DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
SPECIAL MEETING

APRIL 25, 2025

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AGENDA

ACTION ITEMS

ADJOURNMENT

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Electronically Filed with the
Montana Board of Environmental Review
3/28/25 at 7:20 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-02 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **DECKER COAL COMPANY'S MOTION TO SUSPEND ABATEMENT REQUIREMENTS**

Pursuant to section 82-4-254(1)(c), MCA, Decker Coal Company ("Decker") respectfully moves the Board of Environmental Review ("Board") for an order suspending the abatement requirements in the Department of Environmental Review's Notice of Noncompliance and Order of Abatement. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion. A brief in support of this motion is contemporaneously filed.

Dated this 28th day of March, 2025.

/s/Victoria A. Marquis
Victoria A. Marquis
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Attorney for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **DECKER COAL COMPANY'S BRIEF IN SUPPORT OF ITS MOTION TO SUSPEND ABATEMENT REQUIREMENTS**

Pursuant to section 82-4-254(1)(c), MCA, Decker Coal Company ("Decker") respectfully moves the Board of Environmental Review ("Board") for an order suspending the abatement requirements in the Department of Environmental Review's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice"). Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

I. BACKGROUND

On January 29, 2025, DEQ issued the Notice for an alleged violation at the East Decker Mine**.** Exhibit 1, attached. Decker concluded the Notice was both legally unsupported and

factually inaccurate and therefore filed a Request for Hearing with the Board on February 13, 2025. On February 28, 2025, Decker amended the Request for Hearing specific to the Notice issued for the East Decker Mine, noting that no valid legal or factual basis exists for DEQ's alleged violation and even if a valid basis did exist, DEQ's abatement requirements would not cure the alleged violation. Subsequently, DEQ made clear that it intends to pursue further enforcement if Decker does not acquiesce to its demands by April 29, 2025. Exhibit 2, attached; Aff. M. Guptill (March 28, 2025), attached; Aff. T. Tonozzi (March 28, 2025), attached.

Absent a Board Order suspending the abatement requirements, it appears likely that DEQ may pursue a Cessation Order and/or listing in the federal "Applicant/Violator System" or "AVS." *Id.* Any further adverse action by DEQ associated with the Notice, including a Cessation Order or AVS listing, is likely to jeopardize the ongoing reclamation work at both the West Decker and East Decker mines. *Id.* No abatement requirements should apply until resolution of this contested case. DEQ's Notice cites no imminent dangers or environmental harms. In fact, reclamation at East Decker is ahead of schedule. In contrast, DEQ's assertions of further adverse actions create very real and substantial threats to reclamation of both the East and West Decker Mines. Additionally, DEQ's imposition of the abatement requirements would negate Decker's due process right to a contested case hearing in this matter. The Board has authority to, and should, order suspension of the abatement requirements pending final disposition of this contested case. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

II. LEGAL STANDARD

Section 82-4-254(1)(c), MCA allows the Board to issue "a final order suspending the abatement requirements" of any Notice or Order issued pursuant to section 82-4-251(2), MCA, including DEQ's Notice at issue here. That statute, section 82-4-251(2), MCA, provides:

> If, upon expiration of the period of time as originally fixed [for abatement] **or subsequently extended**, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation.

§ 82-4-251(2), MCA (emphasis added). As DEQ noted, Subsection (6) of that statute provides Decker the right to appeal DEQ's Notice to the Board. Ex. 1, p. 5 (*citing* § 82-4-251(6), MCA).

The statute governing the appeal specifically provides that in such cases, the "period permitted for correction of a violation does not … end until entry of a final order suspending the abatement requirements." § 82-4-254(1)(c), MCA. This provides two important relief valves: 1) by operation of law, the period of time to complete the abatement requirements is **subsequently extended** as anticipated in section 82-4-251(2), MCA and does not expire while the Board considers this motion, and 2) the Board may issue a final order suspending the abatement requirements completely or temporarily.

No legal framework or requirements are provided in section 82-4-254(1)(c), MCA, leaving the Board to determine whether and under what conditions DEQ's abatement requirements may be suspended. However, should the Board look for guidance, Montana rule and federal law governing temporary relief during administrative review of coal mine permitting issues may be helpful. Specific to Montana, ARM 17.24.425(3) provides:

> The board may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

> (a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
>
> (b) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and
>
> (c) the relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and
>
> (d) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the department.

Similarly, federal rules governing administrative review of notices and orders directed at coal mining operations provide temporary relief if:

> (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
>
> (2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and
>
> (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

30 U.S.C. § 1275(c).

III. ARGUMENT

An Order Suspending the Abatement Requirements is appropriate in this case because no violation has occurred, the allegations DEQ presents in its Notice do not support finding a violation, and the abatement ordered by DEQ is disconnected from DEQ's alleged violation such that the ordered abatement would not, in any event, resolve the alleged violation. Justice and common sense support the Board exercising its authority to suspend the abatement requirements. Both Montana rule and federal law support suspending the abatement requirements. Due process considerations require that DEQ's abatement requirements be suspended.

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A. THE ABATEMENT REQUIREMENTS SHOULD BE SUSPENDED BECAUSE DEQ'S ALLEGATIONS DO NOT SUPPORT A VIOLATION.

On page 1 of its Notice, DEQ alleges a violation of ARM 17.24.501(6)(b), citing only to that portion of the rules which states "Backfilling and grading must be completed within two years after coal removal from each pit has been concluded." Ex. 1, p. 1. Subsection (b) of the rule cannot be read independent of the prefatory language in the rule itself:

> (6) Backfilling and grading must be kept current with mining operations. To be considered current, backfilling and grading must meet the following requirements, **unless otherwise approved by the department upon adequate written justification and documentation provided by the operator**:
> ***
> (b) Backfilling and grading must be completed within two years after coal removal from each pit has been concluded. For the purpose of this provision, "each pit" means any continuous dragline pass within a particular permit area.

ARM 17.24.501(6) (emphasis added).

1. DEQ's Assertions Contradict Both the Rule and Decker's Reclamation Plan.

The approved reclamation plan for East Decker is found in Minor Revision 111, which was approved by DEQ on March 17, 2023. Exhibit 3, attached. On page 4, it specifically provides that there will be instances where completion of backfilling and grading within two years of coal removal "is not possible." On page 5, the approved reclamation plan acknowledges that areas "exceed the 2-year time frame requirements for backfilling and grading" and specifies that "[t]he actual time frame to complete the reclamation operation will vary from pit to pit." Ex. 3, pp. 4-5. Therefore, the approved Reclamation Plan acknowledges and allows exceedance of the 2-year requirement. This meets the condition in ARM 17.24.501(6): "unless otherwise approved by the department." Therefore, the 2-year requirement found in ARM 17.24.501(6)(b) does not apply. DEQ's assertion that the 2-year requirement must be strictly applied in this case is contrary to both the rule and the approved Reclamation Plan.

Similarly, DEQ's allegation regarding "soil laydown or seeding" is also contrary to the rule. ARM 17.24.501(6)(b) says nothing about soil or seeding and is limited to backfilling and regrading. Therefore, DEQ's allegations regarding soil and seeding are irrelevant to the alleged violation. Even so, the approved Reclamation Plan provides that seeding will occur subject to favorable seedbed conditions and contractor availability. Ex. 3, p. 26. As Decker explained in September 2024, "the United States Department of Agriculture (USDA) has designated Big Horn County contiguous to a primary natural disaster area due to drought." Exhibit 4, attached. Therefore, in compliance with the approved Reclamation Plan that specifically allows flexibility to ensure favorable seedbed conditions (Ex. 3, p. 26), the seeding was delayed to "a more appropriate time when there is adequate moisture in the soil." Ex. 4, p. 1. No violation of ARM 17.24.501(6)(b) can be found based on soil or seeding conditions because the rule does not apply to soil or seeding. Even if it could apply, no violation occurred in any event because Decker wisely complied with the approved Reclamation Plan's built-in flexibility to ensure efficient and effective seeding operations, including adjustments during drought.

2. The Facts Provided by DEQ Prove DEQ's Alleged Violation Wrong.

The reclamation schedule provided in Attachment 313-1b provides additional information and specifically notes "The general sequence is as follows but it is subject to change." Exhibit 5, attached. Even so, the schedule estimates that from 2021 through the end of 2024, a grand total of 23,800,000 Loose Cubic Yards ("LCY") of material would be moved during reclamation. *Id*. On September 17, 2024, Decker informed DEQ that it was ahead of that estimated schedule of material to be moved. Ex. 4, p. 2. Specifically, at that time, Decker had moved a grand total of 29,896,126 LCY of material during reclamation – more than 6,000,000 LCY ahead of schedule. *Id.* DEQ provides no assertion or evidence that the volumes, as

measured and tracked by Decker, are inaccurate. Therefore, at least four months prior to issuing the Notice, DEQ knew that Decker was more than 6,000,000 LCY ahead of schedule. To the extent DEQ's Notice asserts a violation of ARM 17.24.501(6)(b) based on an allegation that Decker has not met the estimated schedule for moving material, the facts presented in DEQ's Notice do not support that assertion and instead reveal that Decker is more than 6,000,000 LCY ahead of the estimated schedule.

3. Neither the Rule nor the Reclamation Plan Require a Truck and Shovel Fleet.

DEQ's Notice also alleges that the "truck and shovel fleet was never activated" as support for violation of ARM 17.24.501(6)(b). The rule only requires completion of backfilling and grading and does not require use of any specific equipment. Even so, Decker addressed equipment in its approved Reclamation Plan, noting that "[e]quipment that is typically used for final highwall reduction and grading operations includes scrapers, motor graders, dozers, shovels, backhoes, and possibly draglines in the future." Ex. 3, p. 7. Attachment 313b lists both truck shovel and dragline/dozer and, as noted above, specifically states "it is subject to change." Ex. 5. To the extent DEQ alleges that Decker's more efficient use of its dragline/dozer operation rather than a truck and shovel fleet to move material is a violation of ARM 17.24.501(6)(b), the allegation is not supported in law or fact. No requirement exists in law, rule, or the Reclamation Plan to use truck and shovel equipment. Ultimately, the undisputed evidence that Decker is more than 6,000,000 LCY ahead of the reclamation schedule proves that the equipment being used is more than sufficient to meet the requirements of the Reclamation Plan.

Decker is ahead of the estimated schedule of material to be moved for reclamation and has adhered to the approved Reclamation Plan. The facts presented in DEQ's Notice do not

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support its alleged violation of ARM 17.30.501(6)(b); therefore, the abatement requirements should never have been issued and should now be suspended.

B. THE ABATEMENT REQUIREMENTS SHOULD BE SUSPENDED BECAUSE DEQ'S ABATEMENT REQUIREMENTS ARE DISCONNECTED FROM THE ALLEGED VIOLATION.

As explained above, DEQ's alleged violation is invalid, but even if it was valid, DEQ's abatement requirements would not abate the alleged violation. DEQ alleges violation of ARM 17.24.501(6)(b), which requires timely backfilling and grading of pits. DEQ does not specify which pits have not been timely backfilled or graded, nor does DEQ require actual backfilling and grading to return to compliance. Instead, DEQ ordered changes to Decker's reclamation plan. Ex. 1, pp. 3-4. Changes to a reclamation plan are paperwork requirements that do not and cannot, in and of themselves, cure any alleged lack of backfilling and regrading in any pit.

Further, DEQ's laundry list of very detailed timetables, plans, and sequencing required for abatement includes issues unrelated to backfilling and regrading, such as "permanent mitigation of coal smokers," "weed management," "removal of buildings and support facilities," and "sampling for hydrocarbons" at decommissioned shop areas. Ex. 1, pp. 3-4. None of those abatement requirements would abate a failure to timely backfill and regrade any pit.

Additionally, the abatement requirements seek a level of detail unsupported by the rules and contrary to DEQ's recent approval of Decker's Reclamation Plan. Ex. 3 (approved by DEQ March 17, 2023). DEQ offers no explanation why the Reclamation Plan it previously approved suddenly lacks sufficient detail to warrant any abatement. The abatement requirements should be suspended because they are wholly disconnected from the alleged violation and incapable of mitigating the alleged violation.

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C. SHOULD THE BOARD RELY ON LEGAL FRAMEWORK PROVIDED IN STATE RULE AND FEDERAL LAW, THAT FRAMEWORK SUPPORTS SUSPENSION OF THE ABATEMENT REQUIREMENTS.

Montana law authorizes the Board to order suspension of the Notice's abatement requirements. § 82-4-254(1)(c), MCA. As noted above, *Supra,* § II., the law provides no criteria or framework, leaving the consideration within the discretion of the Board. As a quasi-judicial agency, the Board has authority to adjudicate this matter, exercising its "judgment and discretion in making determinations," in part by "interpreting, applying, and enforcing existing rules and laws," including section 82-4-254(1)(c), MCA. §§ 2-15-3502; 2-15-102 (10) (defining "Quasi-judicial function"). Based on the Board's considerations and the arguments raised above - that DEQ's Notice does not support a violation and DEQ's abatement requirements are disconnected from any alleged violation – the Board may order suspension of the abatement requirements in DEQ's Notice. However, should the Board desire to consider helpful elements of Montana rule and Federal law regarding temporary relief pending final disposition of an appeal, Decker's motion also satisfies those criteria.

1. Decker and DEQ will have Opportunity to Raise Arguments and Be Heard on this Motion.

ARM 17.24.425(3)(a) counsels that notice and opportunity to be heard should be extended to all parties. DEQ will be served with this motion and have the opportunity to respond in writing to the Board. Additionally, should the Board desire oral argument on this motion, DEQ would have the opportunity to provide oral argument as well. Federal law advises holding a hearing in the locality of the permit area. 30 USC § 1275(c). No express requirement is found in Montana law; however, should the Board desire an evidentiary hearing, DEQ would also have the opportunity to participate and present evidence to the Board.

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2. There is a Substantial Likelihood that Decker will Prevail on the Merits of its Claims.

Both ARM 17.24.425(3) and 30 USC § 1275(c) include consideration of whether the moving party "shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination in the proceeding." ARM 17.24.425(3)(b). As argued above, *Supra* §§ III.A. and B., DEQ's Notice is contrary to the law and the facts, as presented by DEQ itself in the Notice. DEQ alleges a failure to timely backfill and regrade the pits, which is physically impossible because Decker is more than 6,000,000 LCY ahead of the estimated schedule for backfilling and grading. Ex. 4, p. 2. Additionally, the abatement requirements ordered are disconnected from the alleged a violation and would not, in any event, abate the alleged violation. Therefore, Decker has shown a substantial likelihood of prevailing on the merits of its claims.

3. Suspension of the Abatement Requirements will Not Adversely Affect Public Health or Safety, or cause Significant, Imminent Environmental Harms.

Both Montana rule and federal law include consideration of the consequences of suspending the abatement requirements. ARM 17.24.425(3)(c); 30 USC § 1275(c)(3). Here, because the abatement requirements do not mitigate any alleged violation, suspension of those abatement requirements does not adversely affect public health or safety or cause any environmental harm. The abatement requirements seek paperwork modifications to Decker's Reclamation Plan. No on-the-ground actions are required or prohibited. Therefore, suspension of the abatement requirements cannot and does not affect public health, public safety, or the environment. Additionally, Decker continues reclamation and, as of September 2024, was already more than 6,000,000 LCY ahead of the estimated reclamation schedule. Therefore, no harm to the reclamation schedule will result from suspending the abatement requirements. In

contrast however, imposition of the abatement requirements will likely trigger DEQ strictly imposing the April 29, 2025 deadline, which might include or be followed by issuance of a Cessation Order and/or entry in the AVS. *Supra*, § 1; Aff. M. Guptill; Aff. T. Tonozzi. In this case, none of that subsequent enforcement and adverse action by DEQ would be helpful and instead, might actually harm the progress of reclamation now or in the future. Aff. T. Tonozzi.

D. AN ORDER SUSPENDING THE ABATEMENT REQUIREMENTS DURING THE PENDENCY OF THIS APPEAL SHOULD ISSUE TO ENSURE DECKER'S DUE PROCESS RIGHTS ARE PROTECTED.

Montana law provides a right to a contested case hearing on DEQ's Notice. § 82-4-251(6), MCA. Decker timely exercised its right to the contested case hearing. The contested case hearing is governed by the Montana Administrative Procedure Act ("MAPA"), the purpose of which is to "establish general uniformity and due process safeguards in … contested case proceedings," including this matter regarding DEQ's Notice. § 2-4-101(2)(b), MCA. The right to due process of law is established in Article 2, section 17 of the Constitution of the State of Montana. Decker has therefore invoked its constitutional right to due process by filing the appeals with the Board.

DEQ's assertions that Decker may be subject to further enforcement, specifically a Cessation Order and/or entry into AVS before the contested cases have been completed are contrary to Montana law and Decker's due process rights as guaranteed by the Montana Constitution. If DEQ's Notice proceeds toward further enforcement or other adverse actions, every one of those further actions will be built on a house of cards presuming that the alleged violation is valid when it really is not. Yet every further adverse action will likely cause harm to Decker, to the reclamation at both East Decker and West Decker, and to Decker's property. Decker has raised valid claims challenging the alleged violation and, pursuant to MAPA and the

Montana Constitution, has the due process right to have those claims fully adjudicated before further enforcement or other adverse actions are taken. A Board Order suspending the abatement requirements during the pendency of this contested case will ensure that Decker's due process rights are protected.

IV. CONCLUSION

The abatement requirements in DEQ's Notice should be suspended because no violation occurred and the ordered abatement could not correct a violation in any event. Additionally, Decker's motion demonstrates the legal framework provided within Montana rules and federal law for temporary relief are met. Finally, Decker's due process rights support suspending the abatement requirements during the pendency of this contested case. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

Dated this 28th day of March, 2025.

/s/Victoria A. Marquis
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Attorneys for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **AFFIDAVIT OF MATTHEW GUPTILL**

STATE OF Florida)
: ss.
County of Broward)

MATTHEW GUPTILL, being first duly sworn, deposes and says:

1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.

2. I am the General Manager for the Decker Coal Company ("Decker"). Decker holds Montana Coal Mine Permit C1983007, governing operations at the East Decker Mine.

3. I am personally familiar with the facts and circumstances regarding the Montana Department of Environmental Quality's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice") issued January 29, 2025 for the East Decker Mine, which is the subject of this matter before the Board of Environmental Review.

4. On March 27, 2025, I attended a meeting at DEQ's offices in Billings, Montana with several DEQ Coal Section employees, including Mike Glenn, Emily Lodman, Joshua Bridgeman, Mitch Hoofman, Julian Calabrese. Ric Casteel and Eric Dahlgren, also with DEQ, participated remotely. Decker's Permit Coordinator, Sabrina Temple, attended the meeting with me.

5. During the March 27, 2025 meeting, DEQ asserted that the Notice must be resolved within 90 days, by April 29, 2025, and further, that no monetary bond releases would be issued on pending bond release applications until the reclamation plan, as requested by DEQ in the Notice, was submitted to DEQ and the Notice was resolved.

6. I understood DEQ's statements to mean that if Decker does not acquiesce to DEQ's demands by April 29, 2025, then DEQ intends to pursue additional adverse actions, including withholding of bond releases.

FURTHER AFFIANT SAYETH NOT.

Dated: 03/28/2025.

Matthew Guptill

Matthew Guptill

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

(SEAL)

KELSEY PROPER
Notary Public - State of Florida
Commission # HH415727
Expires on June 28, 2027

Notary Public for the State of Florida

Kelsey Proper
[printed name]

Residing at Broward County, Florida

My commission expires: 06/28/2027

Notarized remotely online using communication technology via Proof.
Driver License produced for ID.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

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Attorneys for Montana Department of Environmental Quality

/s/Victoria A. Marquis
VICTORIA A. MARQUIS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **AFFIDAVIT OF TAY TONOZZI**

STATE OF Nevada)
: ss.
County of Clark)

TAY TONOZZI, being first duly sworn, deposes and says:

1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.

2. I am the President and CEO of Lighthouse Resources Inc., which is the parent company of the Decker Coal Company ("Decker"). Decker holds Montana Coal Mine Permit C1983007, governing operations at the East Decker Mine.

3. I am personally familiar with the facts and circumstances regarding the Montana Department of Environmental Quality's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice") issued January 29, 2025 for the East Decker Mine, which is the subject of this matter before the Board of Environmental Review.

4. Beginning almost immediately upon receipt of DEQ's Notice, I have had multiple conversations, both in-person and by telephone with DEQ employees, including Eric Dahlgren, DEQ's Mining Bureau Chief. During these conversations, DEQ initially asserted that the abatement requirements in the Notice must be completed by February 28, 2025. DEQ now

asserts that the abatement requirements must be completed by April 29, 2025. DEQ has also asserted that if the abatement requirements are not met, a Cessation Order and listing in the federal Applicant/Violator System ("AVS") would follow.

5. Any further adverse action stemming from the Notice, including a Cessation Order or listing in the AVS would significantly undermine Decker's reclamation efforts at both the East Decker and West Decker mines. The reclamation is currently funded with money received from Decker's sureties. Additionally, revenues from Lighthouse Resource's joint interest in the Black Butte Coal Project located in Wyoming are intended to fund reclamation at both East Decker and West Decker. Any further adverse action stemming from the Notice will jeopardize relationships with the sureties as well as the permitting actions in Wyoming, both of which are critical to funding reclamation in Montana.

FURTHER AFFIANT SAYETH NOT.

Dated: 03/28/2025.

Tay Tonozzi

Tay Tonozzi

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

(SEAL)

Carlos Pittman
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 21-5441-01
Expires March 7, 2029

Carlos Pittman

Notary Public for the State of Nevada

Carlos Pittman
[printed name]

Residing at Clark, Nevada

My commission expires: 03/07/2029

Notarized remotely using audio-video communication technology via Proof.

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001

NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT

During a Department of Environmental Quality (DEQ) complete inspection of the East Decker Mine (Permit #C1983007) on December 19, 2024, DEQ documented that permit reclamation commitments for 2024 were not completed.

Nature of the Violation: Failure to Comply with the Approved Reclamation Plan

The Administrative Rules of Montana (ARM) 17.24.501(6)(b) states that, unless otherwise approved by DEQ, backfilling and grading must be completed within two years after coal removal from each pit has been concluded. Attachment 313-1b (Exhibit 1) of the permit lists a general timeline of reclamation. In 2024, the East Decker Mine commitment was for 3 million cubic yards of material to be moved with a truck and shovel fleet. One hundred acres were also supposed to be seeded. DEQ conducted thirteen inspections in 2024, and DEQ recorded that the truck and shovel fleet was never activated and that no soil laydown or seeding had occurred in 2024. Decker Coal Company's (DCC) alternate reclamation schedule was approved in 2021 and revised in 2022. While Attachment 313-1b states that the schedule may be subject to change, ARM 17.24.313(1)(b) requires any changes to a reclamation plan to be approved by DEQ prior to implementation. No such approved changes were made.

Description of Conditions

A partial timeline of reclamation plan commitments and observations by DEQ is given as follows.

1) December 4, 2020. Lighthouse Resources Inc, owner of the East Decker Mine, files for Chapter 11 bankruptcy.
2) April 8, 2021. DCC notifies DEQ that the company has relinquished the right to mine in the East Decker permit and that the permit will be in permanent cessation (Exhibit 3).

Since no more coal can be mined once a permit goes into permanent cessation, reclamation commitments for all pits, including backfilling within 2 years unless otherwise approved, are immediately enacted.

