



July 24, 2020

Sent via ePermit system

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Western Energy Company
Rosebud Mine Area B
PO Box 99
Colstrip, MT 59323

Permit ID: C1984003B
Revision Type: Permit
Permitting Action: Deficiency
Subject: C1984003B; AM 5 Round 6 Acceptability Deficiency

Dear Dicki:

The Department of Environmental Quality (DEQ) has completed its acceptability review regarding Western Energy Company's application for SMP C1984003B. The following deficiencies must be adequately addressed before DEQ can determine the application acceptable:

ARM 17.24.303(1)(s): The current mine plan for cuts BXS 65-1 through BXS 99-1 conflict with stockpiles SS-16 and SS-17 placement. The current plan indicates the stockpile foot prints would be mined through prior to their removal for backfilling. Please adjust the mining sequence or the stockpile placement or provide narrative description how both will occur at the same time.

ARM 17.24.304(1)(b): Please provide the Ethnographic Data as per MCA § 82-4-227(2)(d) and ARM 17.24.304(1)(b).

ARM 17.24.305(1)(k): No pdf of "Area B AM5 EXHIBIT J Approximate Reclamation Plan 2020-03 SP.dwg" was included. Please include the pdf.

Additional missing or duplicated map files were also noted: There are two pdf files for Exhibits V1-V14: "Exhibit V1-V14 Westmoreland BXS Stream Analysis 20190729.pdf" and "Exhibit V1-V14 Westmoreland BXS Stream Analysis 20200313.pdf". The older file should be deleted.

No CAD was included for "Exhibit V1-V14 Westmoreland BXS Stream Analysis 20200313.pdf". The CAD file should be included.

There are two copies of "Area B AM5 EXHIBIT L2 Mineral Ownership 2017-09 SP.dwg", one uploaded 12/6/2017 and one uploaded 10/30/19. The files appear identical, one should be deleted.

There are two CAD files for Exhibit J: "Area B AM5 EXHIBIT J Approximate Reclamation Plan 2020-03 SP.dwg" and "Area B AM5 EXHIBIT J Approximate Reclamation Plan 2017-09 SP.dwg". The older file should be deleted.

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ARM 17.24.308(1)(a): Pursuant to ARM 17.24.308, please update the descriptions in Table 308-1 for stockpiles 14, 15, 16 and 17. Stockpiles 14 and 15 should incorporate boxcut material from mine cut 89 and describe the final destination of that spoil. Stockpiles 16 and 17 should incorporate boxcut material from mine cut 89-1 and describe final destination of that spoil.

ARM 17.24.313(1)(c): DEQ acknowledges Western Energy's commitment to submit a revised bond after the PMT plan is acceptable.

ARM 17.24.313(1)(f)(i): The April 28, 2020, deficiency response letter indicated this deficiency had been addressed, but a new version of "17.24.313(1)(f) Drainage Basin Reclamation Plan.pdf" was not uploaded to the ePermit system. "The detailed designs in "Exhibit V1-V14 Westmoreland BXS Stream Analysis 20190729.pdf" are adequate for permitting, but more detail will be necessary prior to construction of the major reclaimed drainages. Please include a commitment to submit and receive approval for drainage designs based on a maximum of 2-foot contours for the Richard Coulee mainstem throughout the disturbed area and for the Lee Coulee mainstem in Section 23 and 24 in "17.24.313(1)(f) Drainage Basin Reclamation Plan.pdf".'

ARM 17.24.314(2)(a): DEQ cannot complete its review of drainage control for the Richard Haul Road in Section 28 until the design is updated for the premine topography.

ARM 17.24.314(3): In "Appendix O B AM5 PHC_R5.pdf", Table 51, for "42A 181541 00" on page 1 of 5 and "42A 27343 00" on page 2 of 5, water quantity impacts are discussed in the "Water Quality Impact Rationale / Assumptions" column. Please move these comments to the water quantity column.

ARM 17.24.314(3)(b)(iv)(A): The postmine sediment modeling uses an assumption of "good condition (80 percent ground cover)" which does not match postmine vegetation targets or monitoring results from other areas of the Rosebud Mine. Please revise the sediment modeling to use a more realistic assumption of postmine vegetative cover. Additionally, the PMT has changed since the postmine sediment modeling was conducted. Please use the current PMT in the updated modeling.

ARM 17.24.321(1)(a): The following deficiency was disputed and not corrected: 'The Richard Haulroad Phase I is planned to be built prior to mining of the underlying coal in Cuts BXS92 and BXS93, however the design contours on "Area B AM5 EXHIBIT O Richard Haulroad Phase I Sheet 1 of 3 2019-10.pdf" appear to be based on the PMT. The portion of the road from approximately 125+00 to 200+00 must be redesigned based on the premine topography.' While DEQ agrees that the premine topography is presented as the base topography in "Area B AM5 EXHIBIT O Richard Haulroad Phase I Sheet 1 of 3 2019-10.pdf" and the accompanying CAD file, the cut/fill design contours for the haul road in the area described above do not match that base topography. DEQ overlaid the design contours with the PMT contours and they match.

ARM 17.24.651(3): DEQ is aware of the macroinvertebrate survey reports attached to the application. These reports do not discuss the presence or absence of a biological community as described in ARM 17.24.651(3). The statement in the April 28, 2020, response letter also does not constitute a demonstration that such a biological community is not present. Please provide an evaluation demonstrating whether or not Wetlands G048, G500, G515, or G054 contain a biological community which meets the definition in ARM 17.24.651(3). This demonstration should be contained in the permit and include an evaluation of the biological community with regards to the four criteria in rule by a qualified expert in aquatic macro-invertebrates.

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The evaluation requested in the previous round of deficiencies should come from an expert or consultant, or should cite to the requested information within the materials provided by the Permittee. Considering the history of this issue in litigation, broad statements like "G054 includes arthropods" can be avoided when the data has been collected and specific answers could effectively be provided now, as opposed to being required in response to litigation.

ARM 17.24.801-806: The monitoring data available for the Richard Coulee AVF determination stops at the permit boundary. The limited monitoring data only allowed for modeling of AVF conditions in the main stem of Richard Coulee downstream of the permit boundary. Due to the limited data the model is only useful for determining AVF status in Richard Coulee, and does not address conditions at the confluence with Rosebud Creek and beyond.

The language contained in the .pdf for ARM 17.24.801-806 is not comprehensive enough to adequately address these rules. Rosebud Creek and the confluence of Richard Coulee with Rosebud Creek each have agricultural fields in the valley floors adjacent to these creeks. It can be expected that these areas are Alluvial Valley Floors downstream, and adjacent to mining. Western Energy must address how they will protect these resources from material damage. This is called out explicitly in ARM 17.24.801(1), 802(2), and 804(1)-(4). DEQ requires an update to the MQAP for the lower reach of Richard Coulee including that confluence area with Rosebud Creek. ARM 17.24.806 describes how AVF's will be measured regarding potential material damage. As such, this information will be required, as part of the annual monitoring, for collection by Western Energy. Please update the monitoring plan accordingly and the language for these rules to reflect those updates.

Additionally, as required by ARM 17.24.304 at least one year of data is required to allow DEQ to evaluate the resource, within the lower reach of Richard Coulee including that confluence area with Rosebud Creek, and to ensure no material damage occurs once disturbance begins.

Upon receipt of satisfactory responses to these deficiencies, DEQ will determine the application to be acceptable.

Please feel free to contact Robert D. Smith at 406-444-7444 with questions regarding this letter.

Sincerely,



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