Special Conditions, of the Mining Plan Modification for Federal Lease COC-70615 at Oxbow Mining, LLC's Elk Creek and Sanborn Creek Mine located in Delta and Gunnison Counties, Colorado

I. Recommendation

I recommend approval, without special conditions, of a mining plan modification for Federal Lease COC-70615 at the Elk Creek and Sanborn Creek Mine. This is a mining plan modification for an underground coal mine being permitted under the Federal lands program, the approved Colorado State program, and the cooperative agreement. This mining plan approval supplements all previous mining plan approvals for the Elk Creek and Sanborn Creek Mine.

My recommendation to approve this mining plan modification is based on:

- (1) Oxbow Mining, LLC's (OMLLC) complete permit application package (PAP) including the Resource Recovery and Protection Plan (R2P2);
- (2) compliance with the National Environmental Policy Act of 1969;
- (3) documentation assuring compliance with applicable requirements of other Federal laws, regulations, and executive orders;



(4) comments and recommendations or concurrence of other Federal agencies, and the public;

(5) the findings and recommendations of the Bureau of Land Management (BLM) regarding the R2P2, the Federal lease requirements, and the Mineral Leasing Act; and,

(6) the findings and recommendations of the Colorado Division of Reclamation, Mining and Safety (CDRMS) regarding the permit application and the Colorado State program.

If you concur with this recommendation, please sign the attached memorandum to the Assistant Secretary, Land and Minerals Management.

II. Background

The Elk Creek and Sanborn Creek Mine is an underground coal mine located in Gunnison County, Colorado. The mine has been in operation since 2001. The life of the currently approved mining operations within the approved permit area is estimated to be three years. The mining operations use longwall mining methods. The average production rate is 3.8 million tons per year from the D coal seam, and the maximum production rate is 7 million tons per year. The mine currently employs 351 people. The State permit area contains 15,677 acres. About 193 surface acres are disturbed within the State's permit area.

The original mining plan for the Somerset Mine (subsequently renamed to Elk Creek and Sanborn Creek Mine) was approved for Federal leases C-03301, C-03302, and D-052504. On May 16, 1984, a mining plan modification was approved adding Federal lease C-36446 to the mining plan approval area. In 1985, 1986, and 1987, the Federal leases were relinquished or reassigned to other lessees. On April 20, 1988, the mining plan approval for the Somerset Mine was cancelled by the Assistant Secretary.

In 1991, the Sanborn Creek addition to the Somerset Mine was opened. The Sanborn Creek mine addition included new portals into a new mining area. On March 9, 1993, a mining plan for the Sanborn Creek Mine for Federal lease COC-53510 was approved. After the March 9, 1993, mining plan approval, approximately 128 acres were incorporated into the approved mining plan area. These areas did not require Secretarial approval because they did not meet the criteria of 30 CFR 746.18(d) for a mining plan modification. On June 23, 2003, a mining plan for Federal Lease COC-61357 at the renamed Sanborn Creek and Elk Creek Mine was approved.

Since the last mining plan approval, four areas have been incorporated into the approved mining plan area. These areas did not require Secretarial approval because they did not meet the criteria of 30 CFR 746.18(d) for a mining plan modification. Attachment A to the lease modification dated May 05, 2012, lists the original lease as tract 1 and tracts 2 through 5 as modifications.

These areas are in the following Federal lease, for which a mining plan has been approved:

<u>Lease</u>	<u>Area (acres)</u>	<u>Location</u>
COC-61357 Tract 2	159.99	<u>T 13 S, R 90 W, 6th PM</u> Sec. 5, lot 19; <u>T 12 S, R 90 W, 6th PM</u> Sec. 32, portions of; being more particularly described as follows:

Metes & Bounds description: beginning at 381.62 feet N 86 ° 2 ' 50 " W from the SE corner of lot 19, section 5, T 13 S, R 90 W, to the starting point. Thence 9,286 feet N, thence 782.63 feet W, thence 6,675.07 feet S 1 ° 2 ' 39" W, thence 158.29 feet S 87° 17' 2" E, thence 2,626.55 feet S 10° 8' 26" E, and thence 284.40 feet S 86° 2' 50" E to the close.