3) April 21, 2021. Minor Revision MR106 is approved which revises the reclamation plan (Exhibit 2). The plan shows reclamation to be almost entirely completed by the year 2026 with only the facilities and out of pit spoils pile OB-1 to be reclaimed post 2026.
4) March 18, 2022. Minor Revision MR108 is approved which revises the reclamation plan to its current timetable (Exhibit 1).
5) January 9, 2024. East Decker inspection. Inspectors note the following: “The truck-haul for backfill is scheduled to begin in May.” (Exhibit 4)
6) February 6, 2024. East Decker inspection. Inspectors note the following: “Decker plans to hire truck shovel crews in 2024, per backfilling and reclamation schedule commitments in the permit. The operator reported that maintenance on the truck fleet has started in anticipation of hiring drivers. East Decker's 2024 permit commitments are for 3 million loose cubic yards truck shovel backfilling and 5.6 million loose cubic yards of dragline backfilling.” (Exhibit 5)
7) March 12, 2024. East Decker inspection. Inspectors note the following: “One of the hydraulic shovels had been relocated to the facilities area for maintenance in preparation for the upcoming truck and shovel work that is planned to start in May.” (Exhibit 6)
8) May 16, 2024. East Decker inspection. Inspectors note the following: “The operator indicated that only five new hires would be required for the truck-haul operation scheduled for May and that filling those positions on relatively short notice was not expected to be problematic.“ (Exhibit 7)
9) July 24, 2024. East Decker inspection. Inspectors note the following: “A truck shovel fleet (fleet) has not mobilized on site. The plan remains to utilize a truck shovel fleet for earth moving of 3,000,000 LCY in 2024; however, news from the managing firm to commence fleet establishment has not arrived. Updates on a timeframe have not been offered to the mine's personnel.” (Exhibit 8)
10) August 13, 2024. East Decker inspection. Inspectors note the following: “A truck shovel fleet has not been mobilized on site. The permit commitment is to use this fleet to move 3,000,000 LCY of material in 2024. No update of when this fleet would be hired was indicated.” (Exhibit 9)
11) August 30, 2024. DEQ notifies DCC that the company does not appear to be on track to meet the 2024 commitments for truck-shovel reclamation, and DEQ requests a written response outlining how the company plans to meet these permit reclamation commitments. (Exhibit 14)
12) September 17, 2024. DCC responds to DEQ with a letter stating that the permit contains a statement that “Plans are subject to change as equipment and manpower dictates.” DCC also states that the dragline and dozers were utilized in areas originally designated for truck-shovel work, and that soil and seeding were not done due to drought conditions in 2024. (Exhibit 15)

13) September 20, 2024. DEQ identified deficiencies in the spoil sampling data that was submitted. (Exhibit 12)
14) September 24, 2024. East Decker inspection. Inspectors note the following: "Decker also sent a letter requesting a revision to the approved reclamation schedule on 09/17/2024. Changes to the reclamation schedule must be submitted as a formal revision to the permit since it is a permit commitment. The current commitment includes 3,000,000 LCY of material to be reclaimed by a truck shovel fleet, which has yet to be mobilized." (Exhibit 10)
15) December 2, 2024. Minor Revision MR119 is submitted to DEQ by DCC to revise the reclamation schedule (Exhibit 13). This revision is not currently approved, and a deficiency letter was sent to the operator on January 22, 2025. The proposed revision changes the commitment from dragline and truck shovel cubic yards to only earthwork cubic yards, greatly reduces the commitment of cubic yards moved per year, and it commits to finishing earthwork movement by the year 2032. The proposed schedule also entirely eliminates commitments to seeding. No justification for the revision is given for how less earthwork movement will result in completion of the backfilling in the same amount of time as the currently approved reclamation plan. (Exhibit 12; Exhibit 16)
16) December 19, 2024. East Decker inspection. Inspectors note the following: "Decker stated no work had been completed during the 2024 year with a truck/shovel fleet as previously planned in May. Additionally, no seeding had been completed during 2024. Personnel indicated that there was difficulty in coordinating with the bond company for funds and finding qualified operators." (Exhibit 11)

Conditions to Abate

ARM 17.24.1202(3) states that DEQ may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
   a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
   b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).
   c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
   d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).
2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

The plan must be submitted to DEQ as a minor revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

Extension or Modification of this Order

Upon application by the Permittee, DEQ may, for good cause, extend the period for abatement. The period for abatement, however, may not be extended beyond 90 days unless one of the conditions set forth in ARM 17.24.1206(5)(b) exists. DEQ's decision on an application for extension beyond 90 days may be subject to a contested case hearing before the Board of Environmental Review (BER) if a hearing before the BER is requested, in writing, within 30 days of such decision by a person with an interest that is or may be adversely affected (ARM 17.24.1206(5)(d)).

This Notice of Noncompliance and Order of Abatement may be modified, vacated, or terminated at any time. The Permittee may submit a letter of mitigating circumstances to DEQ providing information about the violation. DEQ will consider any information submitted in determining the facts surrounding the violation and the amount of penalty.

The letter of mitigating circumstances must be sent to the Bureau Chief of the Mining Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, on or before January 31, 2025. Failure to timely submit a letter of mitigating circumstances may result in the issuance of a Notice of Violation and Administrative Penalty Order without input from the Permittee. The failure to raise an issue in the letter of mitigating circumstances will not preclude the Permittee from raising the issue at a contested case hearing as set forth in 82-4-206, Montana Code Annotated (MCA).

Pursuant to Section 82-4-254(1), MCA, a Permittee who violates the Act, rules adopted, or orders issued under the Act, or term or condition of a permit, shall pay an administrative penalty of not less than $100 and not more than $5,000 and an additional administrative penalty within the same limits for every day during which the violation continues. In order to institute the penalty assessment process, DEQ will serve the Permittee a Notice of Violation and Administrative Penalty Order within 90 days after issuing the Notice of Noncompliance, unless the penalty is waived pursuant to Section 82-4-254(2), MCA. DEQ will determine the penalty based on the factors and penalty calculation procedures found in Section 82-4-1001, MCA, and ARM 17.4.301-308. Pursuant to 82-4-251(7), MCA, DEQ may also request attorney fees and costs associated with any judicial or administrative proceedings.

Hearing

Pursuant to 82-4-251(5), MCA, the Permittee may request an informal public hearing on this Notice of Noncompliance and Order of Abatement. Pursuant to 82-4-251(6), MCA, a person who has been issued a notice or order of cessation pursuant to subsection (1) or (2) may request a hearing before the BER within 30 days of the issuance of the notice.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Matt Guptill, DCC

Montana Department of Environmental Quality

March 25, 2025

Sent via e-mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001
Action: Response to February 28, 2025 Noncompliance Reply Letter

The Department of Environmental Quality (DEQ) received Decker Coal Company's (DCC) February 28, 2025 response to the issuance of Notice of Noncompliance (NON) CN2025001 on January 28, 2025. In your letter, the approved bond calculation document "Appendix A BondCalcTables 1-10_2024 MR115 R3.pdf" was repeatedly cited as containing the required reclamation plan documentation. However, the bond calculation does not contain sufficient detail to describe how reclamation will be completed. The Montana Strip and Underground Mine Reclamation Act specifically separates the reclamation plan requirements (e.g. Administrative Rules of Montana (ARM) 17.24.313 and ARM 17.24.308) from the bonding requirements and bond calculations (e.g. ARM 17.24.1101 through ARM 17.24.1122). DEQ bases the bond calculation, in part, on the reclamation plan. DEQ has reviewed DCC's responses and is providing additional clarification to the items identified in DCC's initial response to the Notice of Noncompliance.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:

> (a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
>
> DCC responded, in part, that no rules require an exact sequence of dragline and truck-shovel operations. However, ARM 17.24.501(6)(b) states that backfilling and grading must be completed within two years after coal removal from each pit has been concluded, unless otherwise approved by the department. The permit in "501 General Backfilling and Grading Requirements TR3.pdf" states that prior commitments with DEQ allowed an exceedance due to coal blending and that grading will be done in accordance with Section 17.24.313(1) of the permit. DEQ issued NON CN2025001 due to DCC's failure to follow the reclamation plan submitted by DCC and approved by DEQ. Any

additional deviation from the 2-year backfilling and grading requirement is based on DEQ approving an updated reclamation plan that contains adequate information for DEQ to ensure the reclamation will be completed. DEQ is requiring an updated reclamation plan similar to the plan shown in Exhibit 2 that was sent in the January 28, 2025 Notice of Noncompliance. This map shows areas of backfilling and the year it will be accomplished. Exact equipment is not required unless certain tasks can only be accomplished with specific equipment.

b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).

While the permit document "Appendix A BondCalcTables 1-10_2024 MR115 R3.pdf" contains an estimate of 1,810 hours for the purpose of bond calculation, DEQ requires a plan of how the current operation proposes to run the pit pumping operation and therefore the timeline that is necessary to remove sufficient water to safely work in the Ramp 0 area. This timeline would be used in conjunction with the order for a reclamation plan sequence and map as discussed under (1)(a) of NON CN2025001. For example, the table states that the pump will run at 1,500 gallons per minute (3.3 cubic feet per second (cfs)). Montana Pollutant Discharge Elimination System permit reporting to DEQ has indicated that the mine has discharged between 0.01 cfs and 1.4 cfs since April, 2024.

c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).

DEQ requires a general plan to note when soil piles will be used to ensure piles are not inadvertently surrounded by reclamation prior to their use. Additionally, temporary soil piles were approved and created in 2023 that still have not been utilized due to the timing and sequencing of the highwall reduction. DEQ requires a plan to ensure that any additional temporary soil piles that will be required for reclamation are approved prior to their creation and that piles are used in a timely manner to ensure soil is not lost as required by ARM 17.24.702.

d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).

ARM 17.24.713 states that seeding and planting of disturbed areas must be conducted during the first appropriate period favorable for planting after final seedbed preparation. The current approved reclamation schedule in "Attachment 313-1b – Reclamation Schedule.pdf" lists acres of seeding, but there is no indication where this seeding would occur. DEQ requires either a map showing the sequencing and timing of soiling and seeding or a commitment that areas shown in a backfilling and grading map will be submitted for a phase I bond release in the year the backfilling is completed with a commitment to soil and seed in the next available season after bond release approval.

e) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).

DCC stated that the plan for permanent mitigation of coal smokers is located in the "Fire Control Plan.pdf" in the permit. This document is focused on fire control during mine operations, and it states that "Coal fires situated in regraded backfill and spoils will be evaluated to determine the potential environmental impacts". DEQ is requiring this evaluation to be completed, persistent fires identified on a map, and plans created for fires that require extinguishing.

f) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).

Maintaining an approved weed management plan approved by Big Horn County will satisfy this reclamation plan requirement.

2) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

DEQ acknowledges that an incorrect rule was cited. The correct rule is ARM 17.24.308(1)(b). The timeline and sequence of building removal is required to be provided. If pit disposal of building material is proposed, the pit that will be used must be provided and included on a map, and a narrative description of how the plan to complies with ARM 17.24.507 must be given.

3) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

Please include the commitments cited in "313_Bond_2024_R3.pdf" in Section 4.11 Facilities Reclamation Plan (addressing rule ARM 17.24.308(1)(c) and ARM 17.24.313(1)(j)).

DCC is reminded that the notice of noncompliance must be abated in full by **April 29, 2025** (90 days after the issuance of the NON on January 29, 2025), unless a specific provision in ARM 17.24.1206(5)(ii) prevents compliance with the abatement order. Thank you for your prompt attention to this matter.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office

Emily Lodman, DEQ Coal Section
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Vicki Marquis, Crowley Fleck PLLP

DECKER COAL COMPANY

17.24.313 EAST PITS RECLAMATION PLAN

DESCRIPTION OF RECLAMATION OPERATIONS

Table of Contents

a. Proposed Postmining Land Use

The postmining land uses at the East Pits will be designated as follows: predominantly Pastureland, secondary Wildlife Habitat; predominantly Livestock Grazing, secondary Wildlife Habitat; Livestock Grazing and Wildlife Habitat codominant; predominantly Wildlife Habitat, secondarily Livestock Grazing. These same uses were present before mining and are now the dominant land uses on adjacent lands.

b. Detailed Timetable for Major Steps

Table 313-1 summarizes the approximate mining/reclamation sequence and time frames for a typical cut.

Table 313-1: Typical Mining and Reclamation Schedule

TIME FRAME (YEARS)	SPECIFIC OPERATION TAKING PLACE
0 – 1	Soil Pre-stripping Begins
1 – 2	Truck and Shovel Assist Operations
1.5 – 2.5	Dragline Operations/Backfilling
2 – 3	Coal Mining Operations
3.5 – 6	Haul Back Material and Final Grading (Coal Removal +2 Years)
5 – 6	Spoil Scarification and Soil Placement
5 – 6	Revegetation / Final Reclamation

Land affected by coal removal, backfilling, and grading to the approved surface will be completed within 2 years of coal removal and at least within four spoil peaks of the active pit. There are instances, however, where this scenario is not possible. All coal and overburden ramps are backfilled only periodically, which may not fit the sequence described. Also, in some areas the final surface is constructed using

truck/shovel assist material. This material is not always available within the above time frames.

Exhibit 11-1 and the above schedule can then be used to anticipate possible time frames for finishing the backfilling and grading process. Due to the present mine plan and subsequent reclamation progression, most areas shown on ***Exhibit 11-1*** exceed the 2-year time frame requirements for completing backfilling and grading.

A generalized reclamation schedule for the final cut of each specific pit can be derived from ***Exhibit 11-1*** and ***Table 313-1*** listed at the beginning of this section. Upon finishing the final removal of coal, the final cut will have reclamation operations begin on a large scale. The actual time frame to complete the reclamation operation will vary from pit to pit. The size of area will also vary. Typically, whole pit sections will be reclaimed as one unit. The reclamation operations may jump from pit to pit depending upon the location of other operations and the utilization of the reclamation operations to conduct other tasks. In general, the areas will be reclaimed as adequately sized blocks become available. Final high wall reduction and final pit backfill can only be completed after all of the economically mineable coal has been removed.

Areal extent also will vary. When scheduling allows, areas affected by mining will be reclaimed in large reclamation blocks. These blocks will facilitate reclamation operations by providing a large working area for cover soil placement and seeding.

All final grading will be accomplished to construct the final surface configuration as depicted on ***Exhibit 12-2*****.** However, the contour intervals depicted on ***Exhibit 12-2*** do not show every feature or undulation found between them. This is done to allow the regrading operations the flexibility to take advantage of field conditions to create a more diverse topography. Although these features are not shown, the mine-wide reclamation plan is dedicated to establish topographic diversity in a manner that will not affect the overall mass balance of material. Examples of diversity to be constructed below the 10-foot intervals can be found in Section 17.24.313(1)(d)(v) of Decker Coal's Reclamation Plan. The aforementioned examples can be achieved while also adhering

to the guidelines outlined in the Montana Department of Environmental Quality Postmine Topography Plan Guideline.

c. Cost Estimate for the Performance Bond

The East Pits bond is recalculated annually, and these bond calculations are approved by the Department. A map of the topography that the bond is based on is contained in Exhibit 313-2 and the Bond Surface is shown on Exhibit 313-4. Exhibit 313-6 is a map displaying the Earthwork detail. The bond calculations are contained in 313_Bond.

d. Plan for Backfilling

(d)(i.) Final Location of All Overburden and Parting Materials in the Fill

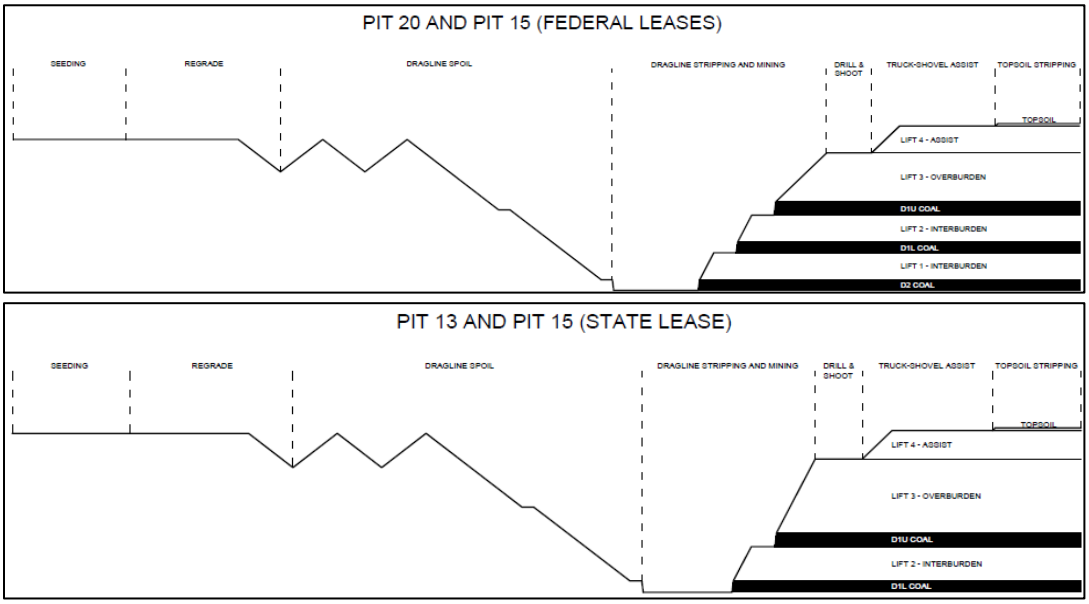


Figure 12-1: Typical Pit Cross-Sections

(d)(ii.) Highwall Reduction

Equipment that is typically used for final highwall reduction and grading operations includes scrapers, motor graders, dozers, shovels, backhoes, and possibly draglines in the future. For a discussion of slopes and highwall reduction alternatives please refer to Section 17.24.515. The affected area disturbed above the highwall will be minimized and will not penetrate any buffer zone unless otherwise approved by the Department. See the ***Exhibit 12-5*** entitled "Typical Reclamation Cross-Section for Highwall Reduction" for a cross-section showing the plan of highwall reduction. Highwall reduction alternatives may be permitted where the Department determines that:

- They are compatible with the postmining land use
- They are stable, achieving a minimum static safety factor of 1.3

(d)(iii.) Derivation of the Bulking Factor (Swell)

Decker Coal Company studied swell factors for the East Pits during the initial start-up period of mining. The method used to determine the appropriate swell factor at that time was aerial photogrammetry. Computer cross-sections were taken throughout the mining area at 50' intervals. Cut and fill quantities were generated from the cross-sections of two flights, using the average end area method. The swell factor was then obtained using the following formula:

$$(\%)\ \text{Swell} = \frac{\text{total fill } (yd^3)}{\text{total cut } (yd^3) - \text{coal mined } (yd^3)} - \text{blasting swell adjustment factor } (yd^3)^* - 1 \times 100$$

The blasting swell adjustment factor took into account any material which was blasted at the time of the first flight. The factor simply converted the blasted material to its bank yardage.

The data obtained yielded a swell of 27%. Using flights of June 20, 1980 and March 29, 1981 the following quantities were obtained:

Total Cut	=	11,924,412 yd^3
Total Fill	=	10,584,097 yd^3
Coal Mined During the Period	=	3,892,328 yd^3
	=	3,604,007 yd^3 @ 2160 lb/yd^3
	=	27%

DCC realizes the importance of obtaining an accurate swell factor. Although the initial swell factor was projected at 27%, the revised mine plan requires a swell factor of 25%. This is primarily due to special handling areas (i.e. North Haulback) where spoil material will be rehandled by the truck shovel operation. Decker Coal Company anticipates a compaction factor of 2% due to the truck shovel operation. This yields an overall swell factor of 25%. This is a conservative value that will ensure a sufficient amount of spoil material to achieve the final regraded surface. In the event that subsequent information yields a swell factor which varies significantly from the 25% used to generate the regraded surface, the Department will be notified.

(d)(iv.) Post Mine Topography Map

Decker Coal developed a new East Decker Post Mining Topography (PMT) Map when Pit 20 was added to the mining operation. The mine plan was used to develop a final mining pit shell. See ***Exhibit 13-9*** for the extent of the current mine plan. The final pit shell was combined with June 2016 topography to create a base for developing the PMT volume balance. Prime volumes were calculated for all remaining cuts and non-scoria overburden swelled at 25%, scoria from burn areas swelled at 0%. The coal waste from each cut was calculated and added to each cut volume. In addition to the prime volumes, the rehandle required to be moved to mine the remaining cuts, mostly resulting from existing haulroad modification, was calculated. The volume of material in the overburden storage areas and any material that is below the PMT on the prime

and spoil side of the active pits was also added to the above listed items to determine the total material that is available for pit backfill. The PMT was developed with an overall volume balance for East Decker. The volumes used to develop the PMT and the volume balance check are shown in ***Table 12-1***. The contours of the post mining topography surface are shown on ***Exhibit 12-2***.

The Coal Creek and Middle Creek channels have been designed in detail and the detailed designs incorporated into the East Decker PMT. ***Exhibit 12-8 Sheet 1*** and ***Exhibit 12-8 Sheet 2*** provide the design information for the postmining Coal Creek channel. This design was done using a variety of methods as well as recommendations from Montana DEQ staff. The Coal Creek design incorporates an overall concave profile, and the profile can be seen on ***Exhibit 12-8 Sheet 2.*** A SEDCAD program was used to generate the resultant hydrograph for the designed Coal Creek from a 100-year, 6-hour design storm with 2.40 inches of rainfall. The hydrograph and peak flow for the designed channel can be seen on ***Exhibit 12-8 Sheet 1***. Representative cross-sections were chosen at the midpoint of each 1000-foot stream reach. These representative cross-sections are presented on ***Exhibit 12-8 Sheet 2***. The results of the SEDCAD hydrograph were input into the Army Corps of Engineers HEC-1 program to obtain the resultant water surface elevations, flow depths and velocities. The design flow, design channel top widths, flow velocities and flow depths for the Coal Creek Channel can all be seen on ***Exhibit 12-8 Sheet 1 and 2***.

Similarly, ***Exhibit 12-9 Sheet 1*** and ***Exhibit 12-9 Sheet 2*** provide the design information for the postmining Middle Creek channel. This design was done using the methodology described above for Coal Creek, and the resultant overall profile for the Middle Creek design is concave longitudinal. The cross sections were developed in a similar manner as the Coal Creek design, and show considerable diversity in flood plain width and side slopes.

The postmine channels will be constructed with substantial variability in

side channel slopes, flood plain width, meander lengths and widths and in many cases may not follow ***Exhibit 12-8*** and ***Exhibit 12-9*** in detail. Channels will be constructed using Section 3.0 of the **MT DEQ Postmine Topography Plan Guideline** (Guideline) as a reference. The Guideline states in Section A.(2) that for a Primary Drainage to be considered consistent with the approved PMT map the area of concentrated flow must (a) Provide flow in the same general direction as that depicted on the PMT map; (b) Outlet at the approved location; (c) Contain similar lengths of similar gradients to that approved and exhibit an overall concave longitudinal profile; (d) When applicable, connect up-gradient to a native drainage; (e) Provide a smooth transition between graded and native areas and between graded areas with different completion dates. Decker Coal will abide by these guidelines when constructing the Coal Creek and Middle Creek channels. When feasible, the side slopes will blend with adjacent valley bottom topography, with gentler slopes corresponding with side swales, tributaries and valleys. Steep side slopes will generally correspond with ridges and knobs. The final slopes will fluctuate considerably as they do in native channels.

(d)(v.) Reclamation Enhancement Features

DCC will, as opportunities arise, construct topographic/habitat features as part of its reclamation plan. These features will provide more topographic and vegetational diversity that better reflect premine or native land found in the area. Features will be constructed as part of the regrading process, matching similar features found in the surrounding area. All feature construction will conform to postmine land uses. Opportunities for feature construction tend to be revealed in the field during the rough regrade operations. DCC will inform the Department of the constructed features during the inspection process. DCC will consult with and receive approval from the Department prior to completion of steep-gradient (>3:1) features. Special habitat enhancements will include, but are not limited to, the construction of the following:

Rock Piles/Ledges - In the process of backfilling and grading, numerous large and durable rocks become available. Instead of trying to bury all of these rocks, some will be placed to provide habitat for wildlife (e.g., thermal cover.)

Steep Slopes/Escarpments - The mining process often results in areas with steep slopes and/or rough terrain. Leaving portions of these steep slope areas will create a more diverse topography and provide a more desirable habitat for different species of wildlife than is associated with gentler slopes. Some of these areas may naturally have scoria substrates that would be left as the growth media without cover soil. These features also provide the opportunity for specific plantings of woody species that would not normally compete effectively with grasses on more productive substrates.

Steep Slope Features (SSF) help minimize disturbance that occurs in the process of tying reclamation into native ground and promote the creation of niches for vegetation and wildlife that would otherwise be lost with standard high wall reduction practices. Many times, the placement of these SSFs will not be planned in advance because the opportunity for creating a SSF often presents itself in the process of grading an area. Due to the nature of the grading operations, this enables the SSFs to blend effectively with the surrounding topography.

Decker may create SSFs without any slope stability analysis or Departmental approval under the following conditions:

- Slopes are no steeper than 1½:1
- Slopes greater than 3:1 are no higher than 10 feet

These SSF parameters are justified in the **West Permit *Appendix 313-1*** in a slope stability analysis performed by the Department in 2004 entitled "TDN Slope Stability Analysis for the C- Section Highwall Area" (TDN).

SSFs that conform to these parameters will have geotechnical parameters comparable to those used in the TDN analyses (cohesion, unit weight, friction angle, etc.) and be similarly located to those used in the TDN analyses (cut slopes with shallow layers of spoil material at the surfaces, i.e. high wall reduction areas).

Steep Slope Replacement Features - Premine steep slope features have been documented within the Decker permit limits and are shown in ***Appendix 313-1,*** entitled "Pre-Mine Slope Map".

Steep Slope Replacement Features (SSRF) also help minimize disturbance that occurs in the process of tying reclamation into native ground and promote the creation of niches for vegetation and wildlife that would otherwise be lost with standard highwall reduction practices. Many times, the placement of these SSRF's will not be planned in advance because the opportunity for creating a SSRF often presents itself in the process of grading an area. Due to the nature of the grading operations, this enables the SSRF's to blend into the surrounding reclamation and native topography.

Decker will demonstrate that each SSRF achieves a 1.3 static safety factor for any SSRF where a slope stability analysis is required. The requirement of a slope stability analysis will be mutually agreed upon by the Department and DCC.

Beginning in the 2005 Annual Report, Decker will document the use of SSRFs and keep a running account of premine features that have been replaced.

Moisture Catchment Basins - Topographic features that are constructed to cause the accumulation of snow (e.g. perpendicular to the prevailing

wind), thereby increasing the available moisture (e.g. snow melt) and enhancing the survival of trees and shrubs.

Small Depressions - Native depressions are usually found along drainages or in the uplands; therefore, similar areas will be expected in postmine reclamation. Depressions will act as moisture catchment basins and will hold water for a portion of the year. Small depressions will not hold more than one acre-foot of water unless specifically approved by the Department, and will have side slopes that allow easy access. Depressions in drainages will generally be smaller, similar to natural channel features, (e.g. less than floodplain width, with lengths up to 2 to 3 times longer than width). When depressions are incorporated into the postmine landscape, they will function to minimize erosion and conserve moisture. Depressions will serve to provide seasonal wetland habitat, replacing or enhancing areas for wildlife and providing additional plant diversity and production. In some cases, the depressions may be used seasonally by livestock, depending on the duration of surface water. The depressions will be compatible with the approved postmining land use and will not restrict normal access throughout the area or constitute a hazard.

