

**BOARD OF ENVIRONMENTAL REVIEW
JUNE 20, 2025**

AGENDA TABLE OF CONTENTS

AGENDA

ADMINISTRATIVE ITEMS

I.A.1. APRIL 11 MEETING MINUTES	pg 001
APRIL 25 MEETING MINUTES	

BRIEFING ITEMS

- II.A.1. CONTESTED CASE UPDATES
- II.A.2. NON-ENFORCEMENT CASE UPDATES
- II.A.3. CONTESTED CASES NOT ASSIGNED TO A HEARING EXAMINER

ACTION ITEMS

III.a. BER 2023-03 OC	pg 007
In the Matter of Appeal and Request for Hearing by Protect the Clearwater regarding Issuance of Opencut Mining Permit #3473	
III.b. BER 2025-01 SM	pg 036
In the Matter of: Decker Coal Company's Request for Hearing regarding Permit C1987001C (West Decker Mine)	
III.c. BER 2025-02 SM	
In the Matter of: Decker Coal Company's Request for Hearing regarding Permit C1983007 (East Decker Mine)	

NEW CONTESTED CASE

IV.a. BER 2025-03 HRM	pg 206
In the Matter of: Yogo Sapphire Group, LLC Exploration License No. 00886	

GENERAL PUBLIC COMMENT

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

APRIL 11, 2025

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present

Chair Dave Simpson; Board Members Julia Altemus, Amanda Knuteson, Jennifer Rankosky, and Joe Smith.

Vice Chair Stacy Aguirre was not present at the meeting.

Roll was called and a quorum was present.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Director: Sonja Nowakowski

DEQ Communications: Emma Gronda, Madison McGeffers

DEQ Legal: Catherine Armstrong, Isabelle Nebel, Sam King, and Nick Whitaker

DEQ Air, Energy and Mining: Josh Bridgeman, Eric Dahlgren, and Mike Glenn

Other Parties Present

Laurie Crutcher—Crutcher Court Reporting

Elena Hagen—Montana DOJ Agency Legal Services Bureau

Robert Farris-Olsen and David (Kim) Wilson—Morrison Sherwood Wilson & Deola, PLLP

Matt Guptill and Sabrina Temple—Decker Coal Company

Samuel Yemington—Holland & Hart

Vicki Marquis and Mark Stermitz—Crowley Fleck

Todd Briggs—Westmoreland Mining

David Smith—Montana Contractors Association

Lori Watson

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the December 20, 2024, Meeting Minutes.

Board member Smith moved to APPROVE the December 20, 2024, meeting minutes. Board member Rankosky SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

II. BRIEFING ITEMS

a. Chair Simpson, Board Counsel Oomens, and Sam King of DEQ offered clarification regarding cases.

The Board did not have any additional questions.

III. ACTION ITEMS

a. In the Matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ.

On March 21, 2025, the parties filed a Joint Status Report and a First Amendment of the Second Stipulation and Request for Retention of Board Jurisdiction. The Board will need to either approve or reject the First Amendment to the Second Stipulation and agree or disagree to retain jurisdiction by the Board.

Chair Simpson asked for counsel to brief the Board about what the case is about, as there is some confusion. Sam King of DEQ gave an update, and discussion ensued.

Chair Simpson asked for a motion to approve the First Amendment to the Second Stipulation. Board member Altemus moved to APPROVE the stipulation. Board member Smith SECONDED.

The motion passed unanimously.

Chair Simpson asked for a motion to retain jurisdiction by the Board, until the next meeting when the attorneys for the parties are present to explain to the Board what the case is about. Board member Smith motioned to RETAIN jurisdiction by the Board. Board member Knuteson SECONDED.

The motion passed unanimously.

IV. NEW CONTESTED CASES

Chair Simpson spoke about the two new contested cases regarding Decker Coal, which are intertwined. One case is regarding the Appeal of the Notice of Violation issued, and the second having to do with the Department order to revise the permit.

Although the case was originally appealed as one case, it has been divided into separate cases as there are two separate issues.

Chair Simpson asked that representatives of Decker Coal Company and DEQ present to the Board their view of what these cases are about. The Board was briefed by Sam King of DEQ and Vicki Marquis of Crowley Fleck, representing Decker Coal Company.

a. **In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1983007 (East Decker Mine), BER 2025-02 SM.**

Discussion ensued.

Board member Altemus motioned to ASSIGN the East Decker violation appeal in its entirety to a Hearing Examiner at Agency Legal Services. Board member Rankosky SECONDED.

Discussion ensued. Board member Altemus WITHDREW her motion.

Board member Smith motioned to RETAIN the Board's control of the East Decker violation appeal until the next Board meeting. Board member Altemus SECONDED.

The motion PASSED unanimously.

b. **In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1987001C (West Decker Mine), BER 2025-01 SM.**

Board member Altemus asked if this issue could be tabled, until the Board has an opportunity to read all briefings and have a special meeting. Chair Simpson asked Board members if they were available April 25th for a special meeting. All Board members indicated they were available.

Board member Altemus motioned to TABLE the West Decker issue until a special meeting to be held on April 25th. Board member Smith SECONDED.

The motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

No public comment was given.

VI. BOARD CHAIR UPDATE

Chair Simpson gave an update regarding legislative items that surfaced during Legislature. He also would like to ask the parties in the Signal Peak case and Rosebud Mine Amendment 4 case to brief the Board on where they stand at the June 20, 2025 meeting.

Chair Simpson would also like an update on the three cases being handled by Hearing Examiner Cameron.

VII. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Altemus SECONDED. The motion PASSED unanimously. The meeting was adjourned at 11:58 A.M.

Board of Environmental Review April 11, 2025, minutes approved:

DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

DATE

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

APRIL 25, 2025

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present

Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Amanda Knuteson, Jennifer Rankosky, and Joe Smith.

Board member Julia Altemus was not present.

Roll was called and a quorum was present.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: DEQ Deputy Director James Fehr

DEQ Director Sonja Nowakowski

DEQ Communications: Emma Gronda, Mae Vader

DEQ Legal: Catherine Armstrong, Jeremiah Langston, Sam King, Isabelle Nebel, and Nick Whitaker

DEQ Air, Energy and Mining: Josh Bridgeman, Alli Calkins, Ric Casteel, Eric Dahlgren, Emily Lodman, Brian Schrage, and Dan Walsh

DEQ Enforcement: Carli Bluhm, Chad Anderson

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen – Montana DOJ Agency Legal Services Bureau

Matt Guptill, Sabrina Temple – Decker Coal Company

Samuel Yemington – Holland & Hart

Morgan Pettit, Vicki Marquis – Crowley Fleck

Todd Briggs, Bob Smith – Westmoreland Mining

I. ACTION ITEMS

Chair Simpson asked the parties to explain why the matters before the Board today are or are not contested case hearings. Sam King of DEQ, and Vicki Marquis of Crowley Fleck provided a briefing. Discussion ensued.

a. **In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1983007 (East Decker Mine), BER 2025-02 SM.**

Chair Simpson proceeded with the hearing regarding Decker Coal's motion to suspend abatement requirements of the Notice of Noncompliance. Counsel for the parties engaged in oral argument.

Vice Chair Aguirre motioned to DISAPPROVE the motion to suspend abatement requirements. Board member Knuteson SECONDED. Discussion ensued. The motion PASSED unanimously.

Chair Simpson motioned that the abatement order be MODIFIED to extend the abatement period for 90 days, recognizing that it's taken 90 days for the Board to get to this point. The motion died for lack of a second.

b. **In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1987001C (West Decker Mine), BER 2025-01 SM.**

Several board members indicated that they had other meeting obligations would not be able to continue. Without these Board members, there would not be a quorum. Chair Simpson asked the parties what their preferences would be for proceeding with oral argument on West Decker.

Both Sam King of DEQ, and Vicki Marquis of Crowley Fleck indicated that they would be comfortable in taking up this issue at the next Board meeting.

Vice Chair Aguirre motioned to MOVE the matter regarding West Decker to the next regularly scheduled Board meeting. Board member Rankosky SECONDED. The motion PASSED unanimously.

II. ADJOURNMENT

Board member Smith MOVED to adjourn the Special Board Meeting; Board member Rankosky SECONDED. The motion PASSED unanimously. The meeting was adjourned at 12:55 P.M.

Board of Environmental Review April 25, 2025, minutes approved:

DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

DATE

**BEFORE THE BOARD OF ENVIRONMENTAL
REVIEW OF THE STATE OF MONTANA**

**IN THE MATTER OF:
APPEAL AND REQUEST FOR
HEARING BY PROTECT THE
CLEARWATER REGARDING
ISSUANCE OF OPENCUT
MINING PERMIT #3473**

Cause No. BER 2023-03 OC

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

INTRODUCTION

This matter comes before the Board of Environmental Review (BER) at the request of Protect the Clearwater (Clearwater) who objects to the issuance of dryland opencut mining permit #3273 (Permit) by the Department of Environmental Quality (DEQ) to LHC, Inc. (LHC). On May 26, 2023, Clearwater filed its Notice of Appeal and Request for Hearing in this matter in front of BER. (Doc. 1). On June 9, 2023, BER assigned this matter to this Hearing Examiner. (Doc. 4). On December 1, 2023, Clearwater and DEQ each filed a Motion for Summary Judgment. (Docs. 39 through 13-18). On December 22, 2023, Clearwater, DEQ, and LHC each filed a response. (Docs. 46, 48 through 50-2). On January 12, 2024, Clearwater and DEQ each filed a reply. (Docs. 53-54). On March 8, 2024, this Hearing Examiner issued a Proposed Findings of Fact and Conclusions

of Law granting DEQ's summary judgment motion (2024 Order) (Doc. 55) and an Order on Exceptions (Doc. 56). On March 22, 2024, Clearwater and DEQ filed exceptions to the 2024 Order (Docs. 57-58) and on April 5, 2024, Clearwater and DEQ filed responses to exceptions to the 2024 Order (Docs. 59-60).

The BER members reviewed the 2024 Order, exceptions, and responses to exceptions as part of their materials for the April 19, 2024, BER meeting. The BER members heard further explanation of the exceptions by the Parties and held a public discussion of the 2024 Order at the April 19, 2024, BER meeting. Ultimately, the BER members concluded that further information was needed regarding the groundwater level and occupied dwelling units before a final agency decision could be made. (Docs. 61, 70). The Parties then agreed to a second round of summary judgment. (Doc. 71). On August 2, 2024, Clearwater, DEQ, and LHC each filed a Motion for Summary Judgment. (Docs. 75-84). On August 23, 2024, Clearwater, DEQ, and LHC each filed a response. (Docs. 85-90). On September 13, 2024, Clearwater, DEQ, and LHC each filed a reply. (Docs. 93-95).

The arguments are the same as the first round of summary judgment. Clearwater argues that DEQ erred in issuing LHC's Permit because the dryland permit requirements were not met; water will in some way be affected, the dwelling unit threshold was never checked, and the required public notice was not made. (Doc. 83). DEQ argues it did not err by issuing the Permit as all dryland permit requirements were met. (Doc. 76). LHC largely agrees with DEQ's argument, but adds that Clearwater's grievances are really concerning the requirements of the Opencut Mining Act, not LHC's application. (Doc. 80). The question in front of this Hearing Examiner is whether DEQ erred by issuing LHC's dryland Permit.

