

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



17 July 2013

Ben Langenfeld, P.E.
Greg Lewicki and Associates, PLLC
11541 Warrington Court
Parker, CO 80138

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

Re: New Horizon North Mine – Permit No. C-2010-089
Technical Revision No. 3 (TR-03) – Incidental Boundary Revision
Preliminary Adequacy Review No. 2

Dear Mr. Langenfeld:

The Division issued its initial Preliminary Adequacy Review (PAR-1) of the TR-03 application on July 2, 2013. Responses to the review were received from your office, on behalf of Western Fuels-Colorado, LLC (WFC) on July 8 and 11, 2013.

Proof of Publication from the San Miguel Basin Forum was submitted to the Division on July 2, 2013 via Email. The Public Notice appeared in the May 16, 2013 edition of the Forum.

The original purpose of TR-03 was to incorporate two incidental areas into the permit boundary: 1) an area attached to the equipment corridor for installation and monitoring a water pump at the former Nucla Mine Pond 001, and 2) an area disturbed by construction of an outlet ditch and flume for Pond NHN-001. Subsequent to the initial application, it was determined that two additional areas should be incorporated into this revision: 3) a Light Use Road providing access from AA Road to the pump at NH1 Pond 001, and 4) an area paralleling the south side of the AA Road Right-of-Way fence, on which the water pipeline will be laid. All four areas lie on a parcel owned by WFC that was previously disturbed by mining (by Peabody and/or WFC).

The materials received July 8, 2013 included an adequacy response letter dated July 3, 2013; updates to Section 2.03 – Legal, Financial, Compliance, and Related Information (title page and pages 4, 5, 8 and 9); a revised Appendix 2.03.8-1 – Legal Description; SEDCAD printout for the light-use road culvert (Appendix 2.05.3(3); and four revised maps: Map 2.03.4-1 (Surface Ownership and Leases), Map 2.03.4-2 (Mineral Ownership and Leases), Map 2.05.2-1 (Life of Mine Plan), and Map 2.05.3(4)-1 (Surface Water Hydrology).

Materials received on July 11, 2013 included a letter dated July 10, 2013, together with revised versions of Appendix 2.03.8-1, the SEDCAD run, and all four maps.

The Division has conducted a second adequacy review of the revised TR-03 application materials. Our comments are provided below, for your consideration and response.

Adequacy Review

1. **DRMS 07/02:** It appears that the base document utilized for the proposed revisions to Section 2.03 is an outdated version, and not the version currently approved in the permit. Please review, and resubmit this section as appropriate.

DRMS 07/17: Pages 4, 5, 8 and 9 (only) of Section 2.03 were re-submitted on July 8. The Division has additional comments regarding Section 2.03. These are addressed under "New Adequacy Items", below.

2. **DRMS 07/02:** The revised Appendix 2.03.8-1 incorporates metes and bounds details for the proposed incidental areas, which is acceptable. However, the original legal description for the active mining area, the W ½ Section 25, T 47 N, R 16 W, has been replaced with metes and bounds. Please restore the legal description to its original form, which will allow clear differentiation between that area and the areas in Section 36.

DRMS 07/17: The attachment now addresses five separate areas: the mining area, the equipment corridor, the light use road corridor, the Pond NHN-001 flume / water line area, and the water pump area at the former Pond 001. *This item has been resolved.*

3. **DRMS 07/02:** Subsequent to the completeness of the TR-03 application, discussions between the Division and the applicant resulted in the determination that the existing two-track dirt road, which will provide access to the pond and pump, will also need to be included in the permit. Please update the application to include this feature, in accordance with the requirements of Rule 4.03.3 - Light Use Roads.

DRMS 07/17: The light-use road has been incorporated into the four maps and the permit legal description. However, the text of Sections 2.05.3(3) and 2.05.4 has not been modified to address the addition of the light use road, pursuant to Rules 2.05.3(3)(c) and 2.05.4(2).

4. **DRMS 07/02:** Map 2.03.4-2 – Mineral Ownership and Leases should also be revised to show the new permit boundary.

DRMS 07/17: This map was incorporated, as requested. Comments related to the information shown on this map are addressed under "New Adequacy Items", below.