COC-61357 Tract 3	190.67	<u>T 13 S, R 91 W, 6th PM</u> Sec. 12, lots 3 & 5, NE1/4SW1/4, SE1/4; Sec. 13, lot 1, and NE1/4; being more particularly described as follows:
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Metes and bounds description: beginning at a point on the center subdivision line from whence the quarter corner common to sections 11 and 12 bears N 86° 23' 01" W, 1,085 feet, more or less, thence along said center division line S 86° 1' 28" E, 3,676.36 feet; thence N 15° 43' 11" W, 3,114.32 feet; thence N 74° 16' 49" W, 2,650.00 feet; thence N 15° 43' 11" E, 1,595.60 feet; thence N 74° 6' 49" W, 945.00 feet; thence N 15° 43' 11" 749.5 feet to the Point of Beginning.

COC-61357 Tract 4	148	<u>T 12 S, R 90 W, 6th PM</u> Sec. 32, lots 1, 2, 7, 8, 9, 10, 15, & 16, NE1/4 (partially); <u>T 13 S, R 90 W, 6th PM</u> Sec. 5, lots 5, 16, & 19; being more particularly described as follows:
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Beginning at a point from whence the section corner common to sections 28, 29, 32 & 33 bears N 02° 27' 33" E, 2,829.7 feet, more or less; thence S 14° 36' 09" W, 7,032.93 feet to the existing lease line for coal lease number COC-61357; thence along said existing line N 00° 00' 36" W, 7,268.02 feet; thence leaving said existing lease line S 75° 23' 51" E, 1,833.57 feet to the Point of Beginning.

COC-61357 Tract 5	158.79	<u>T 12 S, R 90 W, 6th PM</u> Sec. 32, lots 18, 21, and 23, and N1/2NE1/4 Sec. 33, lots 22 and 23.
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These areas are included in the approved mining plan area shown on the mining plan area map in this decision document and on the map attached to the mining plan approval document.

A total of 6,418 acres, containing 25.5 million tons of Federal coal, were previously approved for mining in the currently approved mining plan area.

About 10,126 acres of federally managed surface exist in the currently approved mining plan area, the postmining land uses of which are grazingland and wildlife habitat.

III. The Proposed Action

This mining plan action consists of a mining plan modification to add Federal Lease COC-70615 to the approved mining plan area. Specifically, the mining plan action proposed by OMLLC would extend underground mining into Federal coal lease COC-70615. Current operations have encountered a coal fire and cannot continue. Moving the mining operation will allow the OMLLC to continue mining, employing 351 people.

The legal description for the area being added with Federal lease COC-70615 is:

T 13 S, R 90 W, 6th PM

Sec. 3, lots 8, 9, and 16;

Sec. 4, lots 5 to 16, inclusive;

Sec. 5, lots 12, 13, 20 and 24.

The life of the mining operations is expected to continue for another eight years under Colorado Permit No. C-1981-022 and approval of this mining plan modification.

The average annual production rate and the maximum production rate would not change.

The number of people employed at the mine would not change.

The State permit area will not increase from 15,677 acres as explained in the State's decision document for the permit revision.

Surface disturbance within the approved State permit area would increase by 6 acres to a total of 199 acres. The increase is for drill pads and temporary light duty roads.

Approval of this mining plan modification would authorize the mining of an additional 4 million tons of Federal coal and increase the number of acres of Federal coal in the approved mining plan area by 726 acres to a new total of 7,144 acres as shown on the mining plan area map included with the attached decision document.

An additional 726 acres of Federal surface lands would be included in the mining plan area as a result of this action. This brings the total Federal surface lands to 10,852 acres. As a result of this action, only 6 acres of the Federal surface included in this action will be disturbed for surface facilities.

The postmining land use within the permit and mining plan area would not change.

CDRMS has attached no new permit stipulations to this permitting action.

OMLLC's proposal does not require any special conditions to comply with Federal law.

IV. Review Process

CDRMS reviewed the permit application under the Colorado State program, the Federal lands program (30 CFR Chapter VII, Subchapter D), and the Colorado cooperative agreement (30 CFR 906.30). Pursuant to the Colorado State program and the cooperative agreement, CDRMS approved the permit application on November 26, 2012.