For the reasons set forth below, Clearwater's Motion for Summary Judgment should be denied and DEQ's and LHC's Motions for Summary Judgment should be granted.

LEGAL STANDARDS

Summary judgment procedures may be used in contested cases under MAPA when the criteria of Mont. R. Civ. P. 56 are satisfied. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Mont. R. Civ. P. 56(c). The moving party has the burden of establishing that there is no genuine issue of material fact. *Sprunk v. First Bank Sys.*, 252 Mont. 463, 465, 830 P.2d 130, 104 (1992). If the movant meets the initial burden, the party opposing summary judgment must present substantial evidence raising a genuine issue of material fact precluding summary judgment or that the moving party is nonetheless not entitled to judgment as a matter of law. *Speer v. State*, 2020 MT 45, ¶ 17, 399 Mont. 67, 458 P.3d 1016.

The party challenging DEQ’s decision to approve the permit bears the burden of presenting the evidence necessary to establish, by a preponderance of the evidence, the facts essential to a determination that DEQ’s decision violated the law. *Mont. Env’tl. Info. Ctr. v. Mont. Dep’t of Env’tl. Quality*, 2005 MT 96, ¶ 16, 326 Mont. 502, 112 P.3d 964.

FINDINGS OF UNDISPUTED FACT

There is no genuine dispute as to the following facts:

1. On March 27, 2023, DEQ received LHC's application for a Dryland Opencut Mining Permit to operate a gravel pit south of Salmon Lake (LHC's Application). (Doc. 89 at 1-2).
2. In LHC's Application, it certified that the operation would not affect surface water or groundwater, fewer than 10 occupied dwelling units (ODU) were located within ½ mile of the permit boundary, and public notice was completed. (Doc. 76-2 at 4).
3. LHC observed the site (Doc. 76-5, *Hrg. Trans.*, 72:1-14) and dug test pits 14 feet deep (Doc. 76-5, *Hrg. Trans.*, 51:22-25).
4. On March 28, 2023, DEQ determined LHC's Application was complete and began its acceptability review. (Doc. 89 at 3).
5. On April 10, 2023, DEQ notified LHC of several deficiencies in its Application, including requesting a cover letter from LHC verifying that fewer than 10 occupied dwelling units were within one half of a mile of the proposed mining permit boundary. (Doc. 89 at 3).
6. On April 13, 2023, LHC updated its Application to address the deficiencies. (Doc. 89 at 3-4).

7. On April 27, 2023, DEQ issued an approval of LHC's Application. (Doc. 89 at 4).

8. Also on April 27, 2023, DEQ issued an Environmental Assessment (EA) of the proposed mining permit area. (Doc. 89 at 4).

CONCLUSIONS OF LAW

1. Clearwater, DEQ, and LHC each submitted motions for summary judgment.

2. There are no genuine disputed material facts.

3. Pursuant to § 82-4-432(1)(b) and (c), MCA, Dryland Opencut Mining Permits apply to proposed mining operations that do not:

(i) affect ground water or surface water, including intermittent or perennial streams, or water conveyance facilities; or

(ii) have 10 or more occupied dwelling units within one-half mile of the permit boundary of the operation.

4. In the permitting process, the applicant has the initial burden to submit a mining permit application containing the information required under the Opencut Mining Act. *Mont. Envtl. Info. Ctr. v. Westmoreland Rosebud Mining, LLC*, 2023 MT 224, ¶ 18, 414 Mont. 80, 545 P.3d 623.

5. Upon receiving an Opencut Mining Permit application, DEQ has the burden to evaluate the permit application to determine if the requirements of the Opencut Mining Act are satisfied. Section § 82-4-422(a), MCA; Admin. R. Mont. 17.24.212.

6. DEQ approving the application and issuing the mining permit indicates that DEQ found the application met the requirements of the Opencut Mining Act.

7. If a party disagrees with the issuance of the mining permit, they must prove that DEQ erred in approving the application. *Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality*, 2005 MT 96, ¶ 16, 326 Mont. 502, 112 P.3d 964.

Affect on Water

8. Pursuant to § 82-4-432(1)(b)(i), MCA, to qualify for a dryland permit, the proposed opencut mining operation cannot affect ground water or surface water.

9. The definition of “affect” is not found in Title 82 or the associated administrative rules and the parties disagree on how the term should be defined.

10. Montana's courts interpret statutes to "ascertain and carry out the Legislature's intent." *Mont. Fish, Wildlife & Parks v. Trap Free Mont. Publ. Lands*, 2018 MT 120, ¶ 14, 397 Mont. 328, 417 P.3d 1100. The legislature's intent is determined by first looking at the plain language of the statute at issue. *Id.* If the meaning of a statute cannot be determined by the plain language alone, the court "resort[s] to other canons of statutory construction." *Id.*

11. The common definition of "affect" is to "to influence in some way" (Black's Law Dictionary (9th ed. 2009) at 65) or to "have an influence" or "to cause a change" (Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/affect>); Merriam-Webster, <https://www.merriam-webster.com/dictionary/affect>); see also Doc. 76-13 at 31.

12. The plain language of the statute is clear, therefore no further interpretation is needed. To qualify for a dryland permit, the proposed mining operation cannot influence or change groundwater or surface water.

13. LHC submitted its Application in which it certified that ground and surface water would not be affected by the mining operation. FOF ¶ 2.

14. DEQ found that LHC's Application contained the required information and notified LHC that its Application was complete. FOF ¶ 4.

15. At that point, LHC's burden of proof was met.

16. DEQ was then required to evaluate LHC's Application to determine if the proposed mining operation will influence or change groundwater or surface water. Admin. R. Mont. 17.24.212; §§ 82-4-432(1)(b)(i) and (14), MCA.

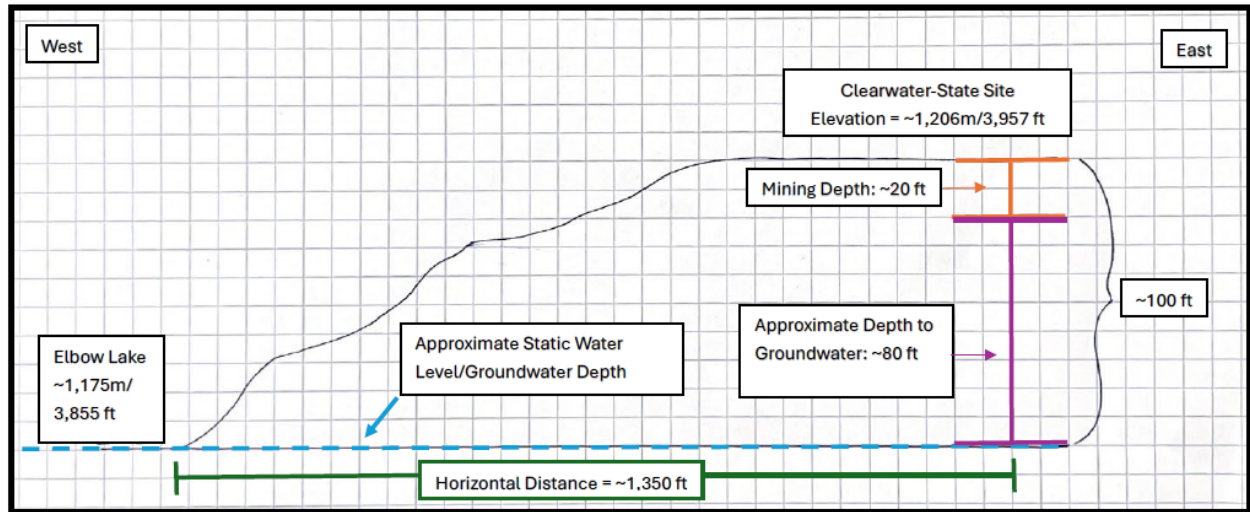
17. The first part of the requirement is that DEQ evaluate LHC's application.

18. Field verification is not required under the statute or administrative rules, but DEQ appeared to complete some field verification when it visited the proposed mining site and took photos from a drone. (Doc. 76-5, *Hrg. Trans.*, 34:19-35:1, 50:6-7).

19. In addition, DEQ reviewed GWIC well logs, the landowner consultation form, soil test pit data, zoning compliance form, reclamation bond spreadsheet, mapped surface waters and wetlands, and verified the proposed permit boundary was at least fifty feet away from the high-water mark of surface waters pursuant to ARM 17.24.227(1)(b). (Doc. 76-5, *Hrg.*

Trans., 29:17-20, 30:18-25, 31:1-2, 33:3-25, 34:1-3, 34:5-9, 34:19-25, 35:1, 40:20-25, 41:1-7, 45:19-25, 46:1-3, 46:12-21, 49:3-5, 49:24-25, 50:1-7).

20. Based on this information, DEQ created the following schematic for ease of reference for BER.



21. DEQ reviewed the information provided in LHC's Application and additionally performed its own field verification and research. Therefore, DEQ did evaluate LHC's Application.

22. The second part of the requirement is that DEQ determine if the proposed mine will influence or change groundwater.

23. DEQ conducted an EA, even though it was not required to do so under the Opencut Mining Act.

24. The EA states that “the depression caused by mining activities would likely cause runoff to drain internally into the site.” (Doc. 76-6 at 8).

25. This raised a concern because “[p]etroleum products would likely be present onsite as fuel, lubricant, asphalt production, etc,” (Doc. 76-6 at 8) which could then infiltrate through the site into the groundwater.

26. The EA notes that the Opencut Mining Act does not have control over petroleum products, but that LHC is still subject to federal law regarding water quality. (Doc. 76-6 at 8, 9).

27. Additionally, the affects DEQ analyze are based on the proposed mining operation. Section 82-4-432(1)(b)(i), MCA.

28. An anticipated violation of federal law from LHC allowing petroleum products to infiltrate into the subsurface is not a proposed mining action and, therefore, cannot amount to affecting groundwater.

29. The EA also states that “DEQ does not anticipate an impact to surface water or groundwater quality or quantity and distribution management.” (Doc. 76-6 at 8).

30. The EA does not anticipate an influence or change to groundwater based on the mining operation. It acknowledges and analyzes the infiltration of runoff into the depression caused by the mining operation and the close proximity to petroleum products, but does not note any influence or change to the groundwater from the infiltration of water runoff or proximity to petroleum products.

31. The third part of the requirement is that DEQ determine if the proposed mine will influence or change surface water.

32. The EA also notes “surface water that may leave the site during a heavy storm could carry sediment.” (Doc. 76-6 at 8 (emphasis added)).

33. In addition, the EA discusses fugitive dust in regards to air quality, but does not draw or support any conclusions with regard to dust landing on or affecting surface water. (Doc. 76-6 at 9).

34. According to the EA, “the nearest surface water is a pond that is located approximately 670’ south of the proposed project area. Elbow Lake (Clearwater River) runs north-south to the west and is 1,250 feet away at the closest point[,]” and “DEQ does not anticipate an impact to surface water or groundwater quality or quantity and distribution management.” (Doc. 76-6 at 8).