For other, usually larger features, such as conversion of traps and sediment ponds to post-mine depressions and construction of larger playas, Decker Coal Company will address them under ARM 17.24.751(2)(f) and (g) and 17.24.642, and receive Department approval prior to construction.

Stock ponds - These water sources may be constructed at various locations to facilitate livestock grazing and wildlife habitat postmine land uses. These features would be constructed during the regrading process as incised ponds in tributaries to main channels. The upper portion of

the drainage channel will be constructed with a concave profile to the bottom of the pond, which will hold 4-8 acre-feet of water. The downstream portion of the drainage channel will be constructed with a concave longitudinal profile, beginning with the pond outlet. The incised nature of the ponds will alleviate much of the design criteria for spillways and provide for a stable structure. Possible locations of stock ponds will be depicted on the "PMT Map". Final location will be based on consideration of many factors, including but not limited to improving livestock and wildlife access, improving wildlife habitat diversity, and need for a water source to better distribute livestock use. Stock ponds will need DEQ approval prior to construction.

Brush Piles - Prior to soil salvage in some areas, it is necessary to clear trees that are too large for stripping equipment. In some cases, these trees may be placed on reclaimed areas for bird perches and small wildlife cover.

e. Drainage Control

Drainage channels will be designed for preventing material damage to the hydrologic balance in adjacent areas and will meet the performance standards of 17.24.634. Drainageway configurations, both longitudinal and cross-sectional, mimic nearby natural systems. Drainage designs will keep the following in mind:

1. Drainages traversing portions of the backfilled final pit area will be reconstructed similar to premine conditions to the extent possible. They will tie into native drainages and swales (see ***Exhibit 12-2,*** entitled "PMT Map"), and all efforts will be made to avoid the placement of highly erosive materials in the channel bottoms.
2. First-order drainage designs will not be submitted to the Department. These drainages will meet the following parameters:
    - They will have a concave-longitudinal profile
    - They will conform to the approved PMT before topsoiling

3. Coal Creek and Middle Creek designs can be seen in ***Exhibit 12-8*** and ***Exhibit 12-9***.
4. Most small internal drainages within the pit areas have an average slope of 2.0 percent with concave longitudinal profiles.
5. Accumulated geomorphic data for affected watersheds will serve as guidelines for design and will be used in conjunction with other methods to develop channel geometry.

Drainageways will receive thicker cover soils than adjacent slopes and be seeded with the approved alluvial seed mix (***Tables 313-11*** and ***11a***). Channel bottoms may or may not be topsoiled depending on the slope and drainage area of the basin. Other than run-in from nearby reclaimed slopes, the hydrology of ephemeral drainageways will not achieve their full potential until they tie into their upstream counterparts and assume natural flows. These temporal constraints will limit the establishment and survival of planted riparian species.

The computer generated final surface takes into account the material balance and represents an achievable postmine landscape configuration. Mining of the East Pits will disturb the Middle Creek and Coal Creek watersheds in the downstream area of each basin. A pre vs. post comparison of each of these stream channels is shown in ***Exhibit 12-8 and 12-9.*** A description of the postmine drainage basin reclamation can be found in the Backfilling and Grading Plan.

<u>Premine and Postmine Comparison</u>

Drainage areas disturbed by mining activity will be reconstructed similar to premining conditions to the extent possible. A comparison of premining and postmining drainage basin size and drainage density is found in ***Table 12-3***. The similar drainage densities contribute to the protection of the hydrologic balance by retaining roughly the same length of stream per acre of sub-watershed. For additional discussion on the protection of the hydrologic balance please refer to Sub-Chapter 3 Plan for Protection of the Hydrologic Balance.

(e)(i.) Drainage Profiles

Longitudinal profiles are provided for Coal Creek and Middle Creek on ***Exhibit 12-8 Sheet 2*** *and* ***Exhibit 12-9 Sheet 2,*** *respectively*. Each longitudinal profile shows both premine and postmine channel profiles. The Coal Creek and Middle Creek designs described in detail in Section 313.1(d)(iv) will need to be finalized and approved by DEQ prior to the actual channel construction.

A. Discussion of How the Drainage Basins Plan Meets Performance Standards in ARM 17.24.634

A discussion of how the plan meets drainage basin performance standards in ARM 17.24.634 is presented primarily in the Reclamation of Drainages which can be found in 17.24.313(1)(e). Additional "Reclamation Plan" subsections that address requirements from Section 17.24.634 are 17.24.501 and 17.24.313(1)(d). Further discussion of performance standards is found in section 17.24.313(1)(d)(iv) of the permit, as well as 17.24.314.

B. Discussion of How the Drainage Basins Plan Meets Requirements from 82-4-231(10)(k)

A discussion of how the plan meets requirements of 82-4-231(10)(k) is found in Section 17.24.314. The text includes plans for minimizing disturbances to the hydrologic balance and to the quality and quantity of ground and surface water systems.

f. Drainage Channel Designs

(f)(i.) Detailed Drainage Designs

Drainage Channel Designs will be appropriate for preventing material damage to the hydrologic balance in the adjacent area and meet the performance standards of ARM 17.24.634. In addition to the designs provided for Coal and Middle Creek, a variety of first order postmining channels are shown on the postmining topographic surface to mimic the premining conditions. These will have varying meander sizes and will tie into native drainages and swales where appropriate. A comparison of the postmining profiles with the premining profiles demonstrate that postmining channel lengths and average gradients are similar to the premining streams. As shown on Exhibit 12-7, Post Mine Drainage Basins, these tributary channels serve relatively small drainage areas (from less than 50 acres to about 500 acres) with moderate basin slopes. See ***Table 12-3*** for a summary of the Pre-Mine and Post-Mine Channel Lengths and Drainage Density.

(f)(ii.) Designs for Other Channels

Typical designs will incorporate an approximately trapezoidal channel with a varying bottom width and will have a concave longitudinal profile. Channel side slopes will be typically 3H:1V but will be constructed with diverse sideslope ranges from approximately 2H:1V to 5H:1V. The reclaimed drainages will be designed using the methods presented in Section 3.5.2 and will be constructed to safely pass the peak discharge from the 100- year, 6-hour precipitation event. After construction, more frequent events such as the 1.5-year precipitation event, will occur and allow for the natural formation of a channel within the constructed floodplain.

g. Plan for Removal, Storage, and Redistribution of Soil, Overburden, and Other Materials

Details are presented in 17.24.313(1)(g)(iii) (soil thickness), 17.24.501 (general backfilling and grading), 502 (cut and fill terraces), 503 (small depressions, see also 17.24.313(1)(d)(iv) of this permit), 504 (permanent impoundments, see also 17.24.313(1)(d)(iv) of this permit), 505 (burial and treatment of waste), 507 (storage/disposal of garbage), 510 (disposal of offsite waste, fly ash), 515 (highwall reduction), 516 (adjacent operations), 517 (slides and other damage), 518 (buffer zones), 519 (monitoring for cessation), 520 (excess spoil), 521 (temporary cessation of operations), 522 (permanent cessation of operations), 701 (removal of soil), 702 (redistribution/stockpiling of soil), and 703 (soil substitutes).

(g)(i.) Using Overburden and Soil Characteristics to Develop Reclamation Plans

For overburden and coal characteristics, refer to Section 17.24.308 (Operations Plan) and Sections 17.24.304(1)(g) Geologic Information. For soil characteristics, refer to 17.24.313(1)(g) (Soil Handling Plan) and Section (ii) below.

(g)(ii.) Proposed Salvage Depths for Each Lift, Each Soil Mapping Unit

Based on soil survey information, the estimated salvage depth by horizon (A and B combined vs. C) of each soil component of each mapping unit is shown in the Annual Report. The Annual Report also estimates soil replacement depths by lift, based on soil remaining to be stripped and stockpiled soil. 17.24.313. (l)(h)(iii) indicates the target soil replacement depths for each revegetation type. The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report. Please refer also to 17.24.313(1)(h)(v) (methods of planting and seeding) and 17.24.701(1-4).

(g)(iii.) Supporting Calculations for Cover Soil

Calculations showing total acreages and volumes of salvageable soil are shown in each Annual Report.

B. <u>Anticipated Thickness of Soil Redistribution Following Regrading</u>

Soil distribution will generally follow 17.24.313(l)(h)(v) and ***Figure 313-1***. As a plant rooting medium at the Rosebud Mine, Keck (1998, p. 60) found that soil depth in reclamation has less influence on plant species suitability and productivity than in pre-disturbance landscapes. While he found unpredictable textural discontinuities both within the profile and across the landscape, he saw function differences between spoil underlying soil and sedimentary rock. Native soils at the Rosebud Mine vary in depth to underlying sedimentary rocks. Spoil beneath the replaced materials presents less of a barrier to water movement or root growth than the original pre-disturbance sedimentary rock. As a result, spoil must be considered as part of the soil profile. The mine soils, although varying in depth of salvaged material over spoil, are uniformly deep as rooting media. Moreover, drainageways may not develop a soil moisture regime moister than uplands until they are connected to the upper reaches of drainages. The potential for dramatic differences in upland revegetation, such as structural development and physiognomy, lies with soil substitutes such as scoria and suitable spoil (Prodgers, 2004) and dramatic topographic differences. Within these constraints, DCC will use variable soil redistribution thickness to promote satisfactory revegetation and the postmine land use. Revegetation expresses relationships among surface substrates, topography, seed mixes and seeding implementation, and to a lesser extent soil thickness over suitable spoil. Certain topographic positions and features are favorable for variable soil depths, soil substitution, and microsite development. These topographic/habitat features and positions are, in turn, favorable for a variety of seeding and planting species and techniques. Associated with each revegetation type (***Table 313-2***) is a cover soil thickness range or a different substrate (17.24.313(1)(h)(iii)). Where cover soil is the seeding substrate, the mean for all samples must fall within the designated range.

Table 313-2: Land uses, substrates, and site features found at the Decker Mine.

Land Use	Substrate	Site
Predominantly pastureland, secondarily wildlife habitat	Topsoil	Flat to undulating, <8% slopes.
Predominantly livestock grazing, secondarily wildlife habitat	Topsoil and Alluvial Topsoil	Gentle, mostly <15% slopes. Includes alluvial drainages.
	Suitable Spoil	Minor inclusions (<4%) within grazing land.
	Scoria	Very minor inclusions (<2%) within grazing land.
Livestock grazing, codominant with wildlife habitat	Topsoil and Alluvial Topsoil	Gentle to moderate, <25% slopes. Includes alluvial drainages.
	Suitable Spoil	Inclusions within grazing land.
	Scoria	Inclusions within grazing land.
Predominantly wildlife habitat, secondary livestock grazing	Thin Topsoil	Moderate to steep dissected slopes.
Livestock grazing	Suitable Spoil	Moderate to steep slopes, dissected
	Scoria	Uplands, often steep, convex slopes

The following percentages of individual samples may fall outside the range according to land use:

1. Predominately pastureland, secondarily wildlife habitat: 15% of cover soil thickness samples may fall outside the designated range.
2. Predominantly livestock grazing, secondarily wildlife habitat: 25% of samples may fall outside the designated range.
3. Livestock grazing and wildlife habitat codominant: 35% of samples may fall outside the range designated.
4. Predominantly wildlife habitat, secondarily livestock grazing: 50% of samples may fall outside the designated range where cover soil is applied. The requirement that mean cover soil thickness fall within the designated range is not based on in situ substrates that may not strictly

qualify as soil. Scoria and suitable spoil, both in situ and placed, may be revegetated without cover soil.

Figure 313-1 shows how cover soil thickness may vary according to topography. Associated cover soil thicknesses are in 17.24.313(1)(h)(iii).

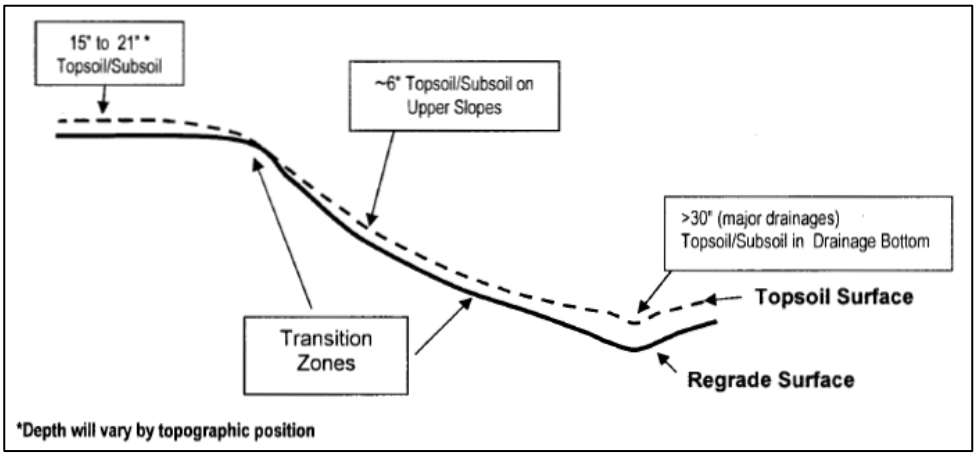


Figure 313-1: Representative Soil Thickness and Transition Areas

Each land use emphasis will be achieved, in part, by complementary seed mixes. Some land uses will receive a single seed mix. Others may have the option for several major seed mixes and one or more minor seed mixes. The minor seed mixes will be used to create shrub mosaics on cover soil or on soil substitutes.

(g)(iv.) Monitoring of Soil, Overburden, and Spoils

Regraded spoil and the depth of soil replacement is discussed in 17.24.702 (6). Soil quality is determined prior to salvage with further discussion in 17.24.701(1). The need for other spoil or soil monitoring may be addressed on a case-by-case basis.

h. Narrative of Revegetation

The revegetation plan is designed to achieve the postmining land uses, with multiple simultaneous land uses in all units. In 2023, as part of MR111, Decker Coal Company sumbitted Addendum 17.24.313-h Technical Standards to the Reclamation Plan. The technical standards were prepared by WESTECH Environmental Services, Inc. The addendum includes land uses, technical standard development, technical standards, and sampling methods. The land uses (tied to physiognomic types) are shown in ***Exhibit 12-3***, entitled "Revegetation Distribution Map". The primary and secondary land uses are:

Pastureland/wildlife habitat	Emphasis on livestock grazing and occasional haying; secondary emphasis on wildlife habitat for adapted species. Low topographic positions, gentle slopes.
Livestock grazing/wildlife habitat	Primary emphasis on livestock grazing, secondary emphasis on wildlife habitat. Low to mid slope positions, gentle to moderate slopes.
Livestock grazing - wildlife	Equal emphasis on grazing and wildlife habitat. Mid habitat to upper slope positions, moderate slopes.
Wildlife habitat/livestock grazing	Primary emphasis on wildlife habitat, secondary emphasis on livestock grazing. Mid to upper, moderate to steep slopes and benches.

In reclamation, DCC is creating habitats to support designated land uses. Grazing is a land use, but DCC actually is creating livestock habitat to support that use. The use of these habitats by both livestock and wildlife may not reach full potential until after the liability period due to field isolation, travel impediments, mining activities, distance to a drinking-water source, or for other reasons. Key elements of general cattle habitat are forage (grasses and when available, legumes), proximity to a source of drinking water, and rather gentle slopes. DCC is not attempting to create special livestock habitat such as calving grounds. Wildlife habitat is a far more complicated term, one that goes beyond how land is "dedicated" or "managed" (82-4-203(20)). Any landscape or plant community will provide habitat for several or many animal species. Even

though many species may use a habitat, the quality (attractiveness) of that habitat may vary drastically for different species. Some species may use a habitat intensively, whereas use by other species may be incidental. There is also a temporal element (e.g., winter habitat, fawning habitat, transient use, etc.). Habitat can only be defined, created, and evaluated with specific species in mind, for example, the ones for which that habitat is most important (Morrison 2002). DCC proposes using the following characteristic animal species to guide creation of wildlife habitat, recognizing that some use is seasonal:

Pastureland/wildlife habitat	Pronghorn, meadowlark, grasshopper sparrow, sharp-tailed grouse, deer mouse, vole sp., desert cottontail, white-tailed jackrabbit, American kestrel.
Livestock grazing/wildlife habitat	Pronghorn, meadowlark, grasshopper sparrow, sharp-tailed grouse, deer mouse, vole sp., desert cottontail, white-tailed jackrabbit, American kestrel, homed lark, red fox.
Livestock grazing - wildlife habitat	Mule deer, pronghorn, meadowlark, vesper sparrow, Brewer's sparrow, homed lark, sage grouse, deer mouse, vole sp., western harvest mouse, desert cottontail, white-tailed jackrabbit, northern harrier, American kestrel, yellow-bellied marmot, red fox.
Wildlife habitat/livestock grazing	Mule deer, vesper sparrow, Brewer's sparrow, sage grouse, deer mouse, vole sp., western harvest mouse, desert cottontail, northern harrier, yellowbellied marmot, red fox, bobcat.

(h)(i) Revegetation Types and Acreage of Each

Revegetation was previously structured by physiognomic type. The correlation with the current land use emphases follow in ***Table 313-3***. Major and minor seed mixes associated with each land use are listed in ***Table 313-4*** and enumerated in ***Tables 313-9*** through ***313-13***. In conjunction with ***Table 313-3***, these provide revegetation types and acreages. More detailed information, such

as specifying types named for dominant plant species far in advance of reclamation, cannot be provided in advance for the following reasons:

1. DCC can specify what it will seed but not what it will get in terms of species composition for many reasons. Each seed mix contains a host of species; which ones will become dominant either initially or from interseeding/reseeding or in the course of vegetational development as influenced by weather and management activities cannot be predicted. In the past, promising detailed revegetation types by acreage proved to be fiction, requiring modifications to bring the plan into conformation with actual revegetation.
2. Depending on what type of vegetation develops from early seedings, later seeding in nearby areas may be chosen to bring the larger area into compliance with the designated land use. Thus, the specific vegetation type for each field within the disturbance limits cannot be predicted.
3. Mine operators usually don't know what the configuration of a field will be, what substrate will be used, etc. until shortly before it is constructed (e.g., one year or less). That is when a seed mix appropriate for the designated land use and site is chosen.
4. When operational opportunities to create diverse microtopography arise, the mine operator should have the flexibility to immediately capitalize on them.

For these reasons, DCC's revegetation plan has proactive and adaptive elements; the latter cannot be specified in advance.

Table 313-3: Correlation of physiognomic types, historic types, and current land use emphases at the Decker Mine.

Old Types	Symbols	Acres	%	New Land Use Emphasis	Acres	%
Pasture/hayland Previously disturbed[1]	Q, P F, R	287 95		Predominantly pastureland, secondary wildlife habitat		
	Subtotal	382	10%		0	0%
Steppe Physiognomic Type	D, H, O, U, X, T	935		Predominantly livestock grazing, secondary wildlife habitat		
	Subtotal	935	26%		2889	79%
Shrub-Steppe Physiognomic Type	A, B, C, G, S, Y, Z, V	2254		Livestock grazing and wildlife habitat codominant		
	Subtotal	2254	62%		646	18%
Badlands, Open Scrub & Woodland Physiognomic Types	E, W, J, N, I	84		Predominantly wildlife habitat, secondary livestock grazing		
	Subtotal	84	2%		120	3%
Total Permitted Acres (North and West of County Road 25)		3655[2]			3655[2]	

1. Prior to mining, County Road 25 was aligned through what is now the active mining area. Restoration of any of this acreage would represent an improvement in ecological condition.
2. Acreage based on approved permit boundary that is North and West of Highway. Total Permit Area is 4361.4 acres. 3655 North & West of County Road 25, 685.8 in block Reference area, and 20.6 acres south of the County Road in the Upper Coal Creek drainage.

(h)(ii.) Revegetation Schedule

Transplanting will occur in spring. Seeding will occur at the first opportunity following cover soil application for dormant fall or spring seeding, assuming seedbed conditions are favorable. An example of unfavorable seedbed conditions is a dry, powdery seedbed in fall. In this case, waiting for spring seeding may give a better opportunity for successful seeding. In addition, DCC presently uses contractors to implement seeding; occasionally, the contractor may be unavailable at the desired time. DCC recognizes the need for a more natural mode of revegetation. Premine vegetation developed in the fullness of time under varying climatic conditions and historic land uses in conjunction with natural site features such as substrate, topography, and hydrology. Revegetation is typically initiated by simultaneously seeding all species, no matter what their usual role in vegetational development or realized niches. We are faced with achieving a facsimile of natural

or semi-natural vegetation in a compressed time schedule to achieve Phase III bond release. This requires the realistic and flexible application of approved husbandry practices that do not reset the bond release clock, along with the realization that a close approximation of premine revegetation cannot always be fully re-created in a single decade. The role of revegetation in creating suitable postmine land uses is predicated first on matching plant species to habitats, primarily substrates and topography, but effective implementation also requires incorporating temporal considerations. A single seeding may not achieve some wildlife habitat requirements. In semiarid areas, woody plants often establish episodically, with high mortality until plants are well established. Likewise, a temporal approach to revegetation will be required and is proposed here. The appearance of shrub-steppe may take years or decades to develop, depending upon species, soil moisture regime, and land management. It is Decker's goal to initiate development of plant communities that allow the desired land uses, not deliver them fully developed at their inception. While reseeding, including seedbed preparation, is considered the re-initiation of revegetation, interseeding of unsatisfactory fields to promote any of the bond release parameters (cover, production, diversity, woody plant density, utility, or seasonality) is considered a normal husbandry practice. Interseeding may use a different seed mix than was initially used (e.g., a shrub mosaic seed mix) or a subset of the initial seed mix, (e.g., only the light-seeded species may be broadcast). The choice of species and seeding rates for interseeding will be tailored to meet each individual field's needs. Interseeding will occur no later than six years preceding a Phase III bond release application and will not affect the 10-year responsibility period. Interseeding may take several forms without resetting the bond release clock.

Shrub mosaics on both generic cover soil and soil substitutes may be interseeded using the appropriate seed mix (***Tables 313-l0a, 313-11a, 313-12a, or 313- 12b***). Interseeding may be implemented by broadcasting, using a no-till drill, or some innovative seeding technique.

In unsatisfactory upland and alluvial sites, interseeding the shrub mosaic seed mixes **(*Tables 313-10a or 313-11a*)** or a subset of the initial seeded species by broadcasting or no-till drill may be implemented, possibly in conjunction with another management practice such as grazing.

Where competitive grasses establish well but additional shrubs are desired to better achieve the mix of postmine land uses, DCC proposes to chemically kill narrow strips through the established revegetation. This will occur while the plants are actively growing, as the herbicide must be taken into growing foliage to be effective. This practice of chemical treatment before interseeding is considered a Standard Conservation Practice for native and disturbed lands as defined by the USDA-NRCS (see FOTG, Section IV Practices, Standards and Specifications, 340, 490, and 550). Standing and belowground portions of dead grasses and forbs will provide a useful degree of erosion control. Standing plant litter can promote the establishment of selected forbs, shrubs, or warm-season grasses.

Chemical application areas, which will comprise <20% of any field, will be clearly visible. After the plants have died, hard-to-establish shrubs (and possibly other desired growth-forms) will be seeded into the plant litter. Along these visible swaths, the following shrub mosaic seed mixes may be broadcast, or just selected elements of these mixes:

- In alluvial shrub-steppe, the mix described in ***Table 313-11a***.
- In upland shrub-steppe or steppe, the mix described in ***Table 313-l0a***.

Chemical treatment will be designed to avoid impacting adjacent areas and, when possible, to target only those species that impair the growth of the desired vegetation. Herbicide usage will comply with label guidelines, the approved permit, and all applicable local, state, and federal laws and regulations. Herbicides used will be compatible with the species to be seeded/planted following treatment or rendered ineffective through decomposition or being adsorbed onto organic matter or soil particles.

Fertilizer may be used as a carrier for trashy seed; the amount of fertilizer

used will be determined based on the ability of a particular seed mix to feed in a particular seeding implement. The rate of fertilizer application is so low as to be all but irrelevant in terms of plant growth and qualifies as a normal husbandry practice.

DCC will use the normal husbandry practices in accordance with applicable Rules [e.g. ARM 17.24. 718(2) (management and land use practices), 725(1) (period of responsibility-normal husbandry practices), and 17.24.733(3) (the 80/60 rule)] to manage reclaimed areas to achieve Phase 3 bond release. The "Reclamation History" section of the Annual Report will document the use of any normal husbandry practice, including a narrative description of the treatment and the desired objectives, cumulative use of management practices, and initial results of individual treatments.