5. **DRMS 07/02:** The purchase option for the Meehan property was executed, as evidenced by the Warranty Deed included as Appendix 2.03.6-1(d) of the approved permit. Please update the ownership information in Section 2.03 and on Map 2.03.4-1 to reflect the change.

DRMS 07/17: This item was partially addressed with the July 8 submittal; additional comments are provided under "New Adequacy Items", below.

6. **DRMS 07/02:** On Map 2.05.3(4)-1, Surface Water Hydrology, the new permit boundary around the ditch and flume construction is shown, but the structures themselves are not depicted. Please denote the locations of the outlet ditch and flume on this map.

DRMS 07/17: Map 2.05.3(4)-1 was revised, as requested. *This item is resolved.*

New Adequacy Items (July 17, 2013)

7. Comments on Section 2.03. (While some are outside the immediate scope of TR-03, the Division believes this is an opportune time to update the entire section, where appropriate.)
- a) 2.03.4(6)(a) on Pages 6 and 7 continue to list the Meehans as surface and mineral owners within the permit area. Please update this section to reflect the current ownership.
 - b) 2.03.4(6)(c) on Page 7 does not reflect the current status of the Meehan purchase. Please update this section, and also provide a reference to the Appendix where the document(s) may be found.
 - c) 2.03.4(7) (Surface Ownership) on Pages 8 and 9, submitted on July 8, contains numerous changes to the approved version of the permit, which are not warranted. Specifically, surface owners 13, 42, 49, 50, 52 and 55 have been added (these parcels are *not contiguous* to the permit area), while owners 47, 59, 64, 65, and 67 have been eliminated (these parcels *are contiguous*, and need to be retained). Please correct these items (it seems likely that the approved version of 2.03 was not utilized for the pages submitted). Another change made is the consolidation and renaming of owners 2 and 3. Please review, and revise/restore if appropriate.
 - d) The Division has a few corrections/comments to the approved version of 2.03.4(7) (Mineral Ownership) on Pages 9 and 10. Specifically: as this section represents contiguous ownership, No. 6 (WFC) should be removed and No. 49 (Wilcox) should be added. No. 54 (Starks) is listed. The Division is aware that WFC purchased this property. If the Starks retained the mineral ownership, no change to this item is required; if WFC now owns the coal, please delete 54 from the list.
 - e) 2.03.6-1 on Pages 11 and 12 addresses right of entry. Item 4 addresses the Meehan property. Please update this paragraph to reflect the current status of this parcel. It may be appropriate to retain much of the language, in order to provide a historical reference.
 - f) Section 2.03.10 lists the various licenses and permits. Please update the DRMS item to show effective and expiration dates (June 20, 2012 and June 20, 2017, respectively); the Compliance Orders on Consent (with reference to the Appendix); the Discharge Permit Appendix; and the DWR permit information (with reference to the Appendix).
8. Comments on Map 2.03.4-1
- a) The parcel adjacent to the SE corner of the permit area continues to show combined ownership (2 & 3), as does the map table. In light of Item 7c), above, please ensure that ownership of this parcel is consistent throughout the various sections.

- b) Parcels 9 (Richards) and 43 (Morgan) do not appear on the map, but are listed in the table.
 - c) Parcels 42 (Lloyd) and 54 (Starks) and 57 (Meehan) are now owned by WFC. Please update the map and table to reflect the change.
 - d) Parcel 46 (Enstrom) lists Herbert, which may be obsolete
9. Comments on Map 2.03.4-2
- a) Parcel 43 (Morgan) appears in the table, but not on the map.
 - b) Parcel 48 (Rice) appears in the table, but not on the map.
 - c) Parcels 54 (Starks) and 57 (Meehan) – did WFC also acquire the mineral rights for either of these two parcels?

This concludes Preliminary Adequacy Review No. 2 for this application. Please contact me with any questions or comments you may have.

Sincerely,



Marcia L. Talvitie, P.E.
Environmental Protection Specialist

cc: Doug White, P.E. - Western Fuels Association, Inc. (Email)
Ross Gubka, P.E. – Western Fuels-Colorado, LLC (Email)
Sandy Brown - DRMS