35. The EA does not anticipate an influence or change to surface water based on the mining operation. It acknowledges and analyzes the possibility that there may be water runoff or fugitive dust from the site, but does not note any influence or change to the surface water from the water runoff or fugitive dust.

36. DEQ determined LHC's certification that groundwater and surface water would not be affected in addition to its own research met the requirements of the Opencut Mining Act, approved LHC's Application, and issued the permit. FOF ¶ 7.

37. At that point, DEQ's burden of proof was met.

38. Now, as the party with the burden of proof, Clearwater must prove that DEQ's determination was incorrect and, therefore, DEQ erred in issuing LHC's Application. COL ¶ 7.

39. To prove LHC's permit was issued in error, Clearwater must prove that LHC's Application did not meet the requirements of the Opencut Mining Act; i.e. that groundwater or surface water will be affected by LHC's mining operation.

40. Clearwater has not provided any evidence that LHC's proposed mining operation would have an affect to surface water or groundwater.

41. As the party with the burden of proof in this contested case, Clearwater fails to meet its burden to show that DEQ erred in approving LHC's Application based on the proposed mining operating affecting groundwater or surface water.

10 Occupied Dwellings

42. Pursuant to § 82-4-432(14)(a)(ix), MCA, to qualify for a dryland permit, the applicant must certify in its Application that there are fewer than 10 ODUs within ½ mile of the proposed permit boundary. (Emphasis added).

43. An ODU is a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence. Section 82-4-403(7), MCA.

44. The statute does not require the person using the structure also have ownership of the property. Therefore, leasehold interests adjacent to the proposed mining boundary may also contain ODUs.

45. LHC submitted an Application for a Dryland Opencut Mining Permit in which it certified that fewer than 10 ODUs were located within ½ mile of the proposed permit boundary. FOF at ¶ 2.

46. LHC determined ODUs based on land ownership, visiting the properties, and a discussion with an employee from the Department of Natural Resources and Conservation. (Doc. 76-5, *Hrg. Trans.*, 76:20-77:6).

47. There is one confirmed leaseholder within ½ mile of the proposed permit boundary who uses his property as a primary residence. (Doc. 76-5, *Hrg. Trans.*, 150:23-151:1).

48. DEQ found that LHC's Application contained the required information and notified LHC that its Application was complete. FOF ¶ at 4.

49. At that point, LHC's burden of proof was met.

50. DEQ was then required to evaluate LHC's Application to determine if the information provided satisfied the requirements of the Opencut Mining Act, i.e. whether less than 10 ODUs were located within ½

mile of the proposed permit boundary. Admin. R. Mont. 17.24.212; §§ 82-4-432(1)(b)(i) and (14), MCA.

51. DEQ evaluated LHC's Application, found a deficiency with the certification, and requested LHC submit a cover letter verifying that less than 10 ODUs were located within ½ mile of the proposed permit boundary. FOF at ¶ 5.

52. LHC submitted a cover letter affirming less than 10 ODUs were located within ½ mile of the proposed permit boundary. FOF ¶ at 6.

53. Under Mont. Code Ann. § 82-4-422(1)(d), DEQ has discretion to make investigations or inspections that it considers necessary to ensure compliance with any provision of the Opencut Mining Act.

54. Just because DEQ has the authority to make investigations or inspections under Mont. Code Ann. § 82-4-422(1)(d) does not mean it is required to do so if it does not consider it necessary.

55. However, DEQ exercised this discretion when it issued the deficiency letter requesting LHC submit a cover letter confirming its findings and clearly stating the Application met the dryland permit requirements. FOF at ¶ 5.

56. LHC then submitted a cover letter affirming its findings. FOF at ¶ 6.

57. DEQ determined LHC's Application and cover letter met the requirements of the Opencut Mining Act, approved LHC's Application, and issued the permit. FOF ¶ at 7.

58. At that point, DEQ's burden of proof was met.

59. Now, as the party with the burden of proof, Clearwater must prove that DEQ's determination was incorrect and, therefore, DEQ erred in approving LHC's Application. COL ¶ 7.

60. To prove LHC's permit was issued in error, Clearwater must prove that LHC's Application did not meet the requirements of the Opencut Mining Act; i.e. that more than 10 ODUs were located within ½ mile of the proposed permit boundary.

61. Clearwater has not provided any evidence that more than 10 ODUs were located within ½ mile of the proposed permit boundary.

62. As the party with the burden of proof in this contested case, Clearwater fails to meet its burden to show that DEQ erred in approving the Application because there were more than 10 ODUs within ½ mile of the proposed permit boundary.

Notice

63. Pursuant to § 82-4-432(14)(a)(x)(B), MCA to provide notice, the applicant shall:

Mail [notice] to surface owners of land located within ½ mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located.

(Emphasis added).

64. LHC submitted its Application in which it certified that proper public notice was given. FOF ¶ 2.

65. DEQ found that LHC's Application contained the required information and notified LHC that its Application was complete. FOF ¶ 4.

66. At that point, LHC's burden of proof was met.

67. DEQ was then required to evaluate LHC's Application to determine if the information provided satisfied the requirements of the Opencut Mining Act, i.e. whether public notice properly given. Admin. R. Mont. 17.24.212; §§ 82-4-432(1)(b)(i) and (14), MCA.

68. The statute does not require notice to be mailed to leasehold interests with ODUs. The statute requires notice to be mailed to surface owners.

69. LHC mailed notice to all surface owners of record within $\frac{1}{2}$ mile of proposed permit boundary. (Doc. 76-5, *Hrg. Trans.*, 66:19-67:7).

70. In addition, the purpose of the published notice is to ensure the public is aware of the proposed Permit and allowed to participate in the Permit review process. *See Johnston v. Hardin*, 55 Mont. 574, 580 (Mont. 1919).

71. All but one of the petitioners participated in the public comment. Clearwater Response Brief at 4.

72. Petitioners were aware of LHC's Application, despite the notice not being mailed to leasehold interests.

73. DEQ determined LHC's certification that public notice was properly given in addition to its own research met the requirements of the Opencut Mining Act, approved LHC's Application, and issued the permit. FOF at ¶ 7.

74. At that point, DEQ's burden of proof was met.

75. Now, as the party with the burden of proof, Clearwater must prove that DEQ's determination was incorrect and, therefore, DEQ erred in approving LHC's Application. COL ¶ 7.

76. To prove LHC's permit was issued in error, Clearwater must prove that LHC's Application did not meet the requirements of the Opencut Mining Act; i.e. that public notice was improperly mailed.

77. Clearwater has not provided any evidence that LHC's public notice was improperly mailed.

78. As the party with the burden of proof in this contested case, Clearwater fails to meet its burden to show that DEQ erred in approving the Application based on the public notice being improperly mailed.

RECOMMENDED DECISION

Clearwater's Motion for Summary Judgment should be DENIED.

DEQ's Motion for Summary Judgment should be GRANTED.

LHC's Motion for Summary Judgment should be GRANTED.

DATED this 16th day of May 2025.

/s/ Terisa Oomens
TERISA OOMENS
Hearing Examiner

**BEFORE THE BOARD OF ENVIRONMENTAL
REVIEW OF THE STATE OF MONTANA**

**IN THE MATTER OF:
APPEAL AND REQUEST FOR
HEARING BY PROTECT THE
CLEARWATER REGARDING
ISSUANCE OF OPENCUT
MINING PERMIT #3473**

Cause No. BER 2023-03 OC

ORDER ON EXCEPTIONS

The undersigned has issued a Proposed Findings of Fact and Conclusions of Law (Proposed Order). The Proposed Order has been served on the parties. Mont. Code Ann. § 2-4-621 allows “each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.” *See* Mont. Admin. R. 1.3.223(1). The Proposed Order is now before BER, which constitutes the “officials who are to render the decision.” Mont. Admin. R. 1.3.223(1). The parties therefore have the opportunity to submit exceptions and make oral arguments before BER concerning the Proposed Order. Based on the Proposed Order, any exceptions filed, and any oral arguments presented, BER will decide on the final agency action at its next scheduled meeting on **June 20, 2025**. If the parties request an extension of time for their exceptions

briefs or responses, BER will not decide on this case until (at the earliest) its meeting in August 2025.

Therefore, IT IS HEREBY ORDERED:

1. Any party adversely affected by this Recommended Decision will have until **May 30, 2025**, to file its exceptions. If no party files exceptions, this matter may be deemed submitted.
2. The parties will have until **June 6, 2025**, to file response briefs. If no party files a response brief, this matter will be deemed submitted.
3. This matter will be submitted for final agency action and placed on the **June 20, 2025**, agenda of BER for final agency action.
4. The parties may present oral argument in person in front of BER at the **June 20, 2025**, meeting, or may submit written statements in lieu of appearing and arguing in person. If a party chooses to submit a written statement rather than appear, the statement must be filed no later than **June 6, 2025**. Failing to appear in person or file a written statement will be deemed a waiver of the party's right to oral argument in front of BER. The location, time, and agenda for the BER meeting, as well as the materials available to BER members for review, will be available on BER's website at <http://deq.mt.gov/DEQAdmin/ber> at least one week in advance of the

BER meeting. The parties are encouraged to regularly check BER's website for any additional updates on the meeting.

5. Requests for extension will be entertained for good cause. If an extension is granted, this matter will be placed on a subsequent BER agenda and will not be submitted to BER at its April meeting.

DATED this 16th day of May 2025.

/s/ Terisa Oomens
Hearing Examiner

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Electronically Filed with the
Montana Board of Environmental Review
5/29/25 at 8:27 AM
By: Sandy Moisey Scherer
Docket No: BER 2023-03 OC

BEFORE THE BOARD OF ENVIRONMENTAL
REVIEW OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING BY PROTECT THE CLEARWATER REGARDING ISSUANCE OF OPENCUT MINING PERMIT #3473	Cause No. BER 2023-03 OC STIPULATION REGARDING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND EXCEPTIONS THERETO.
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The parties, Protect the Clearwater, Montana Department of Environmental
Quality (DEQ), and Intervenor LHC, Inc., hereby agree to and file this Stipulation.

RECITALS

1. This matter was originally filed on May 26, 2023, challenging a gravel mine “dryland” permit issued by DEQ to LHC for Opencut Mining Permit #3473.
2. On March 8, 2024, the Hearing Officer issued a proposed Order granting summary judgment to DEQ and LHC. Thereafter, the parties filed exceptions thereto.
3. On April 19, 2024, the Board of Environmental Review (BER) heard this matter, and voted against adopting the proposed Order. Instead, on May 1, 2024, the BER issued an Order Remanding Case to Hearing Examiner.
4. Subsequently, the parties re-briefed summary judgment for a second time commencing in August, 2024.
5. That briefing was subsequently completed in the fall of 2024.
6. On May 16, 2025, the Hearing Examiner issued an order on Proposed Findings of Fact and Conclusions of Law, again proposing that the BER deny Protect the Clearwater’s, and granting DEQ’s and LHC’s, Motions for Summary Judgment.
7. Also on May 16, 2025, the Hearing Examiner issued an Order allowing parties to file Exceptions, by May 30, 2025.
8. As noted by the Hearing Examiner, the filing of exceptions is allowed, but not required. § 2-4-621 (1), MCA; A.R.M. 1.3.223 (1).