(h)(iii.) Seed Mixes and Transplants

Compared to seeding, transplanting plays a minor role in DCC revegetation. The main use of transplants is to establish an incipient open coniferous forest type. The two main species, which will probably be planted as 10-cubic-inch seedlings, are Ponderosa pine and Rocky Mountain juniper. In addition, DCC may transplant as seedlings a variety of shrubs that may include, but not be limited to, *Prunus americana, Rhus trilobata, Ribes aureum, Shepherdia argentea, Symphoricarpos occidentalis, Prunus virginiana,* and *Rosa spp.* Most of these shrubs require enhanced soil moisture; that habitat requirement must be fulfilled before transplanting. The occurrence of favorable microsites cannot be predicted in advance of final grading and cover soil laydown. DCC will continue to use high quality seed in its revegetation. Seed will be locally adapted and certified whenever possible. Seed older than two years will be tested for germination before use. Seed mixes are listed in ***Table 313-4*** with details in ***Tables 313-9*** through ***313-13***. DCC will attempt to establish a higher density of shrubs in mosaic areas than in the rest of the type in which they occur. Denser shrub patches complement some types and seasons of wildlife use (e.g., those

requiring more structural diversity for nesting cover and security, and those partially dependent upon shrubs for winter forage). If successful, they will also help to achieve shrub density standards.

Table 313-4: List of Seed Mixes

Pastureland/Secondarily Wildlife Habitat	Table 313-8
Predominantly Livestock Grazing, Secondarily Wildlife Habitat	
Steppe Seed Mix	Table 313-9
Warm-season Steppe Seed Mix	Table 313-9a
Livestock Grazing and Wildlife Habitat Codominant	
Upland Shrub-Steppe Seed Mix	Table 313-10
Upland Shrub Mosaic Seed Mix	Table 313-10a
Alluvial Shrub-Steppe Seed Mix	Table 313-11
Alluvial Shrub Mosaic Seed Mix	Table 313-11a
Mixed Shrub Seed Mix, Scoria Soils	Table 313-12a
Mixed Shrub Seed Mix, Suitable Spoil	Table 313-12b
Predominantly Wildlife Habitat, Secondarily Livestock Grazing	
Mixed Shrub Seed Mixes	
Scoria and Thin Soil Substrates	Table 313-12a
Spoil Substrates	Table 313-12b
Upland Shrub-Steppe, Shrub Mosaic Seed Mix	Table 313-10a
Temporary Seed Mix	Table 313-13

Shrub mosaic locations will be based upon the occurrence of favorable shrub establishment environments in generic cover soil laydown areas or on soil substitutes.

Seed mixes are reevaluated routinely and may be modified with identified alternatives. Before application on reclamation in any permitted area, all mixes will be reviewed based upon availability and suitability, with changes proposed to MDEQ if requested. Approval will be obtained before making substitutions other than those approved in ***Tables 313-9*** through ***13***.

Table 313-9: Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 60% of Overall Mix		
Western wheatgrass (Rosana)	1.50 ± 0.25	Prairie junegrass
Slender wheatgrass (Pryor, Revenue)	0.50 ± 0.25	Indian ricegrass
Needle-and-thread	1.00 ± 0.25	Whitmar wheatgrass
Green needlegrass (Lodorm)	1.50 ± 0.25	Streambank wheatgrass
Snake River wheatgrass (Secar)	1.25 ± 0.50	Sandberg bluegrass
Thickspike wheatgrass (Critana)	1.25 ± 0.25	
Sherman big bluegrass	0.75 ± 0.25	
Forbs – Not to Exceed 47% of Overall Mix		
Alfalfa, yellow-flowered	1.50 ± 0.50	Dotted greyfeather
Western yarrow (native)	0.25 ± 0.10	Yucca
Maximilian sunflower	0.50 ± 0.25	Slimflower scurfpea
Echninacea	0.10 ± 0.05	Scarlet globemallow
American vetch	0.40 ± 0.20	Hairy goldenaster
Rocky Mountain bee plant	0.50 ± 0.25	Purple prairieclover (Bismark)
Shrubs and Sub-Shrubs – Not to Exceed 23% of Overall Mix**		
Big sagebrush (Wyoming var.)	0.35 ± 0.10	
Rubber rabbitbrush	0.25 ± 0.10	
Fourwing saltbrush (Natrona, no var.)	1.00 ± 0.50	
Winterfat (Artillery, Open Range)	0.25 ± 0.10	
Maximum Seed Rate Not to Exceed 19.65 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**A small number of shrubs is being seeded to help meet Decker Coal's overall shrub commitment, although they are not strictly required in steppe.

Table 313-9a: Warm Season Steppe Seed Mix

Species	Lbs/Acre P.L.S.			Alternative Species*
Cool Season Grasses – Not to Exceed 33% of Overall Mix				
Canada wildrye	0.50	±	0.25	Canby bluegrass
Snake River wheatgrass (Secar)	0.50	±	0.25	Slender wheatgrass
Indian ricegrass	0.50	±	0.25	Prairie junegrass
Sandberg bluegrass (High plains)	0.50	±	0.25	Squirreltail
Warm Season Grasses – Not to Exceed 54% of Overall Mix				
Alkali sacaton	1.75	±	0.35	Blue grama
Sideoats grama (Pierre, Killdeer, Butte)	1.50	±	0.40	
Sand dropseed	1.25	±	0.25	
Prairie sandreed (Goshen)	1.25	±	0.25	
Little bluestem (Blaze)	1.25	±	0.25	
Forbs – Not to Exceed 29% of Overall Mix				
Scarlet globemallow	0.35	±	0.10	Dotted gayfeather
Prairie coneflower	1.00	±	0.25	Hairy goldenaster
White prairieclover (Antelope)	0.50	±	0.25	Sainfoin
Yucca	1.00	±	0.25	
Shrubs and Sub-Shrubs – Not to Exceed 23% of Overall Mix**				
Big sagebrush	0.50	±	0.25	Skunkbrush sumac
Rubber rabbitbrush	0.25	±	0.10	Shadscale
Fourwing saltbrush (Natrona, no var.)	0.75	±	0.25	
Winterfat (Artillery, Open Range)	0.25	±	0.10	Service berry
Maximum Seed Rate Not to Exceed 19.15 lbs/acre				

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**While not a shrub type, some shrubs will be seeded to meet Decker Coal's overall shrub commitment. The heavy seeding of warm-season grasses should be less competitive than where the normal steppe mix is seeded.

Table 313-10: Upland Shrub-Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 67% of Overall Mix		
Western wheatgrass (Rosana)	2.00 ± 0.25	Sherman big bluegrass
Prairie junegrass	0.75 ± 0.25	
Needle-and-thread	0.75 ± 0.15	Indian ricegrass
Thickspike wheatgrass (Critana)	1.50 ± 0.50	Streambank wheatgrass
Green needlegrass (Lodorm)	2.00 ± 0.50	Canby bluegrass
Snake River wheatgrass (Secar)	0.75 ± 0.25	Whitmar wheatgrass
Warm Season Grasses		
Contained in the Upland Shrub-Steppe Mosaic Mix		
Forbs – Not to Exceed 27% of Overall Mix		
Purple prairieclover (Kanab)	0.75 ± 0.25	Prairie coneflower
Western yarrow (native)	0.25 ± 0.10	Dotted gayfeather
Yellow alfalfa (M.*sativa var falcate*)	1.25 ± 0.25	Yucca
		Slimflower scurfpea
		Scarlet globemallow
		Hairy goldenaster
Shrubs and Sub-Shrubs – Not to Exceed 36% of Overall Mix		
Fourwing saltbrush (Northern if available)	1.50 ± 0.25	
Winterfat	0.50 ± 0.25	
Rubber rabbitbrush	0.50 ± 0.25	
Fringed sagewort	0.25 ± 0.10	
Big sagebrush	0.75 ± 0.15	
Maximum Seed Rate Not to Exceed 17.00 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

Table 313-10a: Upland Shrub-Steppe Mosaic Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Warm Season Grasses – Not to Exceed 69% of Overall Mix		
Blue grama	1.00 ± 0.50	Prairie sandreed (Goshen)
Sideoats grama (Pierre, Killdeer, Butte)	2.00 ± 0.50	
Alkali sacaton	1.50 ± 0.50	
Sand dropseed	1.50 ± 0.50	
Forbs – Not to Exceed 24% of Overall Mix		
Western yarrow (native)	0.25 ± 0.10	Blue aster
Rocky Mountain bee plant	0.50 ± 0.25	Prairie coneflower
Scarlet globemallow	0.20 ± 0.10	
White prairie clover (Antelope)	0.35 ± 0.10	Purple prairie clover
		Maximilian sunflower
Shrubs and Sub-Shrubs – Not to Exceed 37% of Overall Mix		
Big sagebrush (de-fuzzed)	2.00 ± 0.50	
Rubber rabbitbrush (de-fuzzed)	0.50 ± 0.10	
Winterfat	0.50 ± 0.10	
Maximum Seed Rate Not to Exceed 13.55 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Fertilizer, cracked corn, or rice hulls will be used as carrier for broadcast seeding.

Table 313-11: Alluvial Shrub-Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 51% of Overall Mix		
Western wheatgrass (Rosana)	1.75 ± 0.25	Prairie junegrass
Sandberg bluegrass (High plains)	0.50 ± 0.25	Streambank wheatgrass
Green needlegrass (Lodorm)	1.75 ± 0.25	Thickspike wheatgrass
Canada wildrye	0.75 ± 0.25	Slender wheatgrass (Pryor)
Basin wildrye (Trailhead)	1.25 ± 0.25	
Warm Season Grasses – Not to Exceed 28% of Overall Mix		
Switchgrass (Dacotah)	0.60 ± 0.20	Blue grama
Sand dropseed	1.00 ± 0.50	
Alkali sacaton	0.60 ± 0.20	
Forbs – Not to Exceed 29% of Overall Mix		
Western yarrow	0.25 ± 0.10	Purple prairie clover
American vetch	0.35 ± 0.15	
Alfalfa, yellow flowered	1.50 ± 0.50	
Purple prairie clover (Bismark)	0.40 ± 0.10	
Shrubs and Sub-Shrubs – Not to Exceed 32% of Overall Mix		
Silver sagebrush	1.50 ± 0.25	
Cudweed sagewort	0.25 ± 0.10	
Fringed sage	0.25 ± 0.10	
Grease wood	0.75 ± 0.25	
Winterfat	0.25 ± 0.10	
Maximum Seed Rate Not to Exceed 17.50 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

Table 313-11a: Alluvial Shrub-Steppe Mosaic Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Warm Season Grasses – Not to Exceed 55% of Overall Mix		
Sand dropseed	1.00 ± 0.25	None, may delete one
Blue grama	2.00 ± 1.00	
Sideoats grama	1.50 ± 0.50	
Alkali sacaton	1.00 ± 0.25	
Forbs – Not to Exceed 33% of Overall Mix		
Western yarrow	0.25 ± 0.10	Spiny aster
American vetch	0.50 ± 0.15	Pacific aster
Rocky mountain bee plant	1.00 ± 0.25	
Maximilian sunflower	0.80 ± 0.10	
Shrubs and Sub-Shrubs – Not to Exceed 42% of Overall Mix		
Silver sagebrush***	2.50 ± 0.50	Wyoming big sagebrush
Grease wood	0.75 ± 0.25	
Cudweed sagewort	0.35 ± 0.10	
Big sagebrush	0.75 ± 0.25	
Maximum Seed Rate Not to Exceed 13.85 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Decker Coal anticipates broadcast interseeding (interseeding refers to supplemental seeding with all or part of the original mix) sometimes may be required. If so, the above mix can be used, or just the component most in need of supplement. Fertilizer, seed hulls, or cracked corn will be used as a carrier if needed.

***Monitor to see if silver sagebrush establishes effectively in mosaics and in the general mix. Snow accumulation favors silver sagebrush, hence the tall, non-persistent forbs. Grain stubble would also favor snow accumulation.

****Other shrubs can be transplanted into carefully selected locations before the seed mix establishes.

Shrubs and Sub-Shrubs**	
Golden current	Transplants
Chokecherry	Transplants
Wood rose (or *Rosa arkansana*)	Transplants

Rocky Mountain juniper	Transplants

Table 313-12a: Open Scrub/Mixed Shrub-Scoria Substrate Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 36% of Overall Mix		
Indian ricegrass (Nezpar)	1.50 ± 0.50	Whitmar wheatgrass
Squirreltail	0.50 ± 0.15	Prairie junegrass
Needle-and-thread	0.75 ± 0.25	Sandberg bluegrass
Snake River wheatgrass (Secar)	1.50 ± 0.50	
Warm Season Grasses – Not to Exceed 32% of Overall Mix		
Little bluestem (Blaze)	1.50 ± 0.50	Red threeawn
Sideoats grama (Pierre, Killdeer, Butte)	1.00 ± 0.25	Blue grama
Prairie sandreed (Goshen)	1.25 ± 0.25	
Forbs – Not to Exceed 37% of Overall Mix		
Yucca	2.00 ± 0.50	Western yarrow
Prairie coneflower	0.50 ± 0.25	Slimflower scurfpea
White prairie clover (Antelope)	0.50 ± 0.25	Scarlet globemallow
Oxytropis sericea when available	0.25 ± 0.10	
Alfalfa, yellow-flowered	1.25 ± 0.25	
Shrubs and Sub-Shrubs – Not to Exceed 36% of Overall Mix		
Big sagebrush (Wyoming var.)	2.00 ± 0.50	Gardner saltbrush
Rubber rabbitbrush	0.60 ± 0.15	
Fourwing saltbrush (Northern)	1.25 ± 0.25	
Fringed sagewort	0.25 ± 0.05	
Dragon sagewort	0.50 ± 0.10	
Maximum Seed Rate Not to Exceed 21.90 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Decker Coal anticipates broadcast interseeding (interseeding refers to supplemental seeding with all or part of the original mix) scoria substrates as necessary, especially on warm aspects. The above mix can be used, or just

the component most in need of supplement. Fertilizer, hulls, or cracked corn will be used as a carrier if needed.

Table 313-12b: Open Scrub/Mixed Shrub-Suitable Spoil Substrate Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 38% of Overall Mix		
Slender wheatgrass (Pryor)	0.75 ± 0.25	Whitmar wheatgrass
Western wheatgrass (Rosana)	1.50 ± 0.25	Trailhead basin wildrye
Indian ricegrass	1.50 ± 0.50	
Green needlegrass (Lodorm)	1.00 ± 0.25	Bluebunch wheatgrass
Warm Season Grasses – Not to Exceed 30% of Overall Mix		
Sand dropseed	0.75 ± 0.25	Blue grama
Switchgrass (Dacotah)	0.75 ± 0.25	Prairie sandreed (sandy spoil)
Sideoats grama (sandy spoil)	0.75 ± 0.25	
Alkali Sacaton	1.00 ± 0.25	
Forbs – Not to Exceed 33% of Overall Mix		
Yucca	1.75 ± 0.25	Western yarrow
Purple prairie clover (Bismark)	0.75 ± 0.25	Pacific aster
Scarlet globemallow	0.20 ± 0.10	Purple prairie clover
Alfalfa, yellow-flowered	1.50 ± 0.25	
Shrubs and Sub-Shrubs – Not to Exceed 39% of Overall Mix		
Silver sagebrush	1.50 ± 0.25	Gardner saltbrush
Rubber rabbitbrush	0.50 ± 0.10	
Fourwing saltbrush (Northern)	1.25 ± 0.25	
Shadscale	1.25 ± 0.25	
Grease wood	0.75 ± 0.25	
Maximum Seed Rate Not to Exceed 21.65 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Due to a tendency for crusting and surface sealing, broadcast interseeding will be less effective on suitable spoil than on scoria, and heavy-seeded species are more important than light for effective revegetation. No-till drill seeded may therefore be more effective in interseeding than broadcast seeding. Substrates on slopes will be aggressively ripped on the contour prior to the initial seeding due to the erosive substrate. In that case, the initial seeding may be broadcasting without subsequent harrowing.

Table 313-13: Temporary Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses and Legumes		
Alfalfa (Spredor III, Travois, Rangelander, etc.)	2.00 ± 0.50	
Western wheatgrass (Rosana)	2.50 ± 0.50	
Slender wheatgrass (Pryor or Revenue)	1.50 ± 0.50	
Thickspike wheatgrass (Critana)	1.75 ± 0.25	
Green needlegrass	2.00 ± 0.50	

*These species are always available at reasonable cost, so substitutes are not needed.

**For erosion control and seedings of areas that would be permanently seeded later, as opposed to cover soil stockpiles temporarily seeded for an indefinite period, a grain (barley, rye, wheat) will be drilled at 30 pounds/acre with 0.5 pounds/acre sweetclover. A few pounds of Sainfoin would be added if more legume seed is needed to be practically seeded from a legume box or broadcast seeder. The permanent mix may later be drill seeded or broadcast as appropriate.

PREDOMINANTL PASTURELAND, SECONDARY WILDLIFE HABITAT

This is potentially the most productive land use. The utility of pastureland for haying would be impaired by the usual wildlife enhancement features (e.g., diverse microtopography, shrub mosaics, rock piles). Pasture land is integrated with wildlife enhancement features because the pastureland units are relatively small and juxtaposed with other seeding types and associated wildlife habitat features. Drainageways in otherwise pastureland areas again are seeded differently.

Premine

Substrate

Moderate to deep loams and clay loams.

Vegetation

Introduced grasses, mainly smooth brome and crested wheatgrass with lesser amounts of intermediate wheatgrass and Russian wildrye. Productivity varies with condition, but forage production (utility) can be higher than native types.

Slope

Less than 10%.

Postmine

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24"). The C-horizon target depth is the total target depth minus the AB horizon.

Revegetation

Before 1983: Introduced species predominated in seed mixes, although a few fields were seeded mainly with western wheatgrass. Shrubs are generally few, mainly fourwing saltbush.

1984 to 2004: No pastureland was purposely seeded during this interval, but a few fields developed a prevalence of introduced species.

Present: The seed mix is enumerated in ***Table 313-8***. Alfalfa may not endure throughout the liability period, but its short-term benefits to productivity and forage (livestock and wildlife) make its inclusion desirable. A rhizomatous grass (intermediate wheatgrass) is critical to spread vegetative as the alfalfa declines.

Slope

Less than 10%.

Technical Standard: Subject to 17.24.726(2) and (3), the standard for post-1978 fields for perennial canopy coverage is 61% and the standard of peak standing crop (PSC) is 1,010 kg/ha (oven-dried). There is no shrub requirement.

PREDOMINATELY LIVESTOCK GRAZING, SECONDARY WILDLIFE HABITAT

This is the dominant premine and postmine land use in areal extent. It calls for mainly a steppe type of vegetation. The main steppe seed mix (***Table 313-9***) will be used and to a much lesser extent a steppe mix favoring warm-season grasses (***Table 313-9a***); However, in the interest of habitat diversity and increased wildlife use due to interspersion, DCC will seed shrub mosaics on generic cover soil (***TableE 313-l0a***) or use scoria or suitable spoil substrates and seed mixes (***Table 313-12a*** and ***313-12b***, respectively) on at least 4% of areas where livestock grazing is the primary land use starting in 2006. The two types of revegetation, steppe and shrub mosaics, use different seed mixes and sometimes substrates. They are discussed separately next.

Steppe Vegetation

Most of this land use correlates with steppe (grassland) vegetation. Significant drainages within these land use units will be reclaimed as drainageways and seeded with the alluvial shrub-steppe seed mix, which is discussed next under the land use where livestock grazing and wildlife habitat are codominant.

Premine

Substrate

Found on moderate to deep (rarely shallow) soils of variable texture, often loams and clay loams.

Vegetation

Western wheatgrass, needle-and-thread, green needle-grass, and annual bromes were dominant grasses in premine steppe vegetation. While present, shrubs were a minor component, probably due to fire exclusion or shrub removal practices designed to increase forage. Premine mapping units D, H, 0, and U (cool season steppe), and if present X, T, and V (warm-season steppe) correlate with an affinity for livestock grazing.

Slope

Flat or gently sloping, generally less than 10% slopes but occasionally as steep as 25% over small areas.

Postmine

A land use emphasizing primarily livestock grazing and secondarily wildlife habitat will predominate the postmine landscape. For characteristic wildlife, see the beginning of this section.

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24") of topsoil and subsoil on gentle slopes. No special soil substitutes will be used. Total target depth is 12", +/- 6" (6-18") of topsoil and subsoil on steeper slopes, using coarse cover soil to the extent practical, depending on availability. The C-horizon target depth is the total target depth minus the AB horizon.

Revegetation

Seed Mix Prior to 1995: Permanent Seed Mix (approved by MDEQ at the time) was used before 1995. Prominent grasses included western wheatgrass, green needlegrass, slender wheatgrass and beardless wheatgrass. A complete accounting of the seed mix content for each year is in the Annual Reports.

Seed Mix 1995-2001: Grassland areas reclaimed between 1995 and 2001 were seeded with the Upland and Sidehill Seed Mixes, also approved by MDEQ before use. These seed mixes are listed in the Annual Report for each year. The seed mixes contained some shrub seed. However, no special attempts (e.g., spoil/scoria substrates, transplants) were made to establish shrubs in this subtype, and few are present.

Seed Mix 2002-Present: Approximately 90% of new fields in this land use will receive the Steppe Seed Mix (***Table 313-9***). Roughly 5% will use a warm-season variant (***Table 313-9a***). Beginning in 2006, another 4% of areas in this type will be seeded as shrub mosaics (discussed next).

Slope

Both steppe seed mixes (***Tables 313-9*** and ***313-9a***) may be applied anywhere in appropriate land use units. Refer to the "Revegetation Distribution Map" for a visual representation of typical areas suitable for predominantly livestock grazing and secondarily wildlife habitat.

Technical Standards

Subject to 17.24.726(2) and (3), the standard for perennial canopy coverage is 43%; the standard for peak standing crop (PSC) is 720 kg/ha (oven-dried); the standard for shrubs is 400 individuals/ha. These standards apply to bond release units including shrub mosaics where the land use emphasis is primarily livestock grazing and secondarily wildlife habitat. See also 17.24.313.l(h)(x).

Shrub Mosaics

Beginning in 2006, shrub mosaics are intended on at least 4% of areas where the land use is predominantly livestock grazing and secondarily wildlife habitat. If successful, this element of revegetation will be of the shrub-steppe or open scrub types.

Premine

Substrate

Found on shallow to deep soils of variable texture, including shallow skeletal soil over sedimentary bedrock, paralithic shale, and in lowlands, deep unconsolidated sediment deposits.

Vegetation

The main shrub was Wyoming big sagebrush. Other important woody species were rubber rabbitbrush (often cropped closely by wild ungulates), black greasewood, broom snakeweed, fourwing saltbush, and shadscale. Depending upon site factors, important

associated grasses were western wheatgrass, bluebunch wheatgrass, and green needlegrass.

Slope

Variable slopes from nearly flat to 50%.

Postmine

DCC believes that interspersing shrub mosaics providing escape and thermal cover, as well as perching sites and browse, will promote more wildlife use of the prevailing steppe vegetation than would otherwise be the case. For characteristic wildlife, see the beginning of this section.

Substrate

Three substrate combinations may be used:

1. AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24") of topsoil and subsoil on gentle slopes. This substrate is undistinguished from the steppe substrate previously described. The C-horizon target depth is the total target depth minus the AB-horizon.
2. Total target depth is 18", +/- 6" (12-24") of scoria of fragment size suitable for plant growth.
3. Total target depth is 18", +/- 6" (12-24") of suitable spoil, conforming to the extent possible with these properties: tan color, slightly saline to the lower range of saline, SAR less than 8, texture of clay loam or "lighter," and rock fragment content 20-60% by volume.

Revegetation

Seed Mix 2002-Present: Scoria will be broadcast seeded with the Mixed Shrub Seed Mix, Scoria Substrates (***Table 313-12a***). Suitable spoil will be seeded with the Mixed Shrub Mix, Suitable Spoil Substrates (***Table 313-12b***). Replaced soil will be seeded with the Upland Shrub-Steppe Mosaic Mix (***Table 313- l0a***).

Slope

Slopes are generally gentle. Shrub mosaics may be constructed/seeded anywhere within this land use with no special microtopography.

Technical Standards

Technical Standards apply to bond release units, not individual seedings. The technical standards described above for this land use apply whether or not a shrub mosaic(s) falls within the bond release unit.

LIVESTOCK GRAZING AND WILDLIFE HABITAT CODOMINANT

This land use is distinguished by more shrubs than where livestock grazing is the dominant use, resulting in more vegetational structure, thermal cover, escape cover, and browse. Slopes are steeper and terrain more rugged than where grazing predominates, and distance to a drinking water source may be greater. Beginning in 2006, at least 8% of these units will be seeded as shrub mosaics either on generic cover soil or on soil substitutes with corresponding seed mixes already described. This land use may be characterized as having three types of revegetation:

* Upland Shrub-Steppe and Shrub Mosaics
* Alluvial Shrub-Steppe and Shrub Mosaics
* Shrub Mosaics on Soil Substitutes

Upland Shrub-Steppe Vegetation and Shrub Mosaics

Premine

Substrate

Shallow to moderately deep, usually well-drained loams.

Vegetation

The upland phase featured an overstory of big sagebrush with an understory of perennial graminoids such as needle-and-thread, threadleaf sedge, green needlegrass,

bluebunch wheatgrass, western wheatgrass, and blue grama. Scattered forbs included desert alyssum, Hood's phlox, and American vetch. Subshrubs included broom snakeweed.

Slope

Terraces, side slopes <35% or occasionally steeper, rolling hills, and broad ridges.

Postmine

For characteristic wildlife, see the beginning of this section.

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). The C-horizon target depth is the total target depth minus the AB- horizon.

Upper convex slopes: Total target depth is 9", +/- 6" (3-15").

Lower straight to concave slopes: Total target depth is 12", +/- 6" (6-18")

Slopes < 10%: Total target depth is 18", +/-6" (12-24").