The Office of Surface Mining Reclamation and Enforcement (OSM) has consulted with other Federal agencies for compliance with the requirements of applicable Federal laws. Their comments and concurrences are included in the attached decision document.

BLM reviewed the R2P2 for compliance with the Mineral Leasing Act of 1920, as amended, 43 CFR Part 3480, and the Federal lease. BLM found that maximum economic recovery of the Federal coal will be achieved and recommended approval of the mining plan modification in a memorandum dated December 11, 2012.

The OSM Western Region office (WR) has been requested to formally consult with the U.S. Fish & Wildlife Service (USFWS) regarding the Elk Creek East Tract (ECET) by the Colorado Division of Minerals and Geology (CO-DMG). OSM reviewed/ adopted the BLM EA for the ECET which covers an area of 785.79 acres. Federal Coal Lease COC-70615 is for 726 acres of that EA. As part of the section 7 review, OSM prepared a memorandum to the file (included) in which OSM determined that OMLLC complied with the January 1988 USFWS's "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin." OSM reviewed the USFWS Threatened and Endangered species list for Delta and Gunnison counties and "No Effect" was found.

In a memorandum dated January 17, 2013, OSM concurs with the assessment and recommendations for protection of cultural resources, as stated in the State Historic Preservation Officer's concurrence letter dated September 7, 2012.

The area of this mining plan approval has not been designated unsuitable for mining according to section 522(b) of Surface Mining Control and Reclamation Act.

The proposed mining plan modification area is not on any Federal lands within the boundaries of a National Forest.

OSM has determined that approval of this mining plan modification will not have a significant impact on the quality of the human environment. The environmental analysis prepared by BLM and OSM entitled DOI-BLM-CO-150-2008-53 EA, COC70615, Elk Creek East Tract Coal Lease, which OSM has adopted, and other environmental

documents noted in the Finding of No Significant Impact (FONSI), describe the impacts that may result from approval of this mining plan modification and its alternatives. The FONSI and supporting environmental analyses are included in the attached decision document. It should be noted that because of concerns expressed by the public with the release of coal mine methane (CMM), a greenhouse gas, from ventilation wells the EA includes the following statement under the proposed action:

Oxbow Mining LLC will be required to continue to evaluate the technical and economic feasibility of converting or using gas resources that will be released to the atmosphere by the mine ventilation system. Within one year after the lease is approved, OMLLC (utilizing a neutral contractor approved by BLM) will identify existing methane recovery projects that may be applicable to the ECET. At the end of the one year period, OMLLC will submit a report to BLM outlining the technical and economic feasibility of mitigating, capturing, or using the CMM being vented as applicable to the ECET. Annually thereafter, until mining of the ECET is completed, OMLLC will provide BLM with summaries of the status of the projects identified and would include the effectiveness of methane capture, any operational difficulties or constraints, and an assessment of the suitability of the project cost and adaptability to the ECET.

OSM's review of the proposed action did not identify any issues that required resolution by the addition of special conditions to the mining plan approval.

Publication of four consecutive weekly notices in the Delta County Independent newspaper notified the public of the availability of the administratively complete PAP for review. The last publication date was July 4, 2012. No public comments on the PAP were received after the public notice was published.

CDRMS determined that a bond for \$4,871,606 is adequate for Permit No. C-1981-022 associated with this mining plan modification. The bond is payable to both the State of Colorado and the United States.

A chronology of events related to the processing of both the PAP and the proposed mining plan decision is included with the attached decision document. The information in the PAP, and other information identified in the decision document, have been reviewed by CDRMS staff in coordination with the OSM Federal Lands State Coordinator for Colorado.

OSM's administrative record of the proposed mining plan modification consists of the following:

- the PAP submitted by OMLLC and updated through August 20, 2012;
- CDRMS's Proposed Decision and Findings of Compliance for Permit Number C-1981-022 Permit Revision No. 7 provided to OSM under the cooperative agreement;

- the Environmental Compliance Document entitled DOI-BLM-CO-150-2008-53 EA, COC70615, Elk Creek East Tract Coal Lease;
- BLM's R2P2 Memorandum;
- the FONSI for the proposed action and alternatives prepared by OSM;
- other documents prepared by CDRMS; and,
- correspondence developed during the review and processing of the PAP.

Attachment