STIPULATION

1. Given the passage of time in this case, the parties all agree to allow this proposed Order to go directly to the BER without the filing of Exceptions and without oral argument at the June 2025 BER Hearing, by any party, for the BER to make a final decision thereto, pursuant to § 2-4-623, MCA.
2. The parties all reserve for judicial review any objections to the Proposed Findings of Fact and Conclusions of Law, and the BER's final decision, and do not waive any argument(s) that may be made in District Court.

DATED THIS 29th DAY OF MAY 2025

MORRISON SHERWOOD WILSON &
DEOLA

By: /s/ David K.W. Wilson Jr.
Robert Farris-Olsen/David K.W. Wilson, Jr.
Attorneys for Plaintiff

DATED THIS 29th DAY OF MAY 2025

MONTANA DEQ

By: /s/ Sarah Christopherson
Sarah Christopherson

DATED THIS 29th DAY OF MAY 2025

LHC

By: /s/ Mark Stermitz
Mark Stermitz

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2025, I have *electronically* served true and accurate copies of the foregoing to the following:

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By: Sandy Moisey Scherer
Docket No: BER 2025-01 SM

Attorney for Decker Coal Company

**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.
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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
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:

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

Attorney for Decker Coal Company

**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 change, 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:

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*Attorneys for Montana Department of
Environmental Quality*

/s/Victoria A. Marquis
VICTORIA A. MARQUIS



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.

September 27, 2023

Page 5 of 5

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.

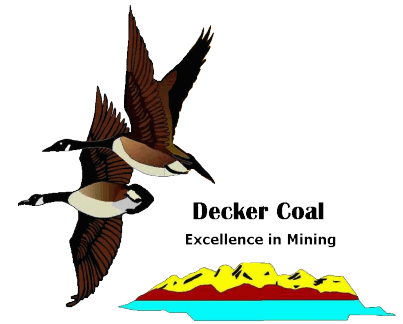
Sincerely,



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

August 1, 2024



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

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 ARM 17.24.723. 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)(i): Please update bond maps as appropriate in meeting commitments approved through MR200.

MR208 Mid Permit Review

August 1, 2024

Page 3

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

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Temple', written over a horizontal line.

Sabrina Temple

Permit Coordinator

Email: s.temple@deckercoal.com

Phone: (406) 300-0929

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)(ii)).
 - 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
<u>ARM 17.24.303(1)(b):</u> 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.
<u>ARM 17.24.303(1)(b):</u> 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.
<u>ARM 17.24.303(1)(j):</u> 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.
<u>ARM 17.24.303(1)(l) & ARM 17.24.303(1)(u):</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.
<u>ARM 17.24.303(1)(m):</u> 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.
<u>ARM 17.24.303(1)(o):</u> 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, 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

**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.

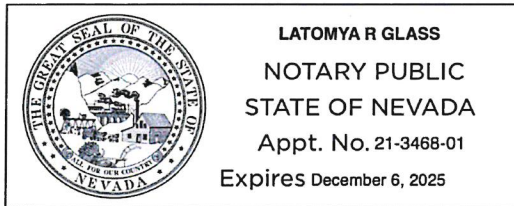
FURTHER AFFIANT SAYETH NOT.

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 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:

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By: Sandy Moisey Scherer
Docket No: BER 2025-01 SM

Attorneys for Respondent

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: DECKER COAL COMPANY’S REQUEST FOR HEARING REGARDING PERMIT C1987001C (WEST DECKER MINE)	BER 2025-01 SM DEQ’S RESPONSE IN OPPOSITION TO DECKER’S MOTION FOR TEMPORARY RELIEF FROM DEQ’S ORDER TO REVISE PERMIT C1987001C
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INTRODUCTION

Respondent Montana Department of Environmental Quality (“DEQ”) applies and enforces the Montana Strip and Underground Mine Reclamation Act (“MSUMRA”), §§ 82-4-201, MCA, *et seq.* and its implementing regulations. As part of this obligation, DEQ must ensure that any reclamation plan remain consistent with the state of the operation; any on-the-ground modifications to that operation, and an operator must update its reclamation plan and schedule accordingly. Section 82-4-205(2)(c), -231(1), -234, -237(3), MCA; ARM 17.24.414, -501(6), -522, -1202(3).

Here, Decker laments that it has to comply with DEQ's Order, raising a host of unmeritorious arguments that its current reclamation plan is sufficient and requesting this Board grant it temporary relief from complying with the Order during the pendency of this appeal because, among other things, it claims it is likely to succeed on the merits. But Decker is mistaken, dismissing the critical issue: that its current reclamation plan is based on future mining which will no longer occur. As such, as laid out in DEQ's Order, Decker must correspondingly update its reclamation plan to reflect these changes in circumstances to comply with the "detailed" requirements laid out in MSUMRA for an adequate reclamation plan.

Moreover, Decker's plea that the Board consider its "due process" rights under the Montana Constitution or claims of speculative future injury if the Board doesn't permit Decker to delay compliance aren't factors for this Board to consider in determining whether temporary relief should be granted under ARM 17.24.425, and cannot be used as justification to modify the regulatory requirements.

Because Decker has not, and cannot, satisfy all of the requirements of ARM 17.24.425 to secure temporary relief, Decker's motion must be denied.

BACKGROUND

1. As Decker acknowledges, its previously approved reclamation plan provides for "yearly backfilling at West Decker [of 25,000 loose cubic yards each year]" until 2030. Decker's Br. in Supp. at 9; Ex. 3 attached thereto. Decker's previous approved reclamation plan, including approved post mine topography ("PMT"), is based on ongoing operations and approved coal cuts where Decker was authorized to mine. Dahlgren Decl., ¶ 7; **Ex. A** attached hereto.

2. DEQ initiated mid-permit review of Decker's West Decker permit on July 26, 2023 pursuant to ARM 17.24.414, which requires mid-permit review no later than the middle of

the permit term. ARM 17.24.414(1). Ex. 3 to Decker's Br. in Supp.; Declaration of Eric Dahlgren, ¶ 4 (Dahlgren Decl.).

3. On September 27, 2023, DEQ sent Decker written findings outlining areas of the permit that required revision pursuant to ARM 17.24.414(2). Ex. 1 to Decker's Br. in Supp.; Dahlgren Decl., ¶ 4. DEQ requested, among other things, updates to Decker's submission to Decker's annual bond calculation; updated postmine topography ("PMT") because the previously approved PMT "include[d] areas of mine disturbance from coal cuts that were not mined"; drainage designs; the hydrologic control plan; various maps; and vegetative monitoring. Ex. 1 to Decker's Br. in Supp.

4. Decker never appealed DEQ's mid-permit review determination to this Board, but did submit several deficient minor revisions ("MR").

5. On February 1, 2024, Decker submitted a request for permanent cessation to DEQ indicating that the company would be relinquishing the right to mine, foregoing several previously-approved mine cuts. Decker to DEQ, Feb. 2, 2024, **Ex. B** attached hereto.

6. On October 18, 2024, DEQ received similar notice from the Bureau of Land Management notifying DEQ that eight of Decker's coal leases were "mined-out" and that Decker is "relieved of any continued operation requirement." Dahlgren Decl., ¶ 6.

7. Decker never initiated an update of its reclamation plan, including an update of the PMT for the West Decker Mine once it notified DEQ of permanent cessation nor after DEQ received notice from BLM that Decker was no longer under an obligation to continue mining. Dahlgren Decl., ¶ 11.

8. Additionally, Decker never resolved the deficiencies identified in the permit review and contained in the deficiency finding. *Id.*

9. Because the previously approved coal cuts that were not mined, the surface grades identified in the PMT cannot be constructed and an updated PMT is required. Dahlgren Decl., ¶¶ 7-8; **Ex. A**.

10. A PMT is fundamental to a sufficient reclamation plan, utilized to determine whether final reclamation surface conforms with MSUMRA, the material movement that must occur, and the basis for a reclamation performance bond, reclamation sequence, reclamation schedule, and hydrologic control plan. Dahlgren Decl., ¶¶ 9, 12; ARM 17.24.313(1)(d)(iv).

11. On January 29, 2025, DEQ issued an Order to Revise Permit, *see* Ex. 3 to Decker's Br. in Supp., ordering Decker to submit necessary updates to its reclamation plan under § 82-4-234 and ARM 17.24.414.

12. DEQ never received any updates. Instead, Decker appealed DEQ's Order to this Board on February 28, 2025, subsequently filing a motion for temporary relief from DEQ's Order on April 9, 2025.

LEGAL STANDARDS

Under MSUMRA, an operation's 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); *see also* ARM 17.24.313 (reclamation plan requirements). Further, reclamation plans "***must be kept current with the operation*** as defined by the rules of the department." Section 82-4-234, MCA (Emphasis added.).

When "problems are *revealed by review of new information* or as a result of field inspections" with respect to any previously approved mining or reclamation plan, "the

department *may order necessary changes* in the mining and reclamation plans to ensure compliance with this part.” Section 82-4-237(3), MCA; *see also* ARM 17.24.1202(3) (stating “the department may order changes in mining and reclamation plans *as are necessary to ensure compliance with [MSUMRA] and the rules adopted pursuant thereto.*”) (emphasis added); ARM 17.24.414(2) (stating after mid-permit review, “the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with [MSUMRA] and this sub-chapter.”) Indeed, MSUMRA requires that DEQ “issue orders requiring an operator to adopt the remedial measures necessary to comply with [MSUMRA] and the rules adopted” thereunder. Section 82-4-205(2)(c), MCA.

Additionally, once an operator “permanently ceases strip or underground mining operations in all or part of the permit area,” that operator “shall close or backfill and otherwise permanently reclaim all affected areas in accordance with [MSUMRA], rules adopted thereunder, and the permit as approved by the department.” ARM 17.24.522. Further, “[t]his *must occur regardless of whether* the permit has expired, or has been revoked or suspended.” *Id.* (emphasis added).

ARGUMENT

I. Decker Fails To Meet Its Burden For Temporary Relief Under ARM 17.24.425 Because It Has Not, And Cannot, Demonstrate A “Substantial Likelihood” That It Will Prevail On the Merits Of Its Appeal.

ARM 17.24.425(3) provides that “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” four factors are met:

- (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.

Because Decker has failed to meet its burden to demonstrate subpart (b) that “there is a substantial likelihood” that it will prevail on the merits of a final determination of the proceeding, the Board must reject Decker’s request for temporary relief.

A. DEQ Has Broad Authority Under MSUMRA To Order New Permit Changes

1. DEQ’s January 29, 2025 Order provided ample justification for Decker to revise its reclamation plan in conformance with ARM 17.24.414.

Decker first claims that DEQ cannot order changes to Decker’s reclamation plan because DEQ failed to make written findings in either its September 27, 2023 Deficiency Letter or its January 29, 2025 Order in contravention of ARM 17.24.414(4). Decker Br. in Supp., at 5. Decker, specifically, claims that neither the deficiency letter nor Order provides “background facts and are not supported by any written findings” and thus is “contrary to the clear language in ARM 17.24.414(4).” Decker’s argument is unavailing.