Revegetation

Upland Shrub-Steppe Mix (***Table 313-10***). Upland Shrub Mosaic Mix (***Table 313-l0a***).

Considerations: To promote core shrub areas, shrub mosaics will be seeded in some areas.

Slope

This type is suitable in uplands with a variety of substrates, aspects, and slopes up to 40%.

Technical Standards

Subject to 17.24.726(2) and (3), the standard for perennial canopy coverage it 40%; the standard for peak standing crop (PSC) is 480 kg/ha (oven-dreid); the standard for shrubs is 1,300 individuals/ha. These standards apply to bond release units where grazing and wildlife habitat are codominant, whether or not shrub mosaics are present in that unit.

Alluvial Shrub-Steppe Vegetation

Premine

Substrate

Usually deep, well-drained loams, sandy loams, and silt loams formed in alluvium.

Vegetation

Silver sagebrush was the dominant shrub, usually with an understory of western wheatgrass and green needlegrass on loams or sandy clay loams. Greasewood was locally important. On sandy loams, needle-and-thread and threadleaf sedge were important understory components. Yarrow was one of the most important forbs, but false scarlet globemallow and pinnate tansymustard also were common.

Slope

Alluvial drainages, sometimes extending into uplands along swales or incised channels.

Postmine

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). The C-horizon target depth is the total target depth minus the AB-horizon. As depicted in ***Figure 313-1***, soil depths will increase from 12-21 inches to 24-36 inches at the transition from upland slope to drainage bottom.

Revegetation

Alluvial Shrub-Steppe Seed Mix (***Table 313-11***). Alluvial Shrub-Steppe Mosaic Mix (***Table 313-11a***). Alluvial or riparian shrub survival may be limited until drainageways connect with their upstream counterparts in undisturbed topography. Until then, the hydrologic regime of reconstructed drainageways will be essentially that of uplands augmented with occasional run-in. Later shrub establishment may require herbicide to reduce herbaceous competition.

Considerations: Heavy silver sagebrush seeding in conjunction with light grass seeding will be practiced in shrub mosaics. Temporary snow fence may be used to promote silver

sagebrush establishment in these areas.

Slope

Drainage bottoms and adjacent areas where slope gradient is usually <5%.

Technical Standards

Bond Release units in this land-use type will be compared to the same standards described under upland shrub-steppe above.

Soil-Substitute Shrub Mosaics

The same soil substitute mosaics and seed mixes described for areas where the land use is predominantly livestock grazing and secondarily wildlife habitat will be used where those land uses are codominant. Technical standards are the same throughout this land use where livestock grazing and wildlife habitat are equally emphasized, whether or not a bond release unit contains shrub mosaic areas.

Predominately Wildlife Habitat and Secondary Livestock Grazing

This land use is distinguished by steep slopes, diverse microtopography, shallow or no soils, and more woody plants for plant community structure and wildlife thermal cover, escape cover, and browse than other land uses. Primary productivity is low, which in conjunction with terrain and distance to drinking water limits livestock use. This land use may be characterized as having two types of revegetation:

* Open scrub
* Open coniferous woodland

The Mixed Shrub seed mixes (***Table 313-12a*** (scoria substrate) and ***Table 313-12b*** (spoil substrate)) are expected to compete minimally with pine and/or juniper seedlings. The scoria substrate is less erosive than others, so the usual objective of quick and fairly complete plant cover is being sacrificed to shrub and conifer establishment. Where nearby older established

stands of pines and junipers remain above the disturbance limits, they may serve as a viable seed source for recruitment.

Premine

Substrate

Thin to very thin, skeletal soils and shale, siltstone, sandstone, and scoria outcrops.

Vegetation

This distinctive type is visually dominated substrate and by shrubs and subshrubs. Productivity and total plant cover are low compared to most other types. Shaley substrates might be called badlands or scablands. Scoria substrates were far more common. The shrub stratum consists of big sagebrush, skunkbush sumac, winterfat, and shadscale. Among subshrubs, snakeweed may be a codominant woody species. Bluebunch wheatgrass is the most common grass on both scoria and shale. Species diversity was high, especially on scoria substrates. Forbs found scattered throughout include annual buckwheat, scarlet gaura, slimflower scurfpea, and stiff goldenrod.

Slope

Steep to very steep, sometimes >50%.

Postmine

For characteristic wildlife, see the beginning of this section.

Substrate

Two substrates paralleling premine conditions will be used as substrate: suitable spoil and scoria. Suitable spoil is formally defined in 17.24.501(2), but in the interest of good revegetation, further screening is desirable. Based on the sodic overburden test plots at the Spring Creek Mine (SCCC) (Prodgers 2Q02), these spoil characteristics are associated with good revegetation, especially shrubs and warm-season grasses: tan color, slightly saline to the lower range of saline, SAR less than 8, texture of clay loam or "lighter," and rock fragment content 20-60% by volume. Due to the limited range of spoil characteristics in the test plots, it is possible

that spoil with other characteristics can be a suitable plant growth medium for adapted species. Scoria will be used more extensively than spoil in reclamation. Scoria is far less erosive than spoil and better suited to slopes > 10%. If not too coarse, it has proven to be a good substrate for shrubs and a diverse assemblage of species. At the SCCC sodic overburden test plots, shrub establishment increased with cover soil thickness up to the 18-inch maximum.

Revegetation

Mixed Shrub -Scoria/Thin-Soil Substrates (***Table 313-12a***) and Mixed Shrub-Spoil Substrates (***Table 313-12b***).

Transplants: Ponderosa pine and Rocky Mountain juniper seedlings will be planted in select areas of favorable topography and microtopography, mostly on scoria substrates. Planting conifers is the only deference between open scrub and open coniferous woodland. Shrub transplants are not planned, but they remain an option.

Considerations: Hand broadcasting of the Mixed Shrub Seed Mixes may be necessary in some areas due to rough seedbeds or steep slopes. Hand broadcasting rates are extremely variable when light/chaffy seed is used and may exceed the rates in tables listed above. Reseeding may be required if initial shrub establishment is unsatisfactory.

Slope

Regraded steep slopes, rocky knobs, and areas that mimic naturally occurring thin soil/outcrop sites.

Technical Standards

Subject to 17.24.726(2) and (3), the standards are: 30% perennial canopy coverage, PSC of 300 kg/ha (oven-dried), and 2,000 shrubs/ha for bond release units.

(h)(iv.) Use of Introduced Species

Seeding introduced species is proposed in the following circumstances:

1. Temporary seed mix
2. Inoculated alfalfa is being included in the basic, non-mosaic seed mixes at a rate that will benefit the soil through nitrogen fixation, boosting productivity while providing forage for all herbivorous mammals and some of the birds identified at the beginning of 313(h). Alfalfa also provides a greater amount of root exudates for soil microbes than would otherwise be the case. It will not establish everywhere it's seeded and may not persist as an important species throughout the liability period.

(h)(v.) Methods of Planting and Seeding

DCC will use a variety of seeding techniques. Three variables determine seeding technique:

1. Condition of the seedbed.
2. Available farming and seeding equipment.
3. Seed characteristics.

Depending upon the specific combination of the above variables, DCC will use drill seeding, broadcast seeding (to include a rangeland "drill"), or a combination of the two (two-phase seeding). Any attempt to enumerate the variables would be incomplete.

Seedbed preparation likewise requires the broadest flexibility. The same field might have to be disced or harrowed in one condition and compacted in another. Skilled operators are granted the flexibility to improvise seeding and seedbed preparation methods and modify revegetation practices with supervisor approval. In some cases, this may require regulatory approval. Transplanting will probably be done by professional crews provided by the same vendor that provides the plants. Hoedads are the preferred planting implement. Where conifers will be transplanted, the application rate of the scoria seed mix (***Table 3 l3-12a***) will be reduced to minimize competition and conifer seed added to the mix when available. The precipitation regime at Decker is marginal for Ponderosa pine, so husbandry

practices must overcome natural limitations in years of near-normal precipitation. These practices will include scoria substrate, microtopography (planting in depressions, trenches), locally adapted origin for seed/seedlings, ectomycorrhizal-inoculated seedlings, minimizing competition, tree- protectors, fertilization, and seeding/transplanting over several years. To the extent practical, a fungal-based soil food web will be initiated by using PJ soils as a substrate or possibly amending with wood-based compost.

(h)(vi.) Seeding and Planting Dates

Transplanting will be done in the spring, preferably April. Seeding and planting of disturbed areas will be conducted during the first appropriate period for favorable planting conditions after final seedbed preparation. The appropriate period for favorable planting will be determined based on seedbed conditions. DCC will consult with the Department if field conditions or equipment availability do not allow planting during the first appropriate period.

(h)(vii.) Nurse and Cover Crops and Mulches

If seeding conditions appear unfavorable for permanent seeding but temporary erosion control is desired, a cereal grain may be seeded as a preparatory crop. If a preparatory crop is used, appropriate permanent mixes may be seeded later directly into the standing litter or following additional seedbed preparation. While it is unlikely to be used often, a cereal grain may be included in some seed mixtures as a nurse crop.

(h)(viii.) Soil Tillage and Amendments

Improper or inadequate seedbed preparation has limited revegetation success at the mine in the past. Due to differences in cover soil characteristics as modified by moisture content and laydown and grading practices, the final graded surface will require site specific seedbed preparation before planting. Uneven, excessively fluffy seedbeds have been a common problem. Such fields may require additional smoothing and discing or harrowing followed by light compaction before or after seeding, or possibly fallowing until spring. Where seed is broadcast followed by

harrowing or the light seed is broadcast after the heavy seed is planted, compaction may be the final step.

Less common are excessively compacted surfaces, which must be ripped and disced or chisel-plowed before seeding. DCC is continually learning through experience and is tailoring seedbed preparation to the specific conditions in each field.

Fertilization has proven unnecessary when using topsoil. The upper lift of these soils has a nutrient reservoir (organic matter) and soil food web that can sustain revegetation.

Two reclamation substrates, suitable spoil and scoria, will require initial fertilization because they lack organic matter and are biologically depauperate. Essential macronutrients, particularly nitrogen, are deficient. The initial stock of mineralized nutrients will be immobilized swiftly in vascular plants. Appropriate fertilization will increase primary productivity and thereby promote soil development. Inorganic fertilizers may be used at Decker's discretion, possibly including slow- release fertilizers.

Vegetational manipulation may include mowing, livestock grazing, and/or burning.

(h)(ix.) Vegetation Monitoring

Vegetation monitoring is conducted periodically on all permanent reclamation to identify conditions during the period of liability. Regular monitoring of reclaimed areas will include a rotating schedule. Each area will be monitored a least once every three years. Newly seeded areas will be monitored on a yearly basis after vegetation has been well established. These new reclamation areas will be included in the three-year rotating schedule after the vegetation composition has stabilized. The same general sampling methods as used in the baseline inventories will be utilized. The monitoring parameters will be the same as given in the Annual Reports, the Baseline Inventories and those listed below:

1. % vegetation cover by species and life form (morphological class). The

perennial grass life form is separated into "cool season" and "warm season" perennial grasses.

2. Relative cover by species and life form.
3. % total vegetation cover (sum of all species).
4. % total ground cover (vegetation + litter + rock).
5. % bare ground (soil).
6. Annual production (standing crop) of herbaceous vegetation by species and by life form. Minor species may be given in aggregate. Shrubs and cacti will not be harvested for annual production.
7. Shrub density.
8. Other information may be gathered depending on possible needs. The above information will be gathered on each permanently reclaimed area and reference area at least once every three years during the liability period. The last year of monitoring may substitute for the first year of bond release evaluation if appropriate.

(h)(x.) Measures to Determine Success of Vegetation

Reference areas are the approved standard for East Decker, and will be used unless new Technical Standards are approved.

(h)(xi.) Plan to Check Quality, Fertility, and Thickness of Redistributed Soil

Refer to Sections 17.24.313(h)(iii) and (g)(ii), and 17.24.702(4) and (6) Regraded Spoils (quality). Refer to Sections 17.24.313(g)(iii)(b), 17.24.501(2), and 17.24.702(4).

(h)(xii) Types of Major Equipment

A comprehensive, updated equipment list can be found in the Annual Report. Generally, the equipment will be used as follows:

Table 313-7: Typical Reclamation Equipment

	Removal of Soil	Storage of Soil	Redistribution of Soil

Loading Shovels		X	X
Off-Road Trucks		X	X
Dozers	X	X	X
Scrapers	X	X	X
Backhoes		X	X

Types of equipment used for cultivation, soil preparation, and/or seeding may include but is not limited to:

1. Farm tractors
2. Grain and grass drills
3. Other grass and grain seeders
4. All types of harrows
5. Disc plows
6. Broadcast seeders
7. Chisel plows

i. Sealing Bore Holes

Cross Sections generated from drilling completed at Decker Coal and the locations of drill holes can be found in the Coal Conservation Plan (17.24.322).

DCC will use the following procedures to prevent changes in quality and quantity of underground waters and the escape of oil and gas during exploratory drilling:

1. No cuttings will be placed in the hole. Where practical, cuttings will be spread over the adjacent surface to a depth of less than ½ inch, or cuttings will be transported to an approved disposal area.
2. If exploration holes are cased for monitoring activities, the casing will be cut off at the surface on rangeland and two feet below the surface on cropland. All holes will be marked with a wooden stake or metal fencepost.
3. If a lost circulation or flowing artesian situation is not encountered, the hole will be filled to within two feet of the surface with a high quality sodium bentonite grout containing at least 50% solids by volume (usually bentonite "chips", poured dry). The remaining two feet will be backfilled with topsoil or other suitable plant growth material, and a magnetic marker placed below the final two feet of fill.
4. Where gassy or flowing artesian conditions are encountered, the hole will be filled to within two feet of the surface with a cement slurry, and the remaining two feet backfilled with topsoil or other suitable plant growth material, and a magnetic marker placed below the final two feet of fill.

j. Facilities Reclamation

At the end of mine life, all facilities listed under ARM 17.24.308(1)(b) will be removed unless otherwise approved by the Department. Upon removal, the affected land shall be regraded and vegetated according to Rule 17.24.313(4) and (5), and 17.24.711- 733 as shown on the "PMT Maps" and "Revegetation Distribution Maps".

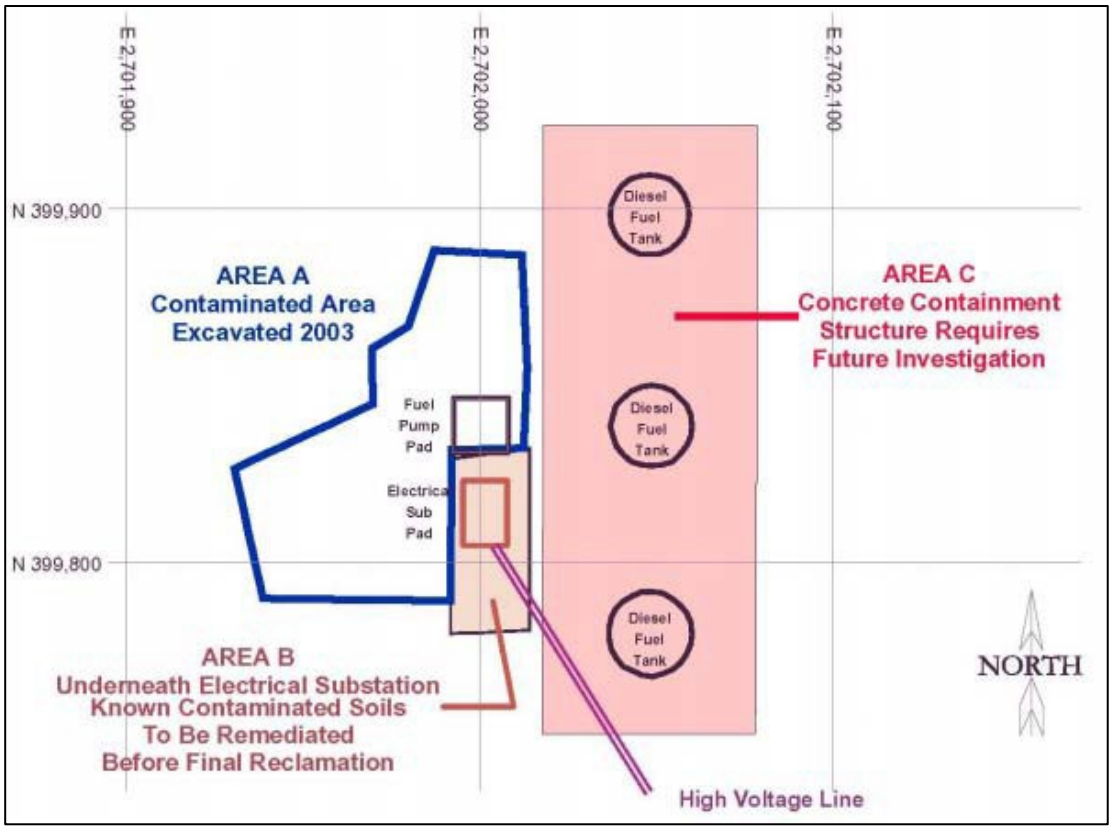
East Decker Diesel Spill Remediation 2003

On April 26, 2003 an accidental spill of approximately 250 gallons of diesel fuel occurred at the East Decker fuel island. This spill was reported to the MDEQ on April 29, 2003. MDEQ requested sampling and analysis of soils within the spill area to determine the extent and concentration of contamination. The affected area is shown on the drawing below.

Excavation (Area A) of approximately 3,000 cy of scoria fill and loosely consolidated bedrock at the fueling site reduced contamination to acceptable concentrations according to RBCA guidelines. The contaminated material was moved to the East Decker Land-farm for remediation. On November 19, 2003, Decker submitted to MDEQ the final report describing the remediation of the diesel fuel contamination at the East Decker fueling station. This report was approved by the Department on December 5, 2003 in a letter to Decker Coal Company. Prior to submitting the final report, the Department and Decker reached a mutual understanding that the remediation of the East Decker fueling station would not be considered complete until further investigation and possible excavation of contamination below the electrical sub-station (Area B) and concrete fuel containment structure (Area C). Consequently, prior to closure of the East Decker fueling station, Decker will investigate and remove the contaminated materials that exceed acceptable contamination levels.

An area of known contamination beneath the sub-station is 21 feet wide and 51 feet long and consists of approximately 300 cy of diesel contaminated soils at concentrations of 1200 to 4700 mg/kg Diesel Range Organics (DRO). High

voltage underground power lines between the electrical sub-station and the concrete containment structure prevented the excavation of contaminated soils in the area during initial remediation efforts.



After the concrete containment structure is removed (immediately east of the spill area) the underlying soils-will be investigated to determine if contamination is present.

East Decker Diesel Spill Remediation 2006

On July 27, 2006 an accidental spill of approximately 150 gallons of diesel fuel occurred at the East Decker wash pad. This spill was reported to the MDEQ and the Department requested sampling and analysis of soils within the spill area to determine the extent and concentration of contamination. The affected area is shown on the drawing below. Excavation of the contaminated materials consisted of the following phases:

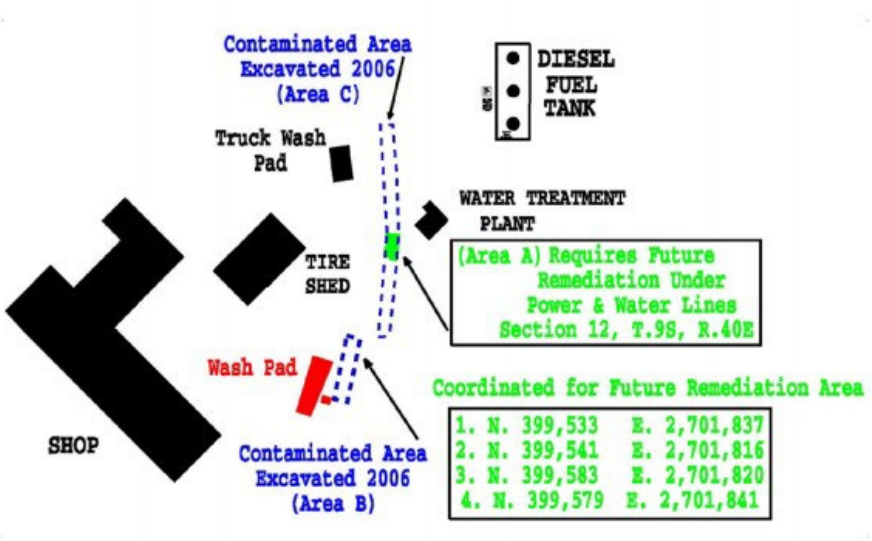
Phase 1: Area from washbay to railroad crossing (Area B). The contaminated area is approximately 104 ft long x 28 ft wide and 4 ft deep with a total excavated volume of

420 cubic yards of material.

Phase 2: Area from Railroad crossing to road crossing (Area C). The contaminated area is approximately 320 ft long x 28 ft wide and 4 ft deep with a total excavated volume of 1,330 cubic yards of material.

On December 21, 2006, Decker submitted to MDEQ the final "Diesel Spill Excavation Report" describing the remediation of the diesel fuel contamination at the East Decker wash pad. The Departments letter on March 13, 2007 determined that the clean-up effort was complete, except for the small area where the power lines and water lines cross the excavated channel (Area A). Remediation efforts at the East Decker wash pad can't be considered complete until further investigation and possible excavation of contaminated materials around the power lines and water lines is complete. Consequently, prior to final closure of the East Decker facilities, Decker will thoroughly investigate and remove the contaminated materials from (Area A) that exceed acceptable contamination levels.

The area of known contamination (Area A) beneath the power lines and water lines is 22 feet wide and 44 feet long and consists of approximately 145 cubic yards of diesel contaminated soils at concentrations of 355 to 2,160 mg/kg, Total Extractable Hydrocarbons (TEH). The high voltage underground power lines and water line between the water treatment plant and the shop facilities prevented the excavation of contaminated soils in the area during initial remediation efforts.


Contaminated Area
Excavated 2006
(Area C)
DIESEL
FUEL
TANK
Truck Wash
Pad
WATER TREATMENT
PLANT
TIRE
SHED
(Area A) Requires Future
Remediation Under
Power & Water Lines
Section 12, T.9S, R.40E
Wash Pad
Coordinated for Future Remediation Area
1. N. 399,533 E. 2,701,837
2. N. 399,541 E. 2,701,816
3. N. 399,583 E. 2,701,820
4. N. 399,579 E. 2,701,841
SHOP
Contaminated Area
Excavated 2006
(Area B)

REFERENCES 17.24.313

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Gilbert, Richard 0. 1987. Statistical methods for environmental pollution monitoring. John Wiley & Sons, 605 Third Ave., NY, NY. 320 pp. ISBN 0-471-28878-0.

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Morrison, M. L. 2002. Wildlife restoration: techniques for habitat analysis and animal monitoring. Chapter 2: Habitat. Society for Ecological Restoration publication. Island Press, Washington D.C. 209 pp.

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Prodgers, R. A. 2003b. Meaningful measurement of revegetation diversity. Paper was presented at the 2003 National Meeting of the American Society of Mining and Reclamation and The 9th Billings Land Reclamation Symposium, Billings, MT, June 3-6, 2003. Published by ASMR, 3134 Montavesta Rd., Lexington, KY 40502

Prodgers, R. 2002. Spring Creek Coal Co. 2001 Vegetation Reports. 63 pp.+ appendices. Part of 2001 Annual Mining Report.

September 17, 2024

Decker Coal
Excellence in Mining

Mr. Eric Dahlgren
Department of Environmental Quality
Mining Bureau
1520 E 6th Avenue
Helena, MT 59601

Permit ID: C1983007
Revision Type: NA
Permitting Action: NA
Reference #: Reclamation Schedule Status Update

Dear Eric:

Decker Coal Company (DCC) has attached a copy of the "Attachment 313-1b-Reclamation Schedule" with a line added for comparison of actual yardage completed per year. As of the end of August 2024, with four months remaining in 2024, DCC is more than 6,096,000 LCY ahead of schedule.

As stated in the "Attachment 313-1b-Reclamation Schedule" "Plans are subject to change as equipment and manpower dictates." DCC posted job openings for truck shovel, but we were not able to fill the positions. The plan also states "A sequence map is not feasible as equipment will be changing areas and overlapping multiple times throughout the life of reclamation" Decker Coal has utilized the Dragline and Dozers in areas that were originally designated for Truck Shovel.

DCC completed overburden sampling in preparation for topsoil placement. Results of backfill sampling were submitted to the MT DEQ on August 13, 2024. DCC also attained numerous bids for seed as well as seeding. DCC has chosen not to seed or move topsoil due to the drought. It is crucial to note that 2024 has been a year of drought. The United States Department of Agriculture (USDA) has designated Big Horn County contiguous to a primary natural disaster area due to drought. It would not be prudent to seed until moisture from the winter months can be retained in the soil. DCC has a minimal seeding commitment of 100 acers. This commitment could easily be achieved at a more appropriate time when there is adequate moisture in the soil.

Please call or email if you have any questions or require any additional information.

Sincerely,

Sabrina Temple

Permit Coordinator
Email: s.temple@deckercoal.com
Phone: (406) 300-0929

Attachments:
Attachment 313-1b-Recleamation Schedule

Gilbert, Sharona

From: Sabrina Temple <s.temple@aecoal.com>
Sent: Tuesday, September 17, 2024 1:03 PM
To: Dahlgren, Eric; Matt Guptill
Cc: Glenn, Michael; jfleischman@osmre.gov; etrent@osmre.gov; DEQ AEMD Coal
Subject: [EXTERNAL] RE: Reclamation Schedule Status Update
Attachments: RecScheduleStatusUpdate_Response_20240917.pdf

Eric,

Please see the attached response.

Sabrina Temple
Permit Coordinator
Decker Coal Company
12 Lakeshore Dr.
Decker, MT 59025
(406)300-0929
s.temple@deckercoal.com

From: Dahlgren, Eric <EDahlgren@mt.gov>
Sent: Friday, August 30, 2024 4:31 PM
To: Sabrina Temple <s.temple@aecoal.com>; Matt Guptill <m.guptill@deckercoal.com>
Cc: Glenn, Michael <MGlenn@mt.gov>; jfleischman@osmre.gov; etrent@osmre.gov; DEQ AEMD Coal <DEQCoal@mt.gov>
Subject: Reclamation Schedule Status Update

Sabrina,

See the attached request for an update on Decker Coal Company's reclamation status as it relates to the reclamation schedule in Permit No. C1983007. Please contact me if you have any questions.

Thank you,

ERIC DAHLGREN | Acting Bureau Chief
Mining Bureau
Montana Department of Environmental Quality
DESK: 406-444-5245
Website [link.edgepilot.com] | **Facebook** [link.edgepilot.com] | **Twitter** [link.edgepilot.com] | **YouTube** [link.edgepilot.com]
How did we do? Let us know here: Feedback Survey [link.edgepilot.com]

Attachment 313-1b - Reclamation Schedule		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
East		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Truck Shovel	LCY	-	-	-	3,000,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	500,000	-	-	-	26,600,000
Dragline/Dozer	LCY	4,000,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,100,000	250,000	-	-	-	-	-	48,550,000
Seeding	Acres	-	-	-	100	200	300	300	300	300	300	300	242	-	-	-	2,342

The general sequence is as follows but it is subject to change. The dragline will work in the general Pit 20 area to begin with. The dragline will then work towards Pit 13 highwall side for highwall reduction and then will transition to spoil side in Pit 13. After completing the dragline portion of reclamation in Pit 13 the dragline will work on the West Leg OB-2 pile. Once complete with East, the dragline will relocate to West Decker to continue reclamation. The D11 dozers will work in P15 to begin with. The dozers will also be at different parts of the mine at any given time depending on dragline needs or truck shovel needs. In general the dozers will follow behind the dragline cleaning up what the dragline can not effectively reclaim. The truck shovel fleet will start in Pit 20 and then follow behind the dragline/dozer operations filling in the gaps that are left behind. Topsoil will be spread as areas are regraded to PMT during the life of reclamation. A sequence map is not feasible as equipment will be changing areas and overlapping multiple times throughout the life of reclamation. Plans are subject to change as equipment and manpower dictates.

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Attorneys for Respondent

Electronically Filed with the
Montana Board of Environmental Review
4/11/25 at 4:58 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-02 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)	BER 2025-02 SM **DEQ'S RESPONSE IN OPPOSITION TO DECKER'S MOTION TO SUSPEND ABATEMENT REQUIREMENTS**

INTRODUCTION

As set forth in Respondent Montana Department of Environmental Quality's ("DEQ") January 29, 2025 Notice of Noncompliance and Order of Abatement ("NON" and "Order") issued to Petitioner Decker Coal Company ("Decker"), *see* Ex. 1 to Decker's Br. in Supp. of Mot., Decker has delayed completing reclamation on schedules previously promised. And currently, despite Decker's misrepresentations, Decker is out of compliance with its own reclamation schedule and reclamation plan, which notably, has nothing to do with its revegetation plan updates previously approved as Minor Revision (MR) 111. And because Decker is out of compliance, DEQ has asked for an updated reclamation plan with updated

timetables to address the noncompliance. Addressing the noncompliance issue is a benefit to Decker to not only get back into compliance but to also provide DEQ with the necessary information to be able to effectively review and process any bond release applications. *See* § 82-4-232, MCA; ARM 17.24.1111.

Incredibly, contrary to the letter of the law and its own best interest to simply provide this required information to the agency, Decker has instead initiated a proceeding before this Board. More obtuse, Decker now asks this Board to stay DEQ's Order for the duration of the proceeding. Neither ARM 17.24.425 nor § 82-4-254(1)(c), however, provide the Board with such authority. And even if it did, Decker couldn't satisfy the requirements of ARM 17.24.425(3) because it isn't likely to succeed on the merits of its claim.

Approval of MR 111 did not, as Decker claims, provide a superseded reclamation plan; it simply updated the revegetation requirements and has nothing to do with the NON and Order. Decker also claims that providing an updated reclamation plan wouldn't abate its failure to follow its old one. Decker's argument is nonsensical. By failing to follow its own reclamation plan, a plan approved by DEQ, Decker is now in violation of ARM 17.24.313 and ARM 17.24.501(6)(c) *unless* DEQ approves a new one. Finally, Decker invents out of thin air its argument that DEQ is demanding requirements in Decker's reclamation plan that aren't required under the Montana Strip and Underground Mine Reclamation Act ("MSUMRA"). Were Decker to read ARM 17.24.313 and the other regulations referenced repeatedly in the NON and Order, it should have been crystal clear that Decker is mistaken.

The Board should reject Decker's invitation to unilaterally expand its authority not granted to it by the Montana Legislature and deny Decker's motion, grant Decker its hearing, and issue a final order upholding DEQ's Order.

FACTUAL BACKGROUND

DEQ incorporates by reference the facts set forth in the NON and Order, attached as Exhibit 1 to Decker's brief in support of its motion. However, it also warrants mention that MR 111, approved by DEQ on March 17, 2023, did not amend the entire reclamation plan; rather, this revision simply added vegetation success criteria to determine if an area meets the vegetation cover, production, and density necessary for DEQ to approve phase III bond release. Declaration of Eric Dahlgren, ¶¶ 5-6 ("Dahlgren Decl."). The revision did not address any of the necessary reclamation plan revisions detailed in DEQ's NON and Order, constitute a new reclamation plan in its entirety, nor supersede the existing reclamation plan and timetables that Decker has failed to meet. *Id.*, ¶¶ 6-7.

After DEQ sent Decker the NON and Order on January 29, 2025, Decker filed a petition for review before this Board on February 14, 2025. (Doc. 1). Notably, Decker's lack of understanding of the applicable statutes is certainly concerning, as its initial legal basis for this appeal cited to a statutory provision of the Montana Opencut Act, §§ 82-4-436, MCA. *Id.* Decker filed an amended petition on February 28, 2025, and on March 28, 2025, Decker filed a Motion to Suspend the Abatement Requirements together with a brief in support.

LEGAL STANDARDS

I. MSUMRA

Coal mining in Montana is governed by the Montana Strip and Underground Mine Reclamation Act ("MSUMRA"), §§ 82-4-201, MCA, *et seq.*, and its implementing regulations. Among MSUMRA's purposes includes establishing "well-defined and consistent" "standards for successful reclamation" "so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved." Section 82-4-202, MCA. A

reclamation plan, including detailed steps and dates for completion, is required under MSUMRA, pursuant to ARM 17.24.313(1). For example, a sufficient reclamation plan must include:

- Timetables and plans to complete backfilling, including the sequence of dragline and pit work, including a map of the reclamation sequence, ARM 17.24.313(1)(b), (d), (g);
- A timeline for mine pit dewatering, *id.*;
- A sequence of soil laydown and details on the soil pile that will be used for specific fields, *id.*;
- A plan for permanent mitigation of coal smokers, ARM 17.24.523; ARM 17.24.308(1)(d);
- A weed management plan, including commitments for spring and fall spraying, ARM 17.24.308(1)(f);
- A timeline for the removal of buildings and other support facilities, ARM 17.24.308(1)(b);
- A plan for facilities sampling for hydrocarbons, including decommissioned shop areas and ready lines prior to grading work in the area, including the spacing of samples and the proposed parameter suite, ARM 17.24.308(1)(c).

Reclamation plans must ensure that all lands affected by strip mining are "capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses" and all reclamation plans must be "approved by [DEQ]." Section 82-4-203(44), MCA; § 82-4-231(3), MCA (applications "***must***" contain reclamation plan and "***must*** be submitted to the department") (emphasis added).

Reclamation plans "***must*** set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards." Section 82-4-231(2), MCA (emphasis added). Among these extensive requirements, "[b]ackfilling and grading ***must*** be completed within two years after coal removal from each pit has been concluded" "***unless*** otherwise approved by the department upon ***adequate written justification and documentation provided by the operator***[.]" ARM 17.24.501(6)(b) (emphasis added). In order for a permittee to qualify for "release of all or part of a performance bond" the

application must contain extensive information, including, but not limited to, "a description of the results achieved ***as they relate to the permittee's approved reclamation plan***." Section 82-4-232(6)(a) (emphasis added). Indeed, an applicant will not even have submitted an "administratively complete" application for DEQ to consider unless the application includes "a discussion of ***how the results of the completed reclamation satisfy the requirements of the approved reclamation plan***." Section 82-4-232(6)(b)(iv), MCA (emphasis added).

II. Violations And Appeals Of Violations To This Board

Section 82-4-251(2), MCA, provides that when

> the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the ***director or an authorized representative*** shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding ***of the director or an authorized representative***, *the* ***director or an authorized representative finds that the violation has not been abated***, *the* ***director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation***. The cessation order remains in effect ***until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5)***. (Emphasis added.)

Section 82-4-251(6), MCA, further provides that a "person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2) . . . ***may request a hearing before the board*** on that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. ***The filing of an application for review under this subsection may not operate as a stay of any order or notice***. The board shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order." (Emphasis added.)

This hearing contemplated for in § 251(6) is distinct from a traditional MAPA contested case appeal subject to Title 2, chapter 4, part 6, which is *only* available for an "approval or denial of" "an application for a permit pursuant to 82-4-231"; "an application for a prospecting permit pursuant to 82-4-226"; "an application to increase or reduce the permit area pursuant to 82-4-225"; "an application to renew or revise a permit pursuant to 82-4-221"; or "an application to transfer a permit pursuant to 82-4-238 or 82-4-250." Section 82-4-206, MCA. And it is only for a MAPA contested case appeal is temporary relief even available. *See* ARM 17.24.425(1), (3), implemented by § 82-4-206, MCA.

Section 82-4-254, MCA, additionally, provides the imposition of penalties for violators. For example, unless under subpart (2) the Department waives a penalty for a minor violation of MSUMRA, its rules, or an order issued by the Department, or the terms or conditions of a permit, and the violation, as deemed by the Department, does not pose risk of harm "to public health, public safety, or the environment and does not impair the administration of this part," then a violator must "pay an administrative penalty of not less than $100 or more than $5000 for the violation and an additional administrative penalty of not less than $100 or more than $5000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section." Section 82-4-254(1)(a), MCA. Subpart (1)(b) provides that the "[p]enalties assessed must be determined in accordance with the penalty factors in 82-4-1001." And subpart (1)(c) clarifies that "[t]he period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a ***final order suspending the abatement requirements*** or until ***entry of an order of court ordering suspension of the abatement requirements***. If the failure to abate continues for more than 30 days, the

department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section." (Emphasis added.).

In other words, under § 82-4-251, only if a violator obtains a final order from the Board or a court "suspending the abatement requirements" is a violator excused from correcting the violation. That only makes sense because under § 82-4-254(6), simply filing an appeal with the Board does not stay the order. And thus unless and until a violator actually obtains a "final order" suspending the Department's order, a violator *must* abate the violation or face additional, accruing penalties and further enforcement action from the Department.

ARGUMENT

I. The Board Does Not Have The Authority Under MSUMRA to Suspend an Order of Abatement.

Decker raises a number of arguments that the Board should suspend the Order of Abatement for the duration of this proceeding on the basis that DEQ's violation was improperly issued for a number of reasons. Decker Br. in Supp., at 2 (claiming "[n]o abatement requirements should apply until resolution of this contested case"); *id.* at 5-8. Even if Decker's arguments had merit—they most certainly do not, as discussed *infra* § III—Decker fundamentally ignores that the Board does not have any authority under MSUMRA to temporarily suspend DEQ's Order.

Again, § 82-4-251(6), MCA, explicitly states that simply filing an appeal "may not operate as a stay of any notice or order." Decker apparently believes, however, that under § 82-4-254(1)(c), that the period of time to comply with the order is extended—i.e., the Order is stayed—while the contested case proceeding[1] is ongoing. Decker's reading is nonsensical and an unfortunate stall tactic. Section 82-4-254(1)(c) simply recognizes that a violator's obligation to

[1] Further, this is not a MAPA contested case proceeding, which is only triggered under those scenarios in § 82-4-206, MCA (and which therefore triggers the ability to grant temporary relief under ARM 17.24.425); this is a "hearing" before the Board under § 251(6).

comply with an Order is *ongoing* during any appeal under § 82-4-251(6) and continues *until a "final order*" from the BER or a district court stating that the Order should not have been issued. Indeed, in furtherance of this clear reading, § 254(1)(c) explicitly continues that if a violator fails to abate the violation within 30 days that DEQ is required to take additional action.

When interpreting statutes, this Board should be aware that "[s]tatutory construction should not lead to absurd results if a reasonable interpretation can avoid it" and it "must harmonize statutes relating to the same subject, as much as possible, giving effect to each." *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003. Decker's strained interpretation violates both of these cannons of statutory construction. To accept Decker's reading would not harmonize these statutes, but rather, places these statutes at odds, recognizing on the one hand, that a challenge to an agency's Order does not operate as a stay of the Order, and on the other, claiming that the Order is effectively delayed until the Board issues a final order.

Likewise, such a reading would jeopardize DEQ's program authority granted to it under the Surface Mining Contral and Reclamation Act ("SMCRA"), which requires that states like Montana with approved state programs "implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program." 30 C.F.R. § 733.11. Montana's approved program, MSUMRA, *requires* that a cessation order be issued if the abatement of the violation has not occurred within 90 days. Section 82-4-251(2), MCA. Decker's interpretation clearly leads to an absurd result, (1) permitting Decker to use § 254(1)(c) to circumvent the directive in § 251(6), (2) relegating the remaining language in § 254(1)(c) requiring DEQ to take additional action within 30 days, meaningless, *see Mont. Sports Shooting Ass'n*, ¶ 15 (courts "must presume that the Legislature would not pass useless or

meaningless legislation."), and (3) causing DEQ to violate its own state program, in violation of SMCRA's mandate. Because Decker's entire motion for temporary relief is premised on this misreading of § 254(1)(c), it fails. The Board should, therefore, deny Decker's motion in its entirety.

II. The Board Lack's Authority To Grant Decker's Request For Preliminary Relief.

Continuing with its erroneous interpretations of MSUMRA, Decker claims—while simultaneously acknowledging that "the law provides no criteria or framework to do so"—that the Board has "discretion" to grant Decker "temporary relief pending final disposition of an appeal," and thus should enter a preliminary injunction enjoining the force and effects of DEQ's notice of violation and order of abatement.

Decker again appears to principally rely on § 254(1)(c) for its proposition. Decker Br. in Supp., at 3. But § 254(1)(c), as stated *supra*, § I, does not permit any temporary relief, or stay DEQ's order. In fact, § 254(1)(c) does not mention temporary relief, or the Board's ability to grant such relief, *at all*, for the clear reason that the statutory provision *does not speak to temporary relief* or temporarily staying DEQ's order.

The BER is "a creature of, owes its being to, and is clothed with such powers as are clearly conferred upon it by statute." *Mont. Power Co. v. Pub. Serv. Comm'n*, 205 Mont. 359, 671 P.2d 604 (1983); *Mont. Rivers v. Mont. Dep't of Envtl. Quality*, 2022 MT 132, ¶ 4 n. 1, 409 Mont. 204, 512 P.3d 1193 ("The Board of Environmental review is a quasi-judicial administrative body that was also created by statute in 1995" (citing § 2-15-3502, MCA)). Accordingly, the Board, as a quasi-judicial agency and a creature of the executive branch, has only those powers and duties "specifically conferred upon them by the legislature." *Bell v. Dept. of Licensing*, 182 Mont. 21, 22, 594 P.2d 331, 332 (1979). The Board thus cannot grant Decker's

request because the Legislature in § 254(1)(c) did not grant any such authority on the Board, and this Board may not read into the statute any such language. To do so would violate the separation of powers reserved to separate branches of government, *see Auto Parts of Bozeman v. Employment Rels. Div.*, 2001 MT 72, ¶ 38, 305 Mont. 40, 23 P.3d 193,[2] and obviate another central cannon of statutory construction that prohibits the Board from reading language into the statute, § 1-2-101, MCA.

Tacitly conceding that there is no explicit authority to the Board for what it is requesting, Decker claims that ARM 17.24.425 provides "guidance" for granting temporary relief. Decker Br. in Supp., at 3. But this rule only applies to appeals of DEQ's final decisions to the Board for "application[s] submitted pursuant to ARM 17.24.401," which govern applications for coal mining permits, major or minor amendments, and prospecting permits, "or [] application[s] for transfer, sale, or assignment of rights." ARM 17.24.425(1). Indeed, this rule, implemented by § 82-4-206, only applies to MAPA contested case appeals in Title 2, Chapter 4, Part 6 of the Montana Code, not requests for "hearings before the board" on violations. *Compare* § 82-4-206, MCA *and* ARM 17.24.425 *with* § 82-4-251(6), MCA. Only in those unique instances of MAPA contested case appeals where an "applicant, permittee, landowner, or any person with an interest which is or may be adversely affected," is the Board is authorized, "under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding," subject to certain conditions. ARM 17.24.425(3)(a)-(d). Here, Decker's appeal does not concern either a final determination by DEQ on Decker's application concerning

[2] Stating further that "[w]hile an administrative body acting as a tribunal has quasi-judicial power, it does not follow that its power is equal to the power of a district court to hear all facets of a case. Jurisdiction in an administrative hearing, contrary to a District Court's jurisdiction, ***is strictly limited by statute. 'It is a basic rule of law that . . . an administrative agency has only those powers specifically conferred upon it by the legislature*[.]**" (Emphasis added) (citation omitted.)

a coal mining permit, major or minor amendment, prospecting permit, or to transfer, sale, or assign its rights, but exclusively concerns DEQ's notice of violation and abatement order for Decker's failure to provide the Department a sufficient reclamation plan. ARM 17.24.425 is therefore inapplicable to this appeal in its entirety.

Finally, Decker advances a confusing and conclusory argument that the due process clause of the Montana Constitution justifies the Board in suspending DEQ's Order during the pendency of the appeal. Decker Br. in Supp., at 11. While due process ensures a right to be heard, "[d]ue process does not necessarily mean judicial process." *Phillips v. Fort Motor Co.*, 83 F.3d 235, 241 (8th Cir. 1996) (citation omitted). That's because "[t]he Constitution does not require a specific state process to be followed." *Anstine v. Adams*, 2024 U.S. App. LEXIS 10946, at *5 (3d Cir., May 6, 2024). Further, the due process clause does not operate as a mechanism to expand the Board's jurisdiction or create procedures that don't exist in law. *Cf.*, *Medina v. California,* 505 U.S. 437, 443-44, 112 S. Ct. 2572 (1992) ("recognizing the due due process clause does not "establish this [c]ourt as a rulemaking organ for the promulgation of state rules of criminal procedure."). Ultimately, if Decker doesn't intend to remedy its violation, that's its own prerogative, and it can face the consequences of that future decision; but Decker will still have an opportunity for a hearing before this Board (and any future hearings, as those processes permit in MSUMRA), and if it so desires, seek state-court review. "A party's due process rights are not violated when it may participate fully in an administrative agency proceeding and later seek state-court review." *Liberty Cable Co. v. City of New York*, 60 F.3d 961, 964 (2d Cir. 1995).

With all due respect to this Board and the important role it serves, unlike a court, it is bound by the authority granted to it by the Legislature. *Auto Parts of Bozeman*, ¶ 38. And there simply is no legal authority for it to press pause on DEQ's enforcement actions or halt a

violator's obligation to comply with DEQ's orders under MSUMRA simply because the violator has sought a hearing. The Board should reject Decker's invitation to exceed its subject-matter jurisdiction by exercising authority it does not have. To acquiesce to Decker's request would run counter to the law and constitute reversible error.

III. Even if the Board Had Authority To Grant Preliminary Relief, Decker Has Not Demonstrated It Is Likely To Succeed On The Merits.

Even assuming for the sake of argument that the BER did have the authority to grant temporary relief under ARM 17.24.425(3), Decker has not demonstrated it is likely to succeed on the merits of its appeal. In arguing to the contrary, Decker makes three flawed assertions.

First, Decker claims that there already is an enforceable reclamation plan based on MR 111, approved in March 2023, Decker Br. in Supp., at 5, such that the two-year time for approval to complete reclamation, ARM 17.24.501(6)(b), is not operative in this scenario. This is a misrepresentation and a red herring. MR 111 is an update to a revegetation plan, required in ARM 17.24.313(1)(h), as needed for phase III bond release; it neither superseded nor addressed the multitude of other requirements needed for an enforceable reclamation plan and had nothing to do with those issues identified in DEQ's NON and Order. *See* Ex. 1 to Decker's Br. in Supp. (Abatement Order citing relevant administrative rules); Dahlgren Decl., ¶ 6.

Decker also contends that this updated revegetation schedule "allows exceedance of the 2-year requirement" to backfill and regrade in ARM 17.24.501(6)(b). Decker Br. in Supp. at 5. Were Decker to read its own revegetation plan, however, it's clear this language on pages 4-5 of Ex. 3 to Decker's Br. is in reference to Table 313-1, or MR 108, approved on March 18, 2022, *see* Ex. 5 to Decker's Br. in Supp., a timetable that Decker itself requested and then didn't meet. Dahlgren Decl., ¶¶ 5, 7. And because Decker didn't meet its timetable, it needs to update the reclamation plan and timetables for a host of other requirements, including: timetables and plans

to complete backfilling; mine pit dewatering; soil laydown; seeding; permanent mitigation of coal smokers; weed management; removal of buildings and support facilities; and facilities sampling for hydrocarbons. Ex. 3 to Decker's Br. in Supp. Without doing so, Decker is therefore in violation of ARM 17.24.501(6)(b) (must complete backfilling and grading within two years unless otherwise approved by DEQ), ARM 17.24.313(1) (requiring an enforceable reclamation plan), and its own outdated reclamation plan, and DEQ cannot process bond release applications because there are no enforceable benchmarks by which to measure Decker's reclamation, ARM 17.24.1111; § 82-4-232, MCA; Dahlgren Decl., ¶ 9.

Second, Decker claims that it is ahead of schedule with respect to backfilling of pits and there is no requirement of utilizing truck and shovel fleets, so therefore, there is nothing to abate. Decker Br. in Supp. at 5-8. Decker's own reclamation timetable, however, contemplates use of a truck and shovel fleet, Ex. 5 to Decker's Br. in Supp., and because it was reviewed and approved by the Department, its enforceable, *see* ARM 17.24.501(6)(b). Whether Decker may be ahead of backfilling with a dragline does not excuse its prior (repeated) commitment to deploying truck and shovel fleets, nor does it excuse its past commitments to soil laydown and seeding, which also did not occur. *See* Ex. 1 to Decker's Br. in Supp. at 8. And if Decker does not now intend to deploy truck and shovel fleet, despite representations in its current plan that it is not complying with, then it needs DEQ's approval for that, too. ARM 17.24.501.

Similarly, Decker argues that DEQ's list of plans and sequencing for reclamation requirements would not abate a failure to timely backfill and regrade any pit. Decker misses the point. While updated plans won't abate Decker's failure to timely follow its own schedule, it *will* abate its current violation of ARM 17.24.313 and ARM 17.24.501(6) for not having a current,

enforceable reclamation plan that has been approved by DEQ.[3] At bottom, Decker's argument is that it can selectively pick and choose which permit reclamation plan requirements they want to follow. MSUMRA does not permit, however, Decker or any permit holder to do whatever it wants whenever it wants. Decker must follow its previously approved plan, and if it doesn't follow that plan, like here, then it needs to submit a new plan to DEQ for approval, commensurate with MSUMRA and its regulations.

Finally, Decker makes an unsupported assertion that "the abatement requirements seek a level of detail unsupported by the rules." Decker Br. in Supp. at 8. To which DEQ responds: *What* level of detail and unsupported by *what* rules? DEQ's requested information virtually mirrors, or presents even a much more truncated version, of the relevant administrative rules cited in the Conditions to Abate. *See* Ex. 1 to Decker's Br. in Supp. For example, DEQ requested "timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence," citing ARM 17.24.313(1)(b, d, g). *Id.* ARM 17.24.313(1)(b) *requires* "a *detailed* timetable for the estimated completion of each major step in the reclamation plan." (Emphasis added.) Subsection (1)(d) concerning plans for backfilling, stabilization, compacting, and grading of the proposed permit area, *requires*

> (i) a description of the final location of all overburden and parting materials in the fill. Diagrams must be included, as necessary;
>
> (ii) a narrative and cross-sections, or other means as approved by the department, showing the plan of highwall backfilling, reduction, or an alternative thereof, including the limits of buffer zone consistent with the performance standards of ARM 17.24.501 and 17.24.515;

[3] Indeed, to accept Decker's argument would mean that there would never be an option to abate a violation if a permitted operation fell behind schedule. Thus Decker could never come into compliance, should go straight into the AVS without any opportunity to rectify the violation, and DEQ should therefore just proceed to bond forfeiture. Decker ought to be careful what it wishes for.

(iii) a narrative description of the derivation of the bulking factor (swell) used by the applicant in calculation of spoil volumes and generation of postmining contour maps. Calculations used in the derivation must be included;

(iv) a map showing the postmining topography that the applicant proposes to meet at the time of final bond release. This map must be prepared to reflect the performance standards; and

(v) a demonstration that the proposed postmining topography can be achieved. This demonstration must include a cross-section or set of cross-sections, or other method as approved by the department, to depict the removal of overburden and mineral and the replacement of the swelled spoil[.]

ARM 17.24.313(1)(g), requires:

plans for removal, storage, and redistribution of soil, overburden, spoils, and other material in accordance with ARM 17.24.501, 17.24.502, 17.24.503, 17.24.504, 17.24.505, 17.24.507, 17.24.510, 17.24.515, 17.24.516, 17.24.517, 17.24.518, 17.24.519, 17.24.520, 17.24.521, and 17.24.522, and 17.24.701 through 17.24.703;

(i) These plans must include or reference other narratives in the application documenting how the information on the characteristics of the overburden and coal (ARM 17.24.304(1)(g)) and soils (ARM 17.24.304(1)(k)) was utilized in developing the plans.

(ii) Using the soil survey information (see ARM 17.24.304 (1)(k)), the applicant shall propose estimated salvage depths for each lift of each soil component (series or phase) of each soil mapping unit.

(iii) The application must also include figures with supporting calculations showing:
(A) total acreages and volumes of salvageable soil of each lift from each soil component of each soil mapping unit; and
(B) the anticipated thickness(es) of soil redistribution for each lift, and in total, on the area of land affected after regrading;

(iv) The applicant must submit plans for any necessary monitoring of soils, overburden, spoils, or other materials[.]

The other rules cited in the Abatement Order with respect to mine pit dewatering, soil laydown, seeding, coal smokers, weed management, building removal, and facilities sampling for hydrocarbons, are equally demanding in their requirements. *See* Ex. 1 to Decker's Br. in Supp. (Conditions to Abate citing rules). And even if Decker were correct that DEQ were purportedly demanding requirements not found in MSUMRA with respect to Decker's reclamation plan, it

still doesn't change the fact that Decker is required to have an enforceable reclamation plan that ensures reclamation is completed in a manner that ensures all lands disturbed by the taking of natural resources are effectively reclaimed.

Ultimately, MSUMRA is incredibly comprehensive and stringent, granting extensive authority to DEQ to ensure its mandates are followed. Accordingly, should the Board even entertain Decker's improper request to temporarily suspend DEQ's Order, Decker has provided no evidence that it is likely to prevail in this appeal that would even justify such relief.

CONCLUSION

Decker fails to recognize that DEQ, by issuing the NON and Order of Abatement, is offering it an opportunity to update its reclamation plan so that it may remain in compliance with MSUMRA and one day, hopefully, qualify for bond release, instead initiating a challenge to the Order before this Board without a valid legal basis to do so. Worse, Decker now invites this Board to ignore the same laws it ignores, and exercise authority it doesn't have. If the Board accepts Decker's request it will constitute reversible error, and further permit Decker to drag its feet with respect to reclamation. The Board should deny Decker's motion.

DATED this 11th day of April 2025.

BY: */s/ Samuel King*
SAMUEL J. KING

Counsel for DEQ

Certificate of Service

I hereby certify that on this 11th day of April 2025, I caused to be served a true and correct copy of the foregoing document to all parties or their counsel of record by electronic mail, addressed as follows:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)	BER 2025-02 SM **DECLARATION OF ERIC DAHLGREN IN SUPPORT OF DEQ'S RESPONSE TO DECKER'S MOTION TO SUSPEND**

I, Eric Dahlgren, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the facts stated herein, and am competent to testify.

2. I am the Mining Bureau Chief for the Montana Department of Environmental Quality, which oversees DEQ's Coal Section. As part of my responsibilities, I oversee the review and approval process of coal permit revisions.

3. I authored the January 29, 2025, Notice of Noncompliance and Order of Abatement, No. CN2025001, to Decker Coal Company for the East Decker Mine, a copy of

which is attached as Exhibit 1 to Decker's Brief in Support of its Motion to Suspend DEQ's Order.

4. As stated therein, Decker ceased mining operations on April 8, 2021, after it notified DEQ that it relinquished the right to mine the East Decker permit. Accordingly, Decker was obligated to complete reclamation commitments for all pits, including backfilling, within 2 years unless otherwise approved by DEQ, as required by ARM 17.24.501(6)(b).

5. On March 18, 2022, DEQ approved a different time period than two years to complete backfilling when it approved Minor Revision 108 (Attachment 313-1b Reclamation Schedule), attached as Exhibit 5 to Decker's Brief and as Exhibit 1 to DEQ's NON and Abatement Order.

6. DEQ also approved, on March 18, 2023, Minor Revision 111, which was the last Minor Revision DEQ approved, attached as Exhibit 3 to Decker's Brief. This approved revision only adds vegetation success criteria to determine if an area meets the vegetation cover, production, and density necessary for DEQ to approve phase III bond release; the revision did not address any of the reclamation plan revisions detailed in DEQ's NON or Order of Abatement, constitute a new reclamation plan in its entirety, nor supersede the existing reclamation plan other than for minor updates to vegetation.

7. As DEQ explains in the NON and Order, DEQ's inspections confirmed that Decker failed to follow its own reclamation timetable for backfilling and grading the pits and mobilizing equipment. *Compare* Ex. 5 to Decker's Br., ¶¶ 4-16, *with* Ex. 3 to Decker's Br.

8. Additionally, because Decker has failed to maintain its reclamation timetable, it must revise the reclamation plan to comply with ARM 17.24.313(1), including dates for completion.

9. Because Decker did not comply with its reclamation plan, it's only option to regain compliance is via the submittal, review, and approval of an updated reclamation plan. Decker is out of compliance with MSUMRA, and absent approval of an updated reclamation plan, cannot come back into compliance with MSUMRA. Further, under the current scenario, Decker will continue to incur bond liability as bond determinations must include inflation. As required by ARM 17.24.313(1)(b), a "**detailed** timetable" is a requirement of the reclamation plan. The detailed timetable is necessary to ensure DEQ can determine a reclamation bond that includes an inflationary cost to account for delays in reclamation. DEQ is required to comply with § 82-4-232, MCA, and ensure a reclamation bond remains in place at all times to cover the cost of reclamation at a mine site. Thus, DEQ is precluded from releasing any reclamation bond funds without a detailed reclamation schedule. *See* § 82-4-232, MCA; ARM 17.24.1111.

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: April 11, 2025

Signed: Eric Dahlgren

Eric Dahlgren
Chief, DEQ Mining Bureau

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING ORDER TO REVISE PERMIT C1987001C**	**CAUSE NO. BER 2025-01 SM** **DECKER COAL COMPANY'S MOTION FOR TEMPORARY RELIEF FROM DEQ'S ORDER TO REVISE PERMIT C1987001C.**

Pursuant to ARM 17.25.425(3), Decker Coal Company ("Decker") respectfully moves the Board of Environmental Review ("Board") for temporary relief from DEQ's Order to Revise Permit C1987001C (the "Order"), including a stay of the Order and a stay of any enforcement or adverse actions related to or arising from the Order, until after the Board issues its final determination in this contested case. A brief in support of this motion is contemporaneously filed for the Board's consideration.

Dated this 9th day of April, 2025.

/s/Victoria A. Marquis
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 9th day of April, 2025:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING ORDER TO REVISE PERMIT C1987001C**	**CAUSE NO. BER 2025-01 SM** **DECKER COAL COMPANY'S BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY RELIEF FROM DEQ'S ORDER TO REVISE PERMIT C1987001C.**

Pursuant to ARM 17.25.425(3), Decker Coal Company ("Decker") submits this brief in support of its Motion for Temporary Relief from DEQ's Order to Revise Permit C1987001C (the "Order"), which is the subject of this contested case. Where, as here, DEQ issues an order to revise a permit, the permittee is entitled to a hearing before the Board of Environmental Review ("the Board") to determine whether the order is lawful. ARM 17.24.414(4); ARM 17.24.425. While the Board's final determination is pending, temporary relief from the Order may be granted. ARM 17.24.425(3). Decker satisfies the requirements of ARM 17.24.425(3) and respectfully requests temporary relief from DEQ's Order, including a stay of the Order and a stay of any enforcement or adverse actions related to or arising from the Order, until after the Board issues its final determination in this contested case.

I. BACKGROUND

Montana rules require that DEQ "shall review each operating permit issued during the term of the permit" and that "[t]he review must occur not later than the middle of the permit term." ARM 17.24.414(1). The West Decker Mine is governed by Coal Mine Permit C1987001C (the "Permit"), which was issued in March 2021 for a five-year term that expires March 27, 2026. Therefore, the middle of this Permit's term and the "not later than" date for a mid-permit review was September 2023. Accordingly, DEQ initiated a mid-permit review on July 26, 2023 and concluded it on September 27, 2023 – not with an order of any type, but instead with a letter titled "MP1; 2023 Mid-Permit Review-Round 1 Acceptability Deficiency" (the "Deficiency Letter"). Exhibit 1, attached.

The Deficiency Letter initiated a process of voluntary submittals from Decker to DEQ for review and consideration. Ex. 1. The words in the Deficiency Letter (i.e.: "Round 1 Acceptability Deficiency" and "The following deficiencies must be adequately addressed before DEQ can determine the application acceptable") implicate ARM 17.24.401 and ARM 17.24.404, which set out requirements for determining when applications are first "administratively complete" and then "acceptable." But Decker had not submitted any type of application associated with the mid-permit review, so there was nothing pending before DEQ for it to consider administrative completeness or acceptability. Aff. S. Temple, ¶ 4 (April 2, 2025).

Decker responded to the Deficiency Letter and endeavored to satisfy DEQ's requests, including with Minor Revision 208, which was submitted in response to the Deficiency Letter, and by referencing Minor Revisions 205 and 207, which were submitted earlier, independent of the Deficiency Letter. Aff. S. Temple, ¶¶ 6-9; Exhibit 2 (Decker Response), attached; *see also* Exhibit 3 (the Order), pp. 3-6 (Status Column), attached. The responsive minor revisions have

either been approved or are still pending approval based on a series of Decker submissions, DEQ review and deficiency notices, and subsequent Decker submissions (the "Minor Revision Process"). *Id*.

Now, more than a full year after DEQ's mid-permit review and outside of the Minor Revision Process, DEQ *orders* Decker to make additional, new, unauthorized, and unlawful permit changes beyond those previously discussed in DEQ's mid-permit review Deficiency Letter. Ex. 3, pp. 1-3, items 1) through 7). The new, unauthorized, and unlawful requests are not tethered to the mid-permit review. As DEQ explains, they were triggered by events post-dating the mid-permit review by several months, including Decker's February 1, 2024 request for permanent cessation of the West Decker Mine and the Bureau of Land Management's October 18, 2024 letter declaring that Decker's federal coal leases are "mined-out" and thereby relieving Decker of any continued mineral extraction. Ex. 3, p. 1. Neither document existed prior to the September 2023 deadline for completion of the mid-permit review.

The Order demands that Decker respond to DEQ's new, unauthorized, and unlawful requests for permit changes by applying for another minor revision within thirty days. Ex. 3, p. 3. Simultaneously, DEQ notified Decker of its right under ARM 17.24.425 to appeal the Order to this Board within thirty days. On February 13, 2025, Decker timely initiated this appeal to the Board after concluding that DEQ lacked authority to issue the Order and that the changes ordered are contrary to the Montana Surface and Mining Reclamation Act ("MSUMRA") and its implementing regulations.

Should Decker fail to respond to the Order's new, unauthorized, and unlawful changes, Decker risks further enforcement or other adverse action initiated by DEQ. To ensure compliance with MSUMRA, maintain the status quo pending final Board decision of this

contested case, and to preserve Decker's due process rights, Decker respectfully requests the Board provide temporary relief from DEQ's Order, including a stay of the Order and a stay of any enforcement or adverse actions related to or arising from the Order until after the Board issues its final determination in this contested case.

II. LEGAL STANDARD

ARM 17.24.425(3) allows the Board to grant parties temporary relief during the pendency of a contested case if: "(a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; (b) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and (c) the relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and (d) the relief sought is not the issuance of a permit where a permit has been denied … by the department."

III. ARGUMENT

Decker is entitled to temporary relief because it satisfies all four of ARM 17.24.425(3)'s requirements. Due process considerations also require that DEQ's Order and any enforcement or adverse actions related to or arising from the Order be stayed until after the Board issues its final determination in this contested case.

A. DEQ WILL BE AFFORDED AN OPPORTUNITY TO RESPOND TO DECKER'S MOTION.

Before the Board may grant temporary relief, ARM 17.24.425(3)(a) requires that all parties to the proceeding are notified of and given an opportunity to be heard on the request for relief. This proceeding is a contested case hearing as described under ARM 17.24.425(2). As such, DEQ will have the opportunity to file its own brief in response to this motion. Additionally, should the Board desire oral argument on this motion, DEQ would have the

opportunity to provide oral argument as well. Should the Board desire an evidentiary hearing, DEQ would also have the opportunity to participate and present evidence to the Board. Therefore, the first element of ARM 17.24.425(3) is met.

B. DECKER HAS A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS.

Under ARM 17.24.424(3)(b), the party requesting temporary relief must demonstrate that there is a substantial likelihood it will prevail on the merits of the appeal. Because DEQ lacked authority to issue the Order and the Order's requests are contrary to MSUMRA, Decker has a substantial likelihood of prevailing on the merits of this appeal.

1. DEQ has No Authority to Order New Permit Changes.

DEQ alleges it has authority under ARM 17.24.414(2) to "order changes in the permit." Ex. 3, p. 1. However, ARM 17.24.414 only authorizes DEQ to order "reasonable revision or modification of the permit provisions" "[a]fter" DEQ's mid-permit review, which "must occur not later than the middle of the permit term." ARM 17.24.414(1) and (2). Any ordered revisions "must be based upon written finding" stemming from the mid-permit review. *Id*. at (4). In this case, DEQ failed to make written findings sufficient to support any ordered revisions, did not timely order any revisions, and illegally ordered changes not tethered to its mid-permit review. Therefore, DEQ lacks authority to issue the Order.

a. DEQ Failed to Make Written Findings.

No specific written findings are identified in either DEQ's September 27, 2023 Deficiency Letter or in its January 29, 2025 Order. Exs. 1 and 3. The September 27, 2023 Deficiency Letter is organized with deficiency headings that list specific rules. Ex. 1. While some include an allegation of what DEQ seems to believe is missing, most do not and instead simply require "review," "update," or that Decker "provide" information – all without any statement alleging a deficiency or any factual finding that would support the requirement. Ex. 1.

Similarly, the new, unauthorized, and unlawful changes in the Order lack background facts and are not supported by any written findings. Ex. 3, pp. 1-3, items 1) through 7). This is contrary to the clear language in ARM 17.24.414(4) (the order "must be based upon written finding"). Because it does not comply with ARM 17.24.414(4), DEQ's Order is unauthorized and therefore invalid.

b. DEQ Did Not Timely Order Revisions; Instead, DEQ Initiated the Minor Revision Process, which Remains On-going.

The rule specifically provides a time limit for the mid-permit review, requiring that it "must occur not later than the middle of the permit term." ARM 17.24.414(1). In this case, the middle of the permit term was September 2023. In accordance with that deadline, DEQ issued the Deficiency Letter on September 27, 2023, which noted that DEQ had reviewed the Permit, identified its desired permit revisions, and intended that the desired permit revisions be addressed through the Minor Revision Process. The Deficiency Letter makes clear that DEQ chose the Minor Revision Process rather than issuance of an appealable order. Ex. 1.

DEQ's Deficiency Letter erroneously implies that ARM 17.24.401 and ARM 17.24.404, which set out requirements for determining when applications are first "administratively complete" and then "acceptable," applied to the mid-permit review. But those rules govern application for a new or renewed permit, major revision of a permit, or an amendment to add acreage to a permit. ARM 17.24.401(1); 17.24.404. A mid-permit review is not a new or renewed permit; nor does it add acreage to the permit. The revisions requested by DEQ do not rise to the level of a "major revision" because they do not seek "a significant change in the postmining drainage plan," "a change in the postmining land use," "a significant change in the bonding level," or a change that "may affect the reclaimability of the area or the hydrologic balance." ARM 17.24 301(66) (defining "major revision"). Decker had not submitted any mid-

permit review application; therefore, there was nothing pending before DEQ for determination of administrative completeness or acceptability. Aff. S. Temple, ¶ 4. The Deficiency Letter wrongly implies that ARM 17.24.401 and ARM 17.24.404 apply and that Decker had somehow initiated an "acceptability determination" process.

Nonetheless, DEQ it is working with Decker, through minor revisions, to address the matters raised in the Deficiency Letter. Ex. 3, p. 3; Ex. 2; Aff. S. Temple, ¶¶ 8-9. After receiving the Deficiency Letter, Decker responded, noting it was proceeding with Minor Revisions 205 and 207 (which were already in-progress) and submitting Minor Revision 208 to address DEQ's Deficiency Letter. Aff. S. Temple, ¶8. Decker continues to work with DEQ through the Minor Revision Process to adequately resolve DEQ's remaining concerns. Aff. S. Temple, ¶ 9; Ex. 3, pp. 3-6 (noting the "status" of many requests involves progress on MR207 and/or MR208). Therefore, the path chosen and committed to for resolution of DEQ's mid-permit review concerns is the Minor Revision Process. Ex. 1; Ex. 3, p. 3. Having committed to that Minor Revision Process, DEQ waived the opportunity to issue an order and may not now – more than a year later – issue the untimely and unsupported Order.

c. DEQ Illegally Ordered Changes Not Tethered to Its Mid-Permit Review.

The new, unauthorized, and unlawful changes DEQ now orders are not related to and go far beyond the mid-permit review process. DEQ does not, and cannot credibly allege that the new, unauthorized, and unlawful changes are a product of the mid-permit review. In fact, DEQ's Order clearly demarcates between the new, unauthorized, and unlawful changes and those original requests for minor revisions. Ex. 3, p. 3 ("In addition to [the new changes ordered], DEQ is still awaiting a satisfactory permit modification to address the following outstanding items" from the Deficiency Letter). Instead, DEQ justifies the Order based on events that

occurred well after it completed the September 2023 mid-permit review. *See* Ex. 3 (relying on Decker's February 1, 2024 request for permanent cessation of the West Decker Mine and the Bureau of Land Management's October 18, 2024 letter declaring that Decker's federal coal leases are "mined-out). ARM 17.24.414 does not authorize DEQ to order permit changes based on the 2024 letters. ARM 17.24.414 authorizes DEQ to request permit revisions or modifications based on the mid-permit review, the deadline for which was September 2023 – long before the 2024 letters even existed.

Many of DEQ's new, unauthorized, and unlawfully ordered changes are also contrary to its mid-permit review because they raise issues and topics never even suggested in the Deficiency Letter. For the first time, DEQ now alleges a need for "detailed steps and dates for completion," "exact sequences," "timetables," and "maps" within the reclamation plan. *Compare* Ex. 3, pp. 1-2. Item 1 (citing ARM 17.24.313(1)(b, d, g)) *with* Ex. 1, pp. 1-2 (citing ARM 117.24.313(1)(b) and (d) for updates only, and not citing ARM 17.24.313(1)(g) or raising the detailed requests found in Ex. 3). Additionally, the new, unauthorized, and unlawfully ordered changes found in Items 2, 3, 4, 5, and 7 are not found anywhere in DEQ's original Deficiency Letter. *Compare* Ex. 3, p. 2 *with* Ex. 1.

DEQ provides no valid authority for the new, unauthorized, and unlawful permit changes and none can be found. Decker is likely to prevail on the merits of this appeal because DEQ lacked any authority to issue the Order.

2. DEQ's Ordered Permit Changes are Contrary To and Unsupported By MSUMRA.

Under ARM 17.24.414, even those permit revisions and modifications DEQ may order must be "reasonable." Where, as here, the ordered changes go beyond the statutory and regulatory requirements of MSUMRA, they are not reasonable and therefore violate ARM

17.24.414(2).

Alleging ARM 17.24.313 requires it, DEQ requests excessively detailed information from Decker, including "detailed steps and dates for completion" of reclamation, including "the exact sequence of dragline and truck-shovel operations." Ex. 3, pp. 1-2. Even a hypervigilant study of ARM 17.24.313 reveals no requirement that Decker's reclamation plan include "detailed steps and dates of completion" or "exact sequences" as DEQ claims. Instead, ARM 17.24.313(1)(b) requires that Decker provide "a detailed timetable for the **estimated** completion of each **major** step in the reclamation plan." (emphasis added). The "exact sequences" of material placement during backfilling, mine dewatering, and seeding cannot reasonably be considered major steps in the reclamation plan. ARM 17.24.313(1)(b) itself states that even the sequence of major steps in reclamation that an operator provides to DEQ **are estimates only.** DEQ's requirement for "dates of completion" and "exact sequences'' seek more than the "estimated completion" required by MSUMRA.

As confirmed by DEQ, Decker provided a timeline of estimated completion, which DEQ approved and clearly understands as "yearly backfilling at West Decker [of 25,000 loose cubic yards each year], [and] backfilling of more than 25,000 loose cubic yards [which] does not commence until 2030, once the majority of backfilling with the dragline and dozer at the East Decker permit is finished." Ex. 3, p. 2, Item 7. DEQ does not and cannot credibly explain why that is inadequate.

The level of detail that DEQ's Order requests for Decker's reclamation plan is not necessary and has never been necessary because effective large mine reclamation requires flexibility. Section 82-4-231(1), Montana Code Annotated ("MCA") requires reclamation to occur "[a]s rapidly, completely, and effectively as the most modern technology and the most

advanced state of the art will allow." Operators working as rapidly, completely, and effectively as possible must be able to reclaim any area of the mine at any time as resource availability, labor, weather, and other conditions permit.

This greater flexibility ensures that reclamation is not delayed simply because a reclamation plan requires an exact sequence of work from which the operator cannot deviate. Requiring specific "completion dates" and "exact sequences" almost certainly ensures that both the permittee and DEQ will, at some point, become bogged down with the need for multiple minor revisions as conditions changes, including due to forces beyond the permittee's control such as weather, drought, and work force availability. Additionally, any deviation from specific "completion dates" and "exact sequences" creates a very real risk that Decker will be held strictly accountable to those details through claims of noncompliance. *See* Cause No. BER 2025-02 SM (challenging DEQ's Notice of Noncompliance, which is not based on any shortage of material moved, but rather on Decker's use of its dragline and dozers to move the material instead of hiring a truck shovel fleet to move the material). The need for flexible reclamation plans is imperative. DEQ's Order requires an overly-rigid and inflexible Reclamation Plan, contrary to MSUMRA, which requires that reclamation be completed "[a]s rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow," as required by MSUMRA. § 82-4-231(1), MCA.

C. STAYING DEQ'S ORDER WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH OR SAFETY, OR CAUSE ENVIRONMENTAL HARM TO LAND, AIR, OR WATER RESOURCES.

MSUMRA requires that all permits issued under the Act include "a comprehensive plan for reclamation" in order to achieve MSUMRA's policy objectives. § 82-4-202, MCA. These objectives include promoting public health and welfare and controlling erosion and pollution. *Id*. Decker is following its approved, comprehensive reclamation plan, as required by MSUMRA.

Ex. 3, p. 2, Item 7. DEQ's Order does not allege violation of the existing reclamation plan, MSUMRA, or anything that would support a claim of environmental harm or adverse affects to the public health or safety. Instead, DEQ's Order demands changes on paper only. Accordingly, Decker's request for temporary relief from the Order and DEQ enforcement of any matter related to or arising from the Order until after final disposition of this contested case will not adversely affect the public health or safety, or cause **any** harm, let alone significant and imminent environmental harm to land, air, or water resources.

D. DECKER IS NOT SEEKING ISSUANCE OF A PERMIT.

This matter does not involve an application for an operating permit, a renewal of an operating permit, a major revision to an operating permit, or an amendment to add acreage to an operating permit. It only involves DEQ's unauthorized issuance of the Order. Decker has therefore satisfied all elements required for temporary relief pursuant to ARM 17.24.425(3).

E. AN ORDER GRANTING TEMPORARY RELIEF DURING THE PENDENCY OF THIS APPEAL SHOULD ISSUE TO ENSURE DECKER'S DUE PROCESS RIGHTS ARE PROTECTED.

The right to due process of law is established in Article 2, section 17 of the Constitution of the State of Montana. The Montana Administrative Procedure Act ("MAPA") was enacted with a purpose to "establish general uniformity and due process safeguards in … contested case proceedings." § 2-4-101(2)(b), MCA. MSUMRA specifically invokes MAPA and its due process safeguards by providing permittees like Decker the right to a contested case hearing on Orders issued by DEQ. ARM 17.24.414(4). Decker has therefore invoked its constitutional right to due process by appealing DEQ's Order to the Board.

Should DEQ be allowed to enforce its Order or take further enforcement or adverse action based on the Order prior to a final Board decision in this contested case, such actions are likely to damage Decker's property by stalling reclamation of Decker's land, causing delays in

reclamation that will result in increased costs and/or delayed bond releases, or damaging Decker's or its parent company's ability to operate other mines. Such damage would be a deprivation of property without the due process afforded by MAPA through completion of this contested case. Therefore, due process requires a stay of the Order and a stay of any enforcement or adverse actions related to or arising from the Order until the Board issues its final determination in this contested case.

IV. CONCLUSION

Decker has demonstrated that it meets all relevant legal requirements provided within MSUMRA for temporary relief. Decker's due process rights support staying DEQ's Order during the pendency of this case. Therefore, the Board should grant Decker's request for temporary relief from DEQ's Order, including a stay of the Order and a stay of any enforcement or adverse actions related to or arising from the Order until after the Board issues its final determination in this contested case.

Dated this 9th day of April, 2025.

/s/Victoria A. Marquis
Victoria A. Marquis
CROWLEY FLECK PLLP
P. O. Box 2529
Billings, MT 59103-2529

Attorney for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 9th day of April, 2025:

[ ] U.S. Mail
[ ] FedEx
[x] Email
[ ] Sharefile

Sandy Moisey Scherer, Board Secretary
Board of Environmental Review
1520 E Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
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Attorneys for Montana Department of Environmental Quality

/s/Victoria A. Marquis
VICTORIA A. MARQUIS

EXHIBIT
1

DEQ
Montana Department
of Environmental Quality

September 27, 2023

Sent via ePermit system

Tyler Kok
Decker Coal Company, LLC
West Decker Coal Mine
12 Lakeshore Drive
Decker, MT 59025

Permit ID: C1987001C
Revision Type: Mid Permit Review
Permitting Action: Deficiency
Subject: MP1; 2023 Mid-Permit Review-Round 1 Acceptability Deficiency

Dear Tyler:

The Department of Environmental Quality (DEQ) has reviewed the Mid Permit Review-MP1. The following deficiencies must be adequately addressed before DEQ can determine the application acceptable:

ARM 17.24.303(1)(a): The applicant was entered into the ePermit system as an "individual" not as a "company". Decker Coal Company needs to be entered as a "company" and Decker Coal Company must delete the individual record and create a new company record as the applicant.

ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision.

ARM 17.24.303(1)(c): Please review and update information as needed.

ARM 17.24.303(1)(d): Please review and update information as needed.

ARM 17.24.303(1)(j): Please review current acreage information. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision.

ARM 17.24.303(1)(l): Please review and update information as needed.

ARM 17.24.303(1)(m): Decker Coal Company should upload a new Compliance with 82-4-251, MCA document as the current one in the system is from 2016 and they have had Ownership and Control updates since then.

ARM 17.24.303(1)(o): Please update the documents in this section as follows:

Provide any updated documents pertaining to either surface/mineral access or consent to access/conveyance documents that expressly grants or reserves the right to extract mineral.

For leases, include the most current update to the lease as well as the original lease document for reference (other iterations are not needed).

All documents must reflect current company name.

Documents must also include ANY surface and/or mineral ownership in the company name.

Any outdated terms pertaining to either mineral or surface leases must be updated.

Documents must be signed/notarized (if notary is applicable) appropriately.

Access/conveyance documents should be either uploaded as separate files or bookmarked with the title of the document (such as Warranty Deed-Date or Grantee, Assumption of Leases, Right-of-Way#).

Include a reference table that outlines which access document (again use the same name as the file or bookmark such as Warranty Deed-Date or Grantee, Assumption of Leases, Right-of-Way#) pertains to each section of the permit. Include in the table the specifics of what the access document provides the operator as far as use/rights or exclusions.

If the conveyance document does not expressly grant the right to extract the mineral by strip mining methods, include documentation (including applicable case law) that under Montana law the applicant has the legal right to extract mineral by those methods.

An example table has been provided. Please see below:

Company Name	County					
	Surface Owner	Surface Access Document(s)	Surface Access Specifics	Mineral Owner	Mineral Owner Access Document(s)	Mineral Access Specifics
T, R, S#						
T, R, S#						

ARM 17.24.303(1)(p)(i): Map 303-2 shows a private estate of Mock-et-al* as private mineral ownership marked as "Fee Coal." This is under Decker Coal Company's ownership on map 303-1. This appears to show a severed estate. Please provide the information required within 303(1)(p)(i) as appropriate to meet the requirements of the applicable rules.

ARM 17.24.303(1)(s): See ARM 17.24.313(1)(b).

ARM 17.24.303(1)(t): Decker Coal Company needs to update the insurance document to the most current policy as the one uploaded is from 2020. Also, the "Expiration Date of Insurance" field needs to be updated with the current expiration date.

ARM 17.24.303(1)(u): Please review and update information as needed.

ARM 17.24.303(1)(x): Decker Coal Company needs to clean up these attachment sections as they include the public notices from the renewal in 2015.

ARM 17.24.304(1)(k)(i)(D): The soil mapping units map was not locatable. Either the link is directed to the wrong location or the map was not included in the ePermit. Please upload the soil mapping units map(s) that coincide with the Baseline soils reports.

ARM 17.24.305(1)(e): Exhibit 305-2 and Exhibit 600-1 referenced in the transportation facilities plan is missing. Please add exhibits to the permit.

ARM 17.24.305(1)(k): Two different PMTs are present in the permit. Please remove the superseded 2009 version.

ARM 17.24.305(1)(l): Please update bond maps as appropriate in meeting commitments approved through MR200.

ARM 17.24.305(1)(m): Exhibits 322-1, 322-2, 322-3, and 322-4 referenced in the "Coal Conservation" plan are missing. Please add the exhibits to the permit.

ARM 17.24.305(3): Please upload DWG companions to pdf versions of existing maps and vice versa as appropriate.

ARM 17.24.312(1)(d)(i): The Northern Long-eared Bat was listed as Endangered in 2023. Portions of West Decker may fall within their potential range. Please visit USFWS website https://ipac.ecosphere.fws.gov/ and complete the determination key for NLEB and submit the results to DEQ. You must add any conservation methods recommended by the USFWS to your Fish and Wildlife Protection Plan.

ARM 17.24.312(1)(d)(iii): Provide a plan for wetland restoration, mitigation, and enhancement.

ARM 17.24.313(1)(b): MR200 was approved on March 15, 2022 but the updated documents have not been uploaded to the epermit. Please update the ePermit with MR200 documents and submit the required annual bond calculation and associated annual bond release as committed to on page 4 of the reclamation plan.

On page 4 of the MR200 reclamation plan, please remove the last two sentences of the first paragraph. Removal of the second to last sentence is warranted as OSM determined that inflation and worst-case scenario must be considered as part of annual bonding. The last sentence needs to be removed as it does not comply with ARM 17.24.1116(1) and 17.24.1116(3)(a) that requires phases of reclamation must be met to release bond in any amount.

ARM 17.24.313(1)(c): The bond documents in the "Admin" section needs to be updated for Bond #9261706 as there were reductions to this bond.

ARM 17.24.313(1)(d)(iv): Please update the postmine topography. The currently approved postmine topography includes areas of mine disturbance from coal cuts that were not mined.

ARM 17.24.313(1)(e)(i): Drainages must be included on the postmine topography maps that show the drainage length that is committed to being replaced in the narrative sections of the reclamation plan. Premine drainages should also be shown on the premine topography map for comparison.

ARM 17.24.313(1)(f)(i): Pearson Creek requires a detailed drainage design including fluvial and geomorphic characteristics and meeting all requirements of ARM 17.24.634.

For areas that have failed bond release due to as-built drainage grade problems, an updated postmine topography is required demonstrating how grade will be modified to tie into existing drainages and fields. Sections of Pond Creek and lower B-valley require an adjustment of the channel design plans.

Any ephemeral channels that are proposed to retain small depression wetlands require a design. At a minimum, a map showing current locations of potential reclaimed wetlands, such as in the lower B-valley, and proposed future locations should be provided.

ARM 17.24.313(1)(g): In this section, the statement, "The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report." must be changed to reflect other soil depth commitments in the permit. For example 17.24.313(1)(h) designates soil depths based on vegetation types and most other discussions refer to this section for depth redistribution. Please evaluate and adjust accordingly.

ARM 17.24.313(1)(h)(iv): Please remove crested wheatgrass from the Pastureland seed mix in reference to table 313-8.

ARM 17.24.315(1): The hydrologic control plan, including the sizing and location of ponds, must be updated to show when and where ponds will be built for retention of sediment through at least Phase II bond release. Current pond locations and routing will not be sufficient through final reclamation as sumps and pits are filled in.

ARM 17.24.322(2)(a)(iv): Maps associated with 322 Geologic Information and Coal Conservation Plan are missing from this permit section. With the realization mining is not occurring in this permit area maps identifying the character of the area are important for planning in the case Department or non-Decker Coal Company personnel are required to continue closure of the mine. Additionally, the studies need the location information to make sense of the data. Please include these maps.

ARM 17.24.510(1): The 508 rule has changed to 510, please update the disposal of off-site generated waste and fly ash document to the current rules.

ARM 17.24.1004(1): Please update the "Vegetation Monitoring" portion of the 1001 Permit Requirements.pdf to state that monitoring will occur in compliance with ARM17.24.723. The language currently included in this permit material refers to reference communities which are no longer being utilized.

Please feel free to contact me with questions regarding this letter.

Sincerely,

Dan Walsh
Mining Bureau Chief
Phone: 406-444-6791
Email: dwalsh@mt.gov

Cc: Jeff Fleischman, Office of Surface Mining
Erica Trent, Office of Surface Mining

EXHIBIT
2

August 1, 2024

Decker Coal
Excellence in Mining

Mr. Eric Dahlgren
Department of Environmental Quality
Mining Bureau
1520 E 6th Avenue
Helena, MT 59601

Permit ID: C1987001C
Revision Type: Minor
Permitting Action: Minor Revision 208
Reference #: MR208 Mid Permit Review

Eric:

Decker Coal Company (DCC) is submitting Minor Revision 208 to update ePermit with the following items related the mid permit review of West Decker Mine. Items relating to the mid permit review that have been addressed as part of other minor revisions are noted at the end of this cover letter. DCC continues progress on remaining items of the mid permit review.

ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision. This information is correct.

ARM 17.24.303(1)(t): Decker Coal Company needs to update the insurance document to the most current policy as the one uploaded is from 2020. Also, the "Expiration Date of Insurance" field needs to be updated with the current expiration date.

ARM 17.24.303(1)(x): Decker Coal Company needs to clean up these attachment sections as they include the public notices from the renewal in 2015.

ARM 17.24.305(1)(e): Exhibit 305-2 and Exhibit 600-1 referenced in the transportation facilities plan is missing. Please add exhibits to the permit.

ARM 17.24.305(1)(k): Two different PMTs are present in the permit. Please remove the superseded 2009 version.

ARM 17.24.305(1)(m): Exhibits 322-1, 322-2, 322-3, and 322-4 referenced in the "Coal Conservation" plan are missing. Please add the exhibits to the permit.

ARM 17.24.312(1)(d)(i): The Northern Long-eared Bat was listed as Endangered in 2023. Portions of West Decker may fall within their potential range. Please visit USFWS website https://ipac.ecosphere.fws.gov/ and complete the determination key for NLEB and submit the

PO Box 12 12 Lakeshore Dr. Decker, MT 59025-0012 406-757-2561 Fax 307-382-6205

results to DEQ. You must add any conservation methods recommended by the USFWS to your Fish and Wildlife Protection Plan.

ARM 17.24.313(1)(b): MR200 was approved on March 15, 2022 but the updated documents have not been uploaded to the epermit. Please update the ePermit with MR200 documents and submit the required annual bond calculation and associated annual bond release as committed to on page 4 of the reclamation plan.
On page 4 of the MR200 reclamation plan, please remove the last two sentences of the first paragraph. Removal of the second to last sentence is warranted as OSM determined that inflation and worst-case scenario must be considered as part of annual bonding. The last sentence needs to be removed as it does not comply with ARM 17.24.1116(1) and 17.24.1116(3)(a) that requires phases of reclamation must be met to release bond in any amount.
Ex 313-5 was updated as part of MR208. The rest of this item is addressed as part of MR207.

ARM 17.24.322(2)(a)(iv): Maps associated with 322 Geologic Information and Coal Conservation Plan are missing from this permit section. With the realization mining is not occurring in this permit area maps identifying the character of the area are important for planning in the case Department or non-Decker Coal Company personnel are required to continue closure of the mine. Additionally, the studies need the location information to make sense of the data. Please include these maps.

ARM 17.24.510(1): The 508 rule has changed to 510, please update the disposal of off-site generated waste and fly ash document to the current rules.

ARM 17.24.1004(1): Please update the "Vegetation Monitoring" portion of the 1001 Permit Requirements.pdf to state that monitoring will occur in compliance with ARM17.24.723. The language currently included in this permit material refers to reference communities which are no longer being utilized.

The following items from the mid permit review have been addressed as part of MR205

ARM 17.24.303(1)(a): The applicant was entered into the ePermit system as an "individual" not as a "company". Decker Coal Company needs to be entered as a "company" and Decker Coal Company must delete the individual record and create a new company record as the applicant.

ARM 17.24.313(1)(c): The bond documents in the "Admin" section needs to be updated for Bond #9261706 as there were reductions to this bond.

The following item from the mid permit review has been addressed as part of MR207

ARM 17.24.305(1)(l): Please update bond maps as appropriate in meeting commitments approved through MR200.

Please call or email if you have any questions or require any additional information.

Sincerely,

Sabrina Temple
Permit Coordinator
Email: s.temple@deckercoal.com
Phone: (406) 300-0929

EXHIBIT
3

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1987001C (West Decker Mine)

ORDER TO REVISE PERMIT C1987001C

On July 26, 2023, the Department of Environmental Quality (DEQ) initiated a mid-permit review of Decker Coal Company's (DCC) West Decker permit (Permit # C1987001C). The Administrative Rules of Montana (ARM) 17.24.414 requires DEQ to conduct a mid-permit review, starting no later than the middle of the permit term. On September 27, 2023, DEQ sent DCC written finding outlining areas of the permit that required revision (Exhibit 3).

On February 1, 2024, DCC submitted a request for permanent cessation to DEQ indicating that the company would be relinquishing the right to mine (Exhibit 4). DEQ received a letter from the Bureau of Land Management (BLM) on October 18, 2024, declaring the eight federal coal leases associated with the West Decker permit "mined-out" and relieved DCC of any continued operation requirements (Exhibit 5).

Pursuant to Section 82-4-234, Montana Code Annotated (MCA), reclamation plans must be kept current with the operation. Receipt of BLM's determination that the federal coal leases for West Decker were "mined-out" in conjunction with DCC's request for permanent cessation are evidence DCC will no longer mine coal. Thus, the approved mine plan, coal conservation plan, and reclamation plan must be revised to be kept current with the mine operation.

ARM 17.24.414(2) states that DEQ may order changes in the permit as are necessary to ensure compliance with the Act. DEQ orders the DCC to revise the reclamation as follows:

1) Update the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
    a) Timetables and plans for pit reclamation to be accomplished by 2035 including the exact sequence of dragline and truck-shovel operations to accomplish the pit backfilling.
    b) A map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)) that identifies when and where material will be placed to accomplish the reclamation.

c) Timetable for mine pit dewatering in relation to the pit backfill sequence (ARM 17.24.313(1)(b, d, g)).
d) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
e) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)). Please remove crested wheatgrass from the Pastureland seed mix in reference to table 313-8.
f) A revised postmine topography (PMT) map and plan to integrate the reduction in disturbance into the overall reclamation plan (ARM 17.24.313(1)(v)).
    i. The revised PMT must also propose grading fixes for areas that failed bond release due to drainage connectivity and excessive erosion (ARM 17.24.313(1)(e)).
    ii. A detained design for Pearson Creek (ARM 17.24.313(1)(f)(i)).
    iii. General geomorphic drainage designs for non-critical drainages (ARM 17.24.313(1)(f)(ii)).
    iv. A map showing the small depressions that are proposed to remain, with special attention paid to small depressions that are within a channel (ARM 17.24.503).
    v. Drainages must be included on the PMT maps that show the drainage length that is committed to being replaced in the narrative sections of the reclamation plan. Premine drainages should also be shown on the premine topography map for comparison (ARM 17.24.313(1)(e)).

2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).
5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).
6) A hydrologic control plan, including the sizing and location of ponds, to show when and where ponds will be built for retention of sediment through at least Phase II bond release. Current pond locations and routing will not be sufficient through final reclamation as sumps and pits are filled in (ARM 17.24.308(1)(b)(vi)).
7) MR196, a minor revision to the reclamation plan, was approved on December 31, 2020 (Exhibit 1). This minor revision's reclamation plan is what is currently in the ePermit system as approved. MR200, a minor revision to the reclamation plan, was approved on March 15, 2022 (Exhibit 2). In this revision, DEQ approved annual bonding and a new reclamation timeline. However, this revision was not incorporated into the ePermit causing a conflict between the approved reclamation schedule and the schedule in the ePermit. While the revision commits to yearly backfilling at West Decker, backfilling of more than 25,000 loose cubic yards does not commence until 2030, once the majority of

backfilling with the dragline and dozer at the East Decker permit is finished. MR200 should also be appropriately included into any future reclamation plan revisions.

The plan must be submitted to DEQ as a revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

In addition to the reclamation plan updates, DEQ is still awaiting a satisfactory permit modification to address the following outstanding items. These items must also all be addressed with an appropriate permit revision and be approvable by July 1, 2025. In some instances, DCC submitted revision requests to DEQ but has not responded to DEQ deficiencies. In those instances, DCC needs to complete the respective permit revision request. Please refer to the attached mid permit review letter for the full list of DEQ's written findings.

Revision	Status
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(j): Please review current acreage information. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(l) & ARM 17.24.303(1)(u): Please review and update information as needed.	There is no statement regarding a prospecting permit. DCC's prospecting permit #X2013340 is not included on the ePermit list of other coal permits, Tab 1.16. There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(m): DCC should upload a new Compliance with 82-4-251, MCA document as the current one in the system is from 2016 and they have had Ownership and Control updates since then.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(o): Multiple items related	There have been no attempts to resolve this

to ownership and control	deficiency.
ARM 17.24.303(1)(p)(i): Map 303-2 shows a private estate of Mock-et-al* as private mineral ownership marked as "Fee Coal." This is under DCC's ownership on map 303-1. This appears to show a severed estate. Please provide the information required within 303(1)(p)(i) as appropriate to meet the requirements of the applicable rules.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(x): DCC needs to clean up these attachment sections as they include the public notices from the renewal in 2015.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.304(1)(k)(i)(D): The soil mapping units map was not locatable. Either the link is directed to the wrong location or the map was not included in the ePermit. Please upload the soil mapping units map(s) that coincide with the Baseline soils reports.	There have been no attempts to resolve this deficiency.
ARM 17.24.305(1)(e): Exhibit 305-2 and Exhibit 600-1 referenced in the transportation facilities plan is missing. Please add exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. This deficiency has not been resolved.
ARM 17.24.305(1)(k): Two different PMTs are present in the permit. Please remove the superseded 2009 version.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(1)(l): Please update bond maps as appropriate in meeting commitments approved through MR200.	Bonding maps were submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.305(1)(m): Exhibits 322-1, 322-2, 322-3, and 322-4 referenced in the "Coal Conservation" plan are missing. Please add the exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(3): Please upload DWG companions to pdf versions of existing maps and vice versa as appropriate.	There are still discrepancies between the .pdf list and .dwg list of maps in Tab "6.1 Maps" of the ePermit.
ARM 17.24.312(1)(d)(i): The Northern Long-eared Bat was listed as Endangered in 2023. Portions of West Decker may fall within their potential range. Please visit USFWS website https://ipac.ecosphere.fws.gov/ and	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.

complete the determination key for NLEB and submit the results to DEQ. You must add any conservation methods recommended by the USFWS to your Fish and Wildlife Protection Plan.	
ARM 17.24.312(1)(d)(iii): Provide a plan for wetland restoration, mitigation, and enhancement.	There have been no attempts to resolve this deficiency.
ARM 17.24.313(1)(b): MR200 was approved on March 15, 2022 but the updated documents have not been uploaded to the ePermit. Please update the ePermit with MR200 documents and submit the required annual bond calculation and associated annual bond release as committed to on page 4 of the reclamation plan.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.313(1)(b): On page 4 of the MR200 reclamation plan, please remove the last two sentences of the first paragraph. Removal of the second to last sentence is warranted as OSM determined that inflation and worst-case scenario must be considered as part of annual bonding. The last sentence needs to be removed as it does not comply with ARM 17.24.1116(1) and 17.24.1116(3)(a) that requires phases of reclamation must be met to release bond in any amount.	313_Bond_24_R2 was submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.313(1)(g): In this section, the statement, "The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report." must be changed to reflect other soil depth commitments in the permit. For example 17.24.313(1)(h) designates soil depths based on vegetation types and most other discussions refer to this section for depth redistribution. Please evaluate and adjust accordingly.	There have been no attempts to resolve this deficiency.
ARM 17.24.322(2)(a)(iv): Maps associated with 322 Geologic Information and Coal Conservation Plan are missing from this permit section. With the realization mining is	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

not occurring in this permit area maps identifying the character of the area are important for planning in the case Department or non-DCC personnel are required to continue closure of the mine. Additionally, the studies need the location information to make sense of the data. Please include these maps.	
ARM 17.24.1004(1): Please update the "Vegetation Monitoring" portion of the 1001 Permit Requirements.pdf to state that monitoring will occur in compliance with ARM17.24.723. The language currently included in this permit material refers to reference communities which are no longer being utilized.	This section was modified with MR208, but the deficiency has not yet been resolved. Reference communities are no longer being utilized with the approval of MR199 and therefore language indicating continued monitoring of those reference communities needs to be removed. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

Provision for Administrative Review

Pursuant to ARM 17.24.425, the permittee must submit a written request for a hearing before the Board of Environmental Review (BER) on the reasons for the order and the terms outlined above within 30 days from receipt of this order if the permittee seeks a review by the Board of Environmental Review (BER). If a request is received, the BER shall commence the hearing within 30 days.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245
edahlgren@mt.gov

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Matt Guptill, DCC

Electronically Filed with the
Montana Board of Environmental Review
4/9/25 at 4:28 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-01 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING ORDER TO REVISE PERMIT C1987001C (WEST DECKER)**	**CAUSE NO. BER 2025-01 SM** **AFFIDAVIT OF SABRINA TEMPLE**

STATE OF Nevada)
: ss.
County of Clark)

SABRINA TEMPLE, being first duly sworn, deposes and says:

1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.

2. I am the Permit Coordinator for the Decker Coal Company ("Decker") and I handle permitting at both the East Decker Mine and the West Decker Mine. Decker holds Montana Coal Mine Permit C1987001C (the "Permit"), governing operations at the West Decker Mine.

3. I am personally familiar with the facts and circumstances regarding the Montana Department of Environmental Quality's ("DEQ") Order to Revise Permit C1987001C ("Order") issued January 29, 2025 for the West Decker Mine, which is the subject of this matter before the Board of Environmental Review.

4. I received and reviewed DEQ's September 27, 2023 letter with a subject line "MP1; 2023 Mid-Permit Review-Round 1 Acceptability Deficiency" (the "Deficiency Letter"). To my knowledge, this is the first mid-permit review DEQ has performed at either West Decker or East Decker. Prior to receipt of the Deficiency Letter, Decker had not applied for a Permit major

revision or amendment associated with DEQ's mid-permit review. Despite the lack of any application from Decker, DEQ requested a response to the Deficiency Letter.

5. I understood that many of the requests in the Deficiency Letter sought updates to DEQ's electronic system, called ePermit. The West Decker Permit has existed since 1987 and, although both DEQ and Decker have the Permit documents, not all of them have been scanned and uploaded into ePermit. Additionally, for some of the documents that had been added to ePermit, the electronic links might not be linking to the relevant documents correctly or the documents are located in different areas of ePermit than where DEQ requests them to be.

6. I began working on responding to and completing tasks identified in the Deficiency Letter. I noted that assembling the historic documents, scanning and uploading them to ePermit would be time-consuming and burdensome.

7. During DEQ's inspection on July 24, 2024, I explained that West Decker's response was being drafted. DEQ encouraged Decker to submit a partial response with those items that were completed.

8. On August 1, 2024, I submitted the requested partial response as Minor Revision 208. I also noted that many of the issues in the Deficiency Letter were being addressed in Minor Revisions 205 and 207, which were submitted independent of DEQ's mid-permit review and Deficiency Letter.

9. On September 16, 2024, Decker received an Acceptability Deficiency letter for Minor Revision 208, which includes additional requests to upload existing permit documents into ePermit. I am continuing to work on responding to both DEQ's mid-permit Deficiency Letter and DEQ's Minor Revision 208 Deficiency Letter.

FURTHER AFFIANT SAYETH NOT.

Dated: 04/02/2025.

Sabrina Temple

Sabrina Temple

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

LATOMYA R GLASS
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 21-3468-01
Expires December 6, 2025

Notary Public for the State of Nevada

LATOMYA R GLASS
[printed name]

Residing at Clark, Nevada

My commission expires: 12/06/2025

Notarized remotely using audio-video communication technology via Proof.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 9th day of April, 2025:

[ ] U.S. Mail
[ ] FedEx
[x] Email
[ ] Sharefile

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/s/Victoria A. Marquis
VICTORIA A. MARQUIS