Decker never appealed DEQ’s deficiency letter, issued in 2023, and was required to do so within 30 days, so any such argument is moot. *See* ARM 17.24.414(4); ARM 17.24.425(1). Indeed, Decker expressed no such confusion, instead submitted several deficient MRs. Regardless, ARM 17.24.414 does not provide a requirement for background facts. Section 1-2-101, MCA (cannot “insert” language omitted); *Egan Slough Cmty. v. Flathead Cty. Bd. of County Comm’rs*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996 (applying statutory canons of construction to regulations).

And even if it did, the material background facts were provided in the Order, including that DEQ already sent Decker its mid-permit review findings “outlining areas of the permit that required revision”; that Decker subsequently “submitted a request for permanent cessation to DEQ” on February 1, 2024; and that given that Decker will no longer mine coal, “the approved mine plan, coal conservation plan and reclamation plan must be revised to be kept current with the mine operation” in conformance with § 82-4-234, MCA. **Ex. 3** to Decker’s Br. in Supp. Likewise, DEQ provided written findings in the Order as to why additional updates to the reclamation plan were required given Decker’s notification that it was ceasing mining operations, including what portions of the reclamation plan needed to be updated. *Id.*; ARM 17.24.414. Indeed, Decker tacitly concedes that it understood which additional updates were required, acknowledging elsewhere in its brief that “[i]tems 2, 3, 4, 5, and 7 are not found anywhere in DEQ’s original Deficiency Letter.” Decker Br. in Supp. at 8.

Decker, ultimately, can point to no authority for the exacting standard Decker now seeks to impart on DEQ with respect to what constitutes satisfactory content in a deficiency letter, and Decker’s feigned confusion regarding DEQ’s expectations, a year-and-a-half after the original deficiency letter, should be rejected.

2. DEQ timely ordered revisions to Decker’s reclamation plan based on changed circumstances, and DEQ cannot “waive” Decker’s obligations to comply with MSUMRA.

Decker also advances several additional semantic argument that DEQ’s Order is improper.

First, Decker claims that DEQ did not order timely revisions because the Order occurred after the deficiency letter and therefore DEQ purportedly “waived the opportunity to issue an order” under ARM 17.24.414. Decker Br. in Supp. at 7. But Decker never resolved the original

deficiencies. Dahlgren Decl., ¶ 11. What's more, ARM 17.24.414 does not address "waiver." Rather, it states only when mid-permit review must occur, and that DEQ may require modification to the existing plan after that time. That's exactly what DEQ did here, incorporating not only Decker's ongoing deficiencies (which it didn't appeal), but also contemplating for the new change in circumstances. **Ex. 3** to Decker's Br. in Supp.; ARM 17.24.522. Contrary to Decker's siloed misreading of ARM 17.24.414, DEQ cannot "waive" its obligations to enforce MSUMRA or Decker's obligations to comply, given that MSUMRA always requires that reclamation plans be kept current with the state of the operation, that DEQ's obligations to enforce MSUMRA's requirements are ongoing, and that Decker's obligations to comply continue regardless of the status of any permit. Section 82-4-234, MCA; § 82-4-205(2)(c), MCA; ARM 17.24.522; Dahlgren Decl., ¶ 12.

Decker, further, gives short shrift to the operative event that occurred after the deficiency letter but before the Order: that Decker and BLM notified DEQ that Decker ceased mining operations, and therefore, the only thing left to do is complete reclamation. *See* Ex. 3 to Decker's Br. in Supp. As DEQ additionally notes in its Order by reference to § 82-4-234, MCA, *id.*, Decker's existing reclamation plan became deficient once cessation occurred and no longer "current with the operation," as reclamation was contingent on proceeding on a much more prolonged schedule. Section 82-4-234, MCA; § 82-4-237(3); ARM 17.24.1202(3); ARM 17.24.414(2); ARM 17.24.501(6) (requiring "[b]ackfilling and grading ***must be kept current with mining operations***" including "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.") (emphasis added). It's nonsensical for Decker to suggest DEQ "waived" a condition on the ground that had not yet occurred.

Second, Decker claims that the changes ordered are “contrary to [DEQ’s] mid-permit review because they raise issues and topics never even suggested in the Deficiency letter.” Decker Br. in Supp., at 7-8. This is the same nonsensical argument. DEQ did not raise these new issues in the deficiency letter because when DEQ issued the deficiency letter, Decker had not informed DEQ of its cessation of mining. And given these changed circumstances, DEQ is required to request, and Decker is required to submit, an updated reclamation plan. ARM 17.24.501(6)(b); ARM 17.24.1202(3); § 82-4-234, MCA; § 82-4-237(3), MCA. DEQ isn’t required to prognosticate future events in a deficiency letter.

At bottom, what Decker is really arguing is that DEQ didn’t cite the correct rule in issuing its Order.¹ Even if that were the case, it doesn’t change the fact that MSUMRA still requires Decker to have a current reclamation plan, § 82-4-234, MCA; ARM 17.24.1202(3), and that DEQ can issue an order to provide updates as necessary. What’s more, Decker is arguing against itself, claiming on the one hand that it is entitled to preliminary relief under ARM 17.24.425 as an appeal to this Board under ARM 17.24.414, and on the other, that DEQ improperly invoked ARM 17.24.414 in ordering Decker to update its reclamation plan. Decker can’t have it both ways. If the Board accepts Decker’s semantic argument that DEQ shouldn’t have ordered Decker to update its reclamation plan under ARM 17.24.414 (ignoring the myriad of other rules and statutes that require the same), then this proceeding isn’t properly before the Board at all such that there is no temporary relief available, and DEQ asks that the Board issue a final order on these narrow procedural grounds and DEQ can proceed to simply reissuing its Order under the multitude of other statutory or regulatory provisions that invoke the same requirements.

¹ Decker entirely ignores that DEQ also cited § 82-4-234, MCA in its Order. Ex. 3 to Decker’s Br. in Supp.

B. Decker's claim that it is entitled to broad flexibility in a reclamation plan is belied by MSUMRA, its Administrative Rules, and DEQ's authority.

Decker next asserts that its likely to succeed on the merits of its claims because the reclamation plan changes are not “reasonable” as required by ARM 17.24.414(2) as the information DEQ ordered was “extensively detailed” and unsupported by ARM 17.24.313. Decker Br. in Supp. at 8-10. This is the same flawed argument Decker raises with respect to the East Decker Mine; MSUMRA requires extensive detail. *See, e.g.*, ARM 17.24.313; § 82-4-222(1) (“operator desiring a permit shall file an application that ***must*** contain a ***complete and detailed plan*** for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected[.]”) (emphasis added).

Tellingly, Decker focuses only on the timeline of estimated backfilling as purportedly contrary to ARM 17.24.313, lamenting that it need only provide a “detailed timetable for the estimated completion of each major step in the reclamation plan.” Decker Br. in Supp. at 9. Decker is confused, ignoring the full extent of ARM 17.24.313. Indeed, just for backfilling alone, the plan “must” contain:

- (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;
- (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(d); *see also* ARM 17.24.501.

Furthermore, ARM 17.24.501(6) requires that backfilling and grading be “kept current with mining operations” and 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.” Here, Decker’s previously approved reclamation schedule, **Ex. B.**, is based on previously approved mine cuts that it will never mine. Dahlgren Decl., ¶ 7; **Ex. C.** Decker’s previous plan, therefore, is no longer “current with mining operations,” ARM 17.24.501(6)(b); § 82-4-234, and must be updated, ARM 17.24.501(6)(b).

Beyond backfilling, Decker curiously fails to acknowledge the vast array of other reclamation requirements DEQ requested, including mapping, mine pit dewatering, soil laydown, seeding, revised PMT, permanent mitigation of coal smokers, weed management plan, removal of buildings, facility sampling for hydrocarbons, hydrologic control plan, etc., *see* Ex. 3 to Decker’s Br. at 1-4, thus conceding that MSUMRA certainly requires any reclamation plan to satisfy these requirements. Indeed, having an updated PMT is fundamental to a reclamation plan because it is used to determine if a final reclamation surface will meet MSUMRA requirements, the material movement needed to occur, and forms the basis for a reclamation performance bond, reclamation sequence, reclamation schedule, and hydrologic control plan. Dahlgren Decl., ¶¶ 8-9, 12. It is Decker’s burden to prove a “substantial likelihood” that it will succeed on the merits of its claims in order to justify temporary relief. ARM 17.24.425(3)(b). Decker’s myopic focus on one erroneous argument regarding previously approved backfilling timelines that does not

account for the subsequent conclusion of mining operations falls far short of carrying this heavy burden.

Finally, Decker makes a flawed policy argument that “large mine reclamation requires flexibility.” Decker Br. in Supp. of Mot. at 9-10. But the only authority Decker can muster in support of this statement, § 82-4-231(1), disproves its point. Section 82-4-231(1), MCA, indeed requires that reclamation occur “[a]s rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow.” And in furtherance of this requirement, the very next subpart, § 231(2), requires that 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.” (Emphasis added.). In other words, the “flexibility” Decker lobbies for to do as it wants when it wants without prior review and approval does not exist in MSUMRA. Permitting Decker to proceed with its current extinct reclamation schedule neither conforms with MSUMRA nor its administrative rules such that it fails to provide “in detail” the manner in which the applicant intends to comply with MSUMRA and thus is neither “complete” nor “effective.” And, given that Decker is no longer actively mining coal, its current schedule fails to ensure that reclamation is completed as “rapidly” as possible.

Because Decker has failed to demonstrate by any reasonable measure a “substantial likelihood” that it will prevail on the merits of its appeal to this Board, its request for temporary relief should be denied.

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II. Invoking “Due Process” Or Claiming Speculative Injury If Temporary Relief Is Not Granted Are Not Factors For This Board To Consider Under ARM 17.24.425.

Like Decker’s request for preliminary relief in the East Decker proceeding, *see* Case No. BER 2025-02 SM, Decker raises two additional arguments that temporary relief is appropriate: (1) that by seeking review before the Board, Decker is invoking its due process rights under the Montana Constitution and therefore preliminary relief should be granted, and (2) that if such relief is not granted, DEQ could take further “enforcement or adverse action” and “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.” Decker Br. in Supp. at 11-12. Neither argument has merit.

The Board, as a quasi-judicial agency, is constrained by its Legislative grant of authority. *Auto Parts of Bozeman v. Employment Rels. Div.*, 2001 MT 72, ¶ 38, 305 Mont. 40, 23 P.3d 193. And here, the factors for the Board to consider in whether temporary relief can be granted are limited to those within ARM 17.25.425(3). Those factors, notably, do not concern whether temporary relief satisfies “due process”² or whether an applicant would suffer some injury without it. Accordingly, neither reason can be used as grounds to modify or enlarge the regulatory process that exists.

But even if claims of injury to the requester were a consideration for this Board in granting temporary relief, Decker’s suggestions of speculative injury don’t qualify. *See, e.g., Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984) (overturning trial

² Nor could Decker credibly claim its due process rights were infringed just because it couldn’t obtain temporary relief. “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 962, 964 (2d Cir. 1995).

court's issuance of Temporary Restraining Order where finding of irreparable harm was "not based on any factual allegations" and thus "speculative"); *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004) ("A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store."); *Knapp v. Cate*, No. 1:08-cv-01779-SKO PC, 2010 U.S. Dist. LEXIS 119324, at *2 (E.D. Cal. Oct. 26, 2010) ("A party seeking a temporary restraining order or preliminary injunction simply cannot prevail when that motion is unsupported by evidence."). Here, Decker provides no evidence of any injury at all; rather, Decker simply provides unsupported arguments of counsel of unsubstantiated future fears, which "are not evidence and do not establish the existence of the matters that are argued." *McKenzie v. Scheeler*, 285 Mont. 500, 508, 949 P.2d 1168, 1173 (1997).

The Board should reject Decker's invitation to consider extra-regulatory factors in determining whether temporary relief is appropriate.

III. Even If The Board Finds Temporary Relief Available, This Is Not A MAPA Proceeding Such That Any Order Should Be Based On A Hearing And Promptly Issued.

Section 82-4-206(1)-(2), MCA, provides when Montana Administrative Procedures Act contested case procedures under Title 2, Chapter 4, Part 6 of the Montana Code are invoked. Notably, § 206 is limited to approvals or denials of applications for a permit, prospecting permit, increase or reduction of a permit area, to renewals or revisions to a permit, or transfers of a permit. Here, before the Board is no determination by DEQ regarding any such application, but rather an Order from DEQ to update Decker's reclamation plan issued under § 82-4-234 and ARM 17.24.414.

To be sure, ARM 17.24.414 makes reference to ARM 17.24.425, such that the “contested case” hearing “shall commence” “within 30 days of such request” and the Board may, upon a requester’s demonstration that they meet the factors in ARM 17.24.425(3), issue temporary relief until the Board issues “written findings of fact, conclusion of law and order.” ARM 17.24.425(2), (6). It does not follow, however, that such a hearing is subject to the Montana Administrative Procedure Act (“MAPA”) contested case procedure in Title 2, Chapter 4, Part 6 of the Code. That procedure is limited to those scenarios in § 82-4-206. And the regulation, ARM 17.24.425, cannot enlarge the statute. *Bell v. Dep’t of Licensing*, 182 Mont. 21, 23, 594 P.2d 331, 333 (1979) (administrative rules cannot “engraft additional and contradictory requirements on the statute” or “engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature”). Accordingly, even if the Board determines that Decker has demonstrated it is entitled to temporary relief, including that Decker has proven a “substantial likelihood” that it will prevail on the merits in this case, DEQ asks that the Board proceed to issuing a final order as soon as possible, rather than permit Decker to delay this proceeding (and its compliance with MSUMRA) through its erroneous invocation of MAPA.

CONCLUSION

It is undisputed that Decker’s existing reclamation plan is based on circumstances that no longer exist—namely, future mine cuts. Decker’s existing reclamation plan, therefore, is defunct. MSUMRA requires that Decker’s reclamation plan be “kept current with the operation.” Section 82-4-234, MCA. Because its not, Decker is not substantially likely to succeed on the merits of its appeal to this Board, and Decker’s request for temporary relief should be denied.

Respectfully submitted this 18th day of April, 2025.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

BY: /s/ Samuel King
SAMUEL KING
JEREMIAH LANGSTON

Counsel for DEQ

Certificate of Service

I hereby certify that on this 18th 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:

Board Secretary
Board of Environmental Review
1520 E. Sixth Ave.
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Attorney for Petitioner Decker Coal Company

BY: /s/ Samuel King
Samuel King, Chief Legal Counsel
Dept. of Environmental Quality

Exhibit A

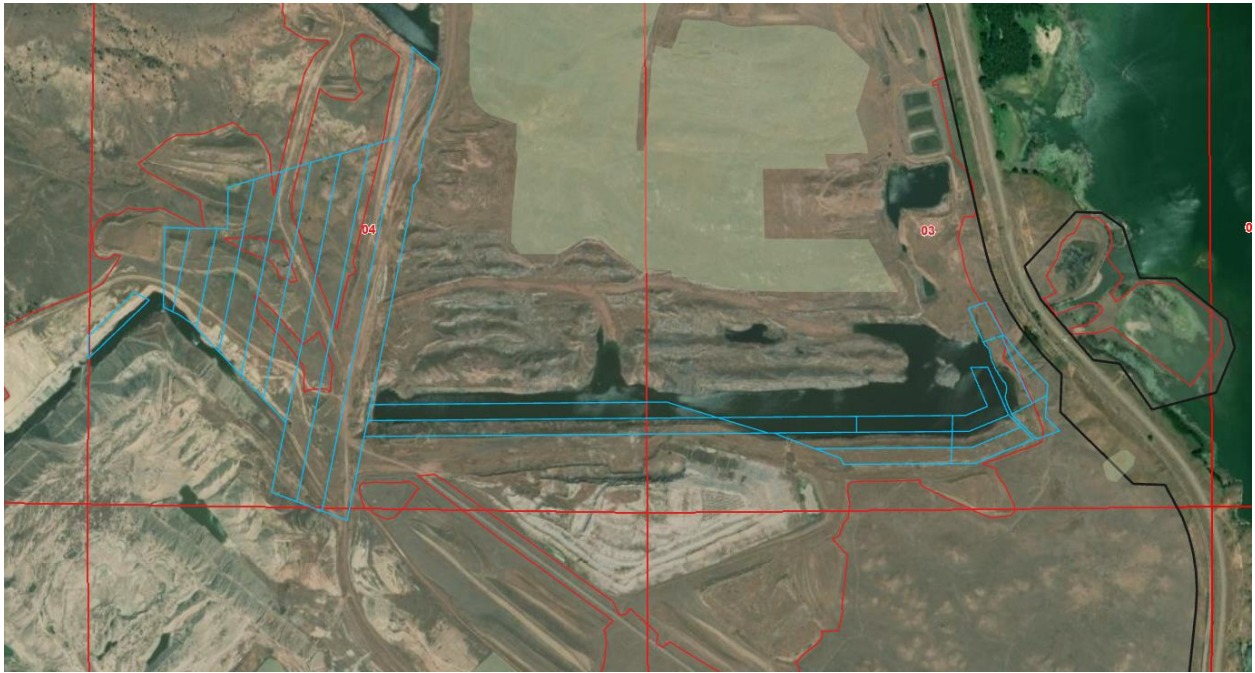


Figure 1. Unmined coal cuts (outlined in blue) contained in the approved West Decker Mine Plan.

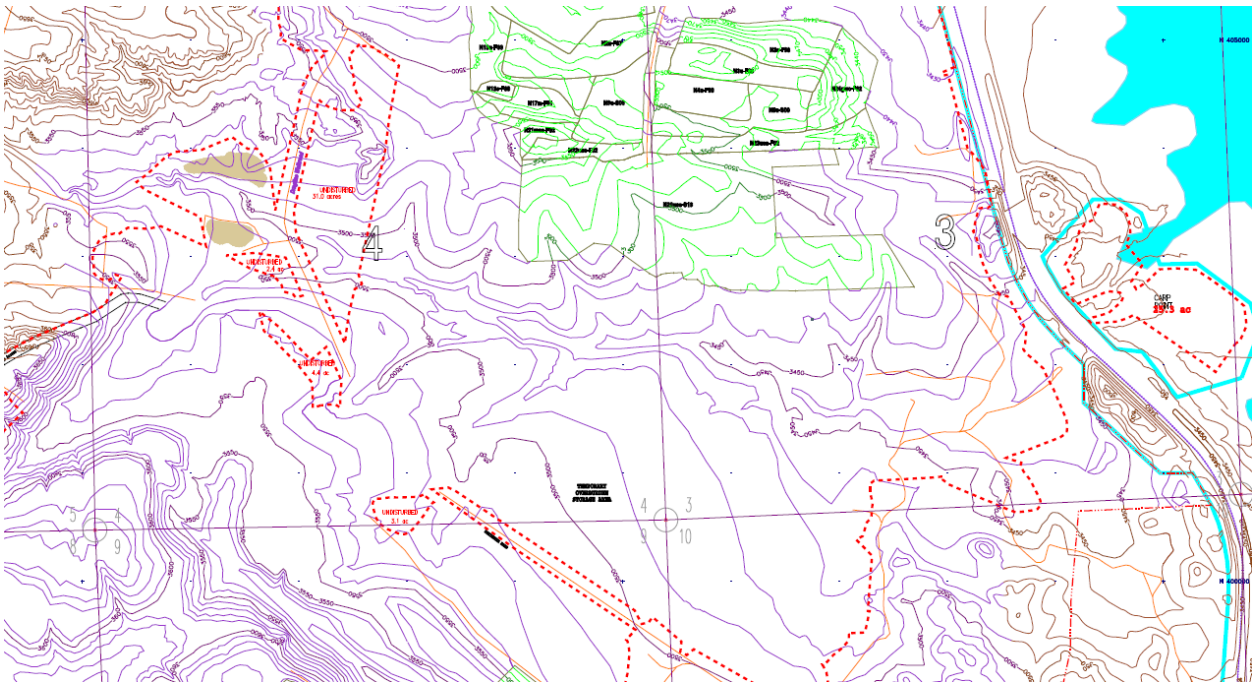
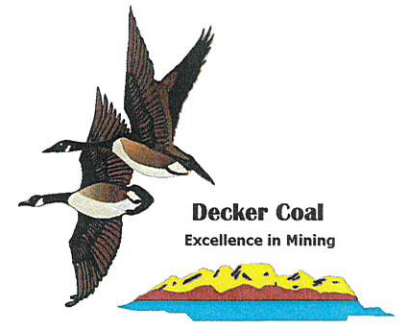


Figure 2. West Decker approved PMT that has not been updated to reflect modifications to the mine plan.

February 1, 2024

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



Permit ID: C1987001C
Revision Type: NA
Permitting Action: Permanent Cessation of Operations
Reference #:

Dear Eric:

Decker Coal Company (DCC) will no longer be mining coal, and as such, has relinquished the right to mine and will continue as a reclamation company until West Decker has satisfied ARM 17.24.522. DCC submits this as our formal request for Permanent Cessation of Operations at West Decker.

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

Gilbert, Sharona

From: Sabrina Temple <s.temple@aecoal.com>
Sent: Thursday, February 1, 2024 3:22 PM
To: DEQ AEMD Coal
Cc: Matt Guphill
Subject: [EXTERNAL] West Decker Permanent Cessation
Attachments: West Permanent Cessation Letter.pdf

Please see the attached letter requesting Permanent Cessation of Operations at West Decker.

Sabrina Temple
Permit Coordinator
Decker Coal Company

t 406-300-0929
c 406-939-5357
e s.temple@deckercoal.com



IMPORTANT NOTICE: Information in this message (and any attachments) is confidential, may be legally privileged and is intended for use only by the addressee(s). The sender did not intend to waive any privilege by sending this message. If you are not the intended recipient of this message, please delete the email, destroy all copies and contact the sender immediately. Any disclosure, distribution or use of the information by unintended recipients is prohibited and may be unlawful. We do not represent, warrant or guarantee that this message is free of viruses.

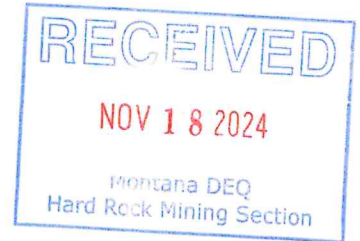


United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 Montana/Dakotas State Office
 5001 Southgate Drive
 Billings, MT 59101
<https://www.blm.gov/montana-dakotas>



October 18, 2024



In Reply Refer To:

MTM 0057934, MTM 0057934A, MTM 0061685, MTM 037604,
 MTM 101098, MTM 101100, MTM 105019, MTM 107327, MTM 083088
 3482 (921.jz)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Mr. Mathew Guptill	:	
General Manager	:	Federal Coal Leases
Decker Coal Company	:	West Decker Mine
P.O. Box 12	:	
Decker, MT 59025-0012	:	

Resource Recovery and Protection Plan Approved

On March 6, 2024, the Bureau of Land Management (BLM) received a Resource Recovery and Protection Plan (R2P2) modification from Decker Mining Company (Decker) requesting that eight federal coal leases be declared mined out at their West Decker property to include:

MTM 0057934, MTM 0057934A, MTM 0061685, MTM 037604, MTM 101098, MTM 101100, MTM 105019, and MTM 107327

Following review of the application, we find it to be complete and in conformance with the requirements of the Minerals Leasing Act of 1920, as amended, and the applicable regulations at 43 CFR 3480. BLM approves this R2P2 effective August 6, 2024.

The BLM conducted a mined-out inspection of the West Decker Mine on August 1, 2024, followed by a review of all production verification submissions by Decker over the life of the leases. The BLM found that while some coal resource may remain, there are no recoverable reserves remaining in the subject leases due to the Decker Mine bankruptcy, lack of customer, and negative cash flow to mine the leases. Therefore, the BLM, Montana Dakotas State Office, Branch of Solid Minerals declares the subject leases "mined-out" at the West Decker Mine. The Decker mine is relieved of any continued operation requirement and as such, Logical Mining Unit MTM 083088 is hereby dissolved.

Mineral Leasing Act of 1920 (MLA Diligence Requirements)

The federal coal leases listed in this letter have met their MLA Section 7(b) diligence requirements. The regulations are silent regarding the MLA diligence obligations under Section 7(b) now that the leases are mined-out; however, the Interior Board of Land Appeals (IBLA) issued a decision April 13, 1995, which provides guidance for this situation (Ark Land Co., 132 IBLA 241).

The regulation at 43 CFR 3472.1-2(e)(5) provides that a mined-out coal lease can be held for reclamation purposes without the lessee being disqualified from holding other mineral leases under Section 2(a)(2)(A) of the MLA. The IBLA references this regulation in its decision and offers the interpretation that, since there are no recoverable reserves in a mined-out lease, there is no production requirement. The IBLA then applies this interpretation to the MLA Section 7(b) diligence requirements:

In the absence of recoverable coal reserves, we find that the lessee is also discharged of the requirement to maintain continued operations (or pay advance royalty in lieu of continued production)

Based on this IBLA interpretation, West Decker may hold the above listed coal leases for reclamation purposes and does not have to maintain continued operations or pay advance royalty.

Appeal Information

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board pursuant to Part 4, Subpart B, 4.21 of Title 43, Code of Federal Regulations, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions, please contact Ms. Tessa Wallace at 406.896.5086 and tlwallace@blm.gov.

Sincerely,

TESSA WALLACE

Digitally signed by TESSA
WALLACE
Date: 2024.10.18 09:16:07 -06'00'

Tessa Wallace
Chief, Branch of Solid Minerals

Enclosures (2):

- 1- West Decker Specific Lease Locations
- 2- Appeal Information Sheet

cc:

Office of Natural Resources Revenue
Solid Minerals and Geothermal ACM
PO Box 25165, Mail Stop 62300B
Denver, CO 80225-0165

Mr. Charlie Kwak
Office of Surface Mine Reclamation and Enforcement
P.O. Box 25065
Lakewood, Colorado 80225-0065

Mr. Franklin Bartlett
Program Analyst
Office of Surface Mining Reclamation and Enforcement
Casper Area Office
100 East "B" St., Room 4100
Casper, WY 82602

Mr. Eric Dahlgren
Acting Bureau Chief, Mining Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59260

Attachment 1:

West Decker Specific Lease Locations

MTM 0057934

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 03, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N2SE $\frac{1}{4}$ SW $\frac{1}{4}$, E2NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,

A tract of land in the SE $\frac{1}{4}$ more particularly described as follows: Beginning at the South $\frac{1}{4}$ of Section 3, being the True Point of Beginning; thence N2°09'31" a distance of 1301.27 feet; thence N87°16'58"E a distance of 664.02ft; thence N2°10'14" a distance of 435 feet to a point on a curve; thence along said curve to the left, having a radius of 2,415.00 feet and a central angle of 7°58'04", an arc distance of 335.79 feet to the point of tangency; Tangent bearing into curve being S34°05'33E and tangent bearing out of curve being S42°03'37"E, Chord bearing from P.C. to P.T. being S38°18'24" and chord distance to P.T. being 335.52 feet; thence S45°00'08E a distance of 268.93 feet; thence S46°17'46"E a distance of 408.54 feet; thence S2°15'18" a distance of 318.62 feet; thence S87°19'49"W a distance of 664.55 feet; thence S2°12'22"E a distance of 651.16 feet to a point on the south line of Section 3; thence S87°22'40"W along the south line a distance of 665.09 to the True Point of Beginning at the South $\frac{1}{4}$ of Section 3.

Sec. 04, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 10, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$

The area described aggregate 200.17 acres.

MTM 0057934A

Montana Prime Meridian, Montana

T. 09 S., R 40E

Sec 03, A tract of land in the East $\frac{1}{2}$, more particularly described as follows: Beginning at the south $\frac{1}{4}$ of Section 3, thence N2°09'29"W, a distance of 1,301.27 feet to the True Point of Beginning; thence N2°09' 29W a distance of 1,960.95; thence N87°19'22"E a distance of 249.50 feet; thence S14°48'25"E a distance of 461.25 feet; thence S14°48'25" a distance of 273.17 feet to the point of spiral curve to the left; thence along said spiral curve a distance of 268.98 feet, through a 3°45' spiral angle, to the point of a circular curve to the left; thence along said circular curve to the left, having a radius of 2200.08 feet, through a central angle of 15°14'38", an arc distance of 585.29 feet (from the "point of spiral-to-curve", S26°10'42"E a chord distance of 583.61 feet to the end of the circular curve to the left); thence S2°10'14" a distance of 435.11 feet; thence S87°16'58"W a distance of 664.02 feet to the "True Point of Beginning"; thence S2°09'31"W a distance of 1301.27 feet to the "Point of Beginning" at the S $\frac{1}{4}$ of section 3.

Sec. 04, SW $\frac{1}{4}$ Lot 2

Sec. 10, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

The area described aggregate 120.73 acres.



MTM 0061685

Montana Prime Meridian, Montana

T. 08 S., R. 40 E.

Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 33, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

T. 09 S., R. 40 E.

Sec. 04, NE $\frac{1}{4}$ Lot 3, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 09, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

The area described aggregate 250.1 acres.

MTM 037604

Montana Prime Meridian, Montana

T. 09 S., T. 40 E.,

Sec. 05, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 08, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

The area described aggregate 50.0 acres.

MTM 101098

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec.03, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

The area described aggregate 40.0 acres.

MTM 101100

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 08 SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;

The area described aggregate 210.0 acres.

MTM 105019

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 08, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 09, W $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 17, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 20, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

The area described aggregate 390.0 acres.

MTM 107327

Montana Prime Meridian, Montana

T.09 S., R. 40 E.,

Sec. 03 $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, and the portion of the $SE\frac{1}{4}SE\frac{1}{4}$, lying southwesterly of the southwesterly right-of-way of the Burlington Northern Santa Fe Railroad.;

Sec. 04, $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;

Sec. 09, $N\frac{1}{2}NE\frac{1}{4}$;

Sec. 10, $NE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$;

The area described aggregate 530.57 acres.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT



INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
- AND**
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

**I. NOTICE OF
APPEAL.....**

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that they wish to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

**2. WHERE TO FILE
NOTICE OF APPEAL.....**

Montana State Office, Bureau of Land Management
5001 Southgate Drive
Billings, Montana 59101-4669

**WITH COPY TO
SOLICITOR.....**

Field Solicitor, U.S. Department of the Interior
2021 4th Avenue North, Suite 112
Billings, Montana 59101

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

**WITH COPY TO
SOLICITOR.....**

Field Solicitor, U.S. Department of the Interior
2021 4th Avenue North, Suite 112
Billings, Montana 59101

4. SERVICE OF DOCUMENTS

A party that files any document under 43 CFR Subpart 4, must serve a copy of it concurrently on the appropriate official of the Office of the Solicitor under 43 CFR 4.413(c) and 4.413(d). For a notice of appeal and statement of reasons, a copy must be served on each person named in the decision under appeal and for all other documents, a copy must be served on each party to the appeal (including intervenors). Service on a person or party known to be represented by counsel or other designated representative must be made on the representative. Service must be made at the last address of record of the person or party (if unrepresented) or the representative, unless the person, party or representative has notified the serving party of a subsequent change of address.

5. METHOD OF SERVICE....

If the document being served is a notice of appeal, service may be made by (a) Personal delivery; (b) Registered or certified mail, return receipt requested; (c) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (d) Electronic means such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing. All other documents may be served by (a) Personal delivery; (b) Mail; (c) Delivery service, if the last address of record is not a post office box; or (d) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a Notice of Appeal (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your Notice of Appeal (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821-GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Grand Junction, CO and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota, and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ----- New Mexico, Kansas, Oklahoma, and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Headquarters Office, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506.

(Form 1842-1, September 2020)

§ 4.20 Purpose.

In the interest of establishing and maintaining uniformity to the extent feasible, this subpart sets forth general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals.

§ 4.21 General provisions.

This content is from the eCFR and is authoritative but unofficial.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately;

(2) A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal; a petition for a stay may be filed only by a party who may properly maintain an appeal;

(3) A decision, or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an Appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b)(4) of this section.

(b) *Standards and procedures for obtaining a stay.* Except as otherwise provided by law or other pertinent regulation:

(1) A petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (i) The relative harm to the parties if the stay is granted or denied,
- (ii) The likelihood of the appellant's success on the merits,
- (iii) The likelihood of immediate and irreparable harm if the stay is not granted,

and

- (iv) Whether the public interest favors granting the stay;

(2) The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted;

(3) The appellant shall serve a copy of its notice of appeal and petition for a stay on each party named in the decision from which the appeal is taken, and on the Director or the Appeals Board to which the appeal is taken, at the same time such documents are served on the appropriate officer of the Department; any party, including the officer who made the decision being appealed, may file a response to the stay petition within 10 days after service; failure to file a response shall not result in a default on the question of whether a stay should be granted; service shall be made by delivering copies personally or by sending them by registered or certified mail, return receipt requested; and

(4) The Director or an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (b)(1) of this section, within 45 calendar days of the expiration of the time for filing a notice of appeal.

(c) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency

action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a)(3) or (b)(4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a)(1) of this section or pursuant to other pertinent regulation.

(d) *Finality of decision.* No further appeal will lie in the Department from a decision of the Director or an Appeals Board of the Office of Hearings and Appeals. Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding concerned, and must state with particularity the error claimed. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies.

Samuel J. King
Jeremiah R. Langston
Montana Department of
Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
Telephone: (406) 444-4961
Samuel.King@mt.gov
Jeremiah.Langston2@mt.gov

Electronically Filed with the
Montana Board of Environmental Review
4/18/25 at 2:34 PM
By: Sandy Moisey Scherer
Docket No: BER 2025-01 SM

Attorneys for Respondent

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1987001C (WEST DECKER MINE)	BER 2025-01 SM DECLARATION OF ERIC DAHLGREN
--	---

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 (DEQ), 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, Order to Revise Permit C1987001C, ("Order") to Decker Coal Company ("Decker") for the West Decker Mine, a copy of which is attached as Ex. 3 to Decker's Brief in Supp. of Mot. for Temp. Rel.

4. As stated therein, on September 27, 2023, DEQ provided Decker written findings identifying areas in Decker's permit that required revision pursuant to the Administrative Rules of Montana (ARM) 17.24.414.

5. DEQ received a letter from Decker on February 1, 2024, that stated Decker, would no longer be mining coal and has relinquished the right to mine and will continue as a reclamation company until the West Decker Mine has been reclaimed. ARM 17.24.522 requires operators to perform reclamation in accordance with the Montana Strip and Underground Mine Reclamation Act (MSUMRA), the rules adopted thereunder, and the permit as approved by DEQ regardless of the permit status.

6. On October 18, 2024, DEQ received a letter from the Bureau of Land Management (BLM) declaring eight federal coal leases associated with the West Decker permit "mined-out" and relieved Decker of any continued operation requirements related to the mining of coal (Ex. C to DEQ's Br. in Resp.).

7. A digital image that shows a portion of the West Decker Mine as it currently exists, and the approved post mine topography (PMT) are shown in Ex. A to DEQ's Br. in Resp. Figure 1 (Ex. A to DEQ's Br. in Resp.) shows a portion of the approved mine plan that depicts coal cuts approved for mining. The approved coal cuts are identified as light blue polygons. The approved coal cuts depict where Decker was authorized to mine. Figure 2 (Ex. A to DEQ's Br. in Resp.) shows the approved PMT based on the approved mining plan. The portion of the approved PMT shown in Figure 2 is of the same area of the mine as shown in Figure 1. By not mining the approved coal cuts, the surface grades identified in the PMT cannot be constructed and an updated PMT is required.

8. Decker is required to update the PMT to reconcile the differences between the PMT previously submitted by Decker and approved by DEQ and the current state of the mine given no additional mining can occur. The requirement to update the PMT was identified in the deficiency findings issued to Decker on September 27, 2023, and reiterated in the Order.

9. The PMT map required by ARM 17.24.313(1)(d)(iv) is a fundamental component of the reclamation plan. The PMT map depicts what the PMT will be at the time of final bond release. DEQ utilizes the PMT, in part, to determine if the final reclamation surface will meet the requirements of MSUMRA and the rules adopted thereunder. The PMT is also used to determine the material movement that must occur and is part of the basis for the reclamation performance bond, reclamation sequence, reclamation schedule and the hydrologic control plan.

10. Section 82-4-234, MCA, requires an operator to commence reclamation as soon as possible after the beginning of mining and in accordance with the plans previously approved by DEQ. Section 82-4-234, MCA, also requires the plans for backfilling, subsidence stabilization, topsoiling, and water management be kept current with the operation.

11. As of January 29, 2025, Decker had not resolved the deficiencies identified in the permit review and contained in the deficiency findings. Importantly, Decker also did not initiate an update of its reclamation plan including an update of the PMT for its West Decker Mine once it had 1) notified DEQ of permanent cessation and 2) received notice from BLM that Decker was no longer under an obligation to continue mining.

12. Because the PMT is a fundamental component of the reclamation plan and is the basis for material movement at the mine site, changes to the PMT impose changes on the items identified in the Order. Pursuant to § 82-4-237(3), MCA, DEQ is authorized to order any necessary changes to a mining plan or reclamation plan to ensure compliance with MSUMRA

when problems are revealed by new information. Finally, pursuant to Section 82-4-205(2)(c), MCA, DEQ is required to issue orders requiring an operator to adopt remedial measures as necessary to comply with MSUMRA and rules adopted thereunder.

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

Dated: April 18, 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 PERMIT C1987001C (WEST DECKER MINE) AND PERMIT C1983007 (EAST DECKER MINE)	CAUSE NO. BER 2025-01 SM DECKER COAL COMPANY’S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY RELIEF FROM DEQ’S ORDER TO REVISE PERMIT C1987001C.
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On August 14, 2024, the U.S. Department of Interior, Office of Surface Mining (“OSM”) conducted a “Mine Site Evaluation,” which included two hours of permit review and a two-hour site visit. Ex. 14. OSM found no issues of non-compliance, determined that Decker was “Mining with a Valid Permit,” that Decker had met its reclamation obligations, and that its reclamation was “keeping current with contemporaneous reclamation requirements” as required by Montana rule. Ex. 14, pp. 2, 3, 4. Nothing in that positive report even hints at the need for Decker to revise its permit – not for the 30+ provisions that DEQ requested in its September 27,

2023 Deficiency Letter and certainly not for the seven additional requests in DEQ's Order, issued just five months after the positive OSM evaluation.

Nonetheless, Decker has and continues to provide DEQ with the requested information, including most recently in its February 28, 2025 response letter to the Order, which explained that Decker had already arranged for an updated PMT that it would provide by September 2025. Ex. 23. Decker also explained how previously submitted documents satisfied DEQ's additional new requests. Ex. 23. DEQ has not responded to that information, choosing instead to pressure Decker through administrative and legal processes.

DEQ now argues that its "Deficiency Letter" was an appealable action that Decker should have appealed, that citations to rules are "written findings," that due process rights should not be considered in this contested case, and that this proceeding – which is referred to in rule as a contested case – is somehow not a contested case. DEQ is wrong. Decker's motion for temporary relief should be granted.

I. BACKGROUND

As it did with East Decker, DEQ's background leaves out several events. DEQ Br., pp. 2-4. No one disputes that DEQ timely completed the mid-permit review by September 27, 2023 when it issued the "2023 Mid-Permit Review-Round 1 Acceptability Deficiency" Letter to Decker (the "Deficiency Letter"). DEQ Br., pp. 6, 7, 8, 9 (specifically referring to the letter not as an order, but as a "deficiency letter"). DEQ wrongly asserts that Decker did nothing between September 2023 and DEQ's issuance of the Order in January 2025. DEQ Br., p. 3 (#7 "Decker never initiated an update of its reclamation plan," #8 "Decker never resolved the deficiencies identified in the permit review," #12 DEQ never received any updates"). Those statements are patently false. Beginning in 2023, a more accurate timeline is provided here:

January – August 2023: Decker submits Minor Revisions 202, 203, 204, 205, and 206, updating its ownership and control information, reservoir downsizing information, weed management plan, and its Monitoring Quality and Assurance Plan within its existing reclamation plan and its bonding information. By April 9, 2024, DEQ had approved all of these minor revisions.

July 26, 2023: DEQ initiated a mid-permit review of the West Decker Mine permit.

September 27, 2023: DEQ issues a “2023 Mid-Permit Review-Round 1 Acceptability Deficiency.” Citing thirty two separate rules, DEQ notes that “deficiencies” from Decker’s “application” “must be adequately addressed before DEQ can determine the application acceptable.” Decker had not submitted any such application to DEQ. Exhibit 4.

October 3, 2023: DEQ inspects the West Decker Mine. Regarding the “Administrative” topic, DEQ noted that Decker is “entered as an ‘individual’ in the ePermit system instead of a ‘company’” and that “Decker will fix this issue when they reply to MP1.” No new Follow-Up, Maintenance, or Non-Compliance Items were noted. Exhibit 5.

February 1, 2024: Decker notifies DEQ that it will no longer be mining at the West Decker Mine and formally requests Permanent Cessation of Operations. Exhibit 6.

February 13 and 15, 2024: OSM and DEQ approve Phase II (23 acres) and Phase III (1,700 acres) bond liability release. Exhibit 7.

February 28, 2024: Decker requests engineering proposals to update the West Decker PMT.

March 29, 2024: Decker receives a proposal to update the West Decker PMT from CDG Engineers.

March 11, 2024: DEQ staff notifies Decker that it is “working on a response to your request for permanent cessation at West Decker” and that DEQ will not yet move to quarterly inspections. Exhibit 8.

April 11, 2024: Decker submits Minor Revision 207 for an updated bond calculation using the interim bond surface “based on the ‘worst-case’ level of disturbance.” Exhibit. 9, p. 4; *See also* entries for June 5, 2024; September 9, 2024; November 8, 2024; January 9, 2025.

April 18, 2024: Decker meets with DEQ to discuss a variety of issues, including Decker’s notice of permanent cessation that remains pending DEQ approval and DEQ’s mid-permit review.

June 5, 2024: DEQ sends a deficiency letter for Minor Revision 207 (April 11, 2024 bond calculation), stating “Since mining operations have ended at West Decker, please use the PMT instead of the Interim Bond Surface as final topography in bond calculations.” Exhibit 10.

June 26, 2024: DEQ inspects the West Decker Mine. DEQ staff indicated that Decker was working on responses to DEQ's Deficiencies letters for MR207 and DEQ's Mid Permit Review. Exhibit 11.

July 24, 2024: DEQ inspects the West Decker Mine. DEQ indicated that two days later, it responded to Decker's request for bond information. Regarding DEQ's mid-permit review, DEQ noted that Decker had addressed roughly half of the DEQ's thirty-two requests. DEQ encouraged Decker to submit the completed items rather than wait until they were all complete. Exhibit 12.

August 1, 2024: Decker submits Minor Revision 208 to DEQ, responding to and resolving some of DEQ's requests made in DEQ's Mid Permit Review acceptability determination letter. Decker also notifies DEQ that some of its requests are addressed in MR207 and MR205, currently pending before DEQ. Exhibit 13.

August 14, 2024: OSM conducts a mine site evaluation of West Decker Mine. OSM noted:

- **"The West Decker Mine has a permit commitment of moving 25,000cy of spoil into a pit. This commitment has been met for the year. No additional spoil movement is anticipated at the West Decker Mine as the focus is reclamation at the East Decker Mine."**
- **"OSMRE has determined that the West Decker Mine is keeping current with contemporaneous reclamation requirements as defined by the ARM and contained within the permit."**

Exhibit 14.

September 9, 2024: For MR207, Decker responded to DEQ's First Deficiency letter (June 5, 2024), noting that "once DEQ approves permanent cessation of West Decker Mine, the PMT will need to be updated to account for cuts that will not be mined. DEQ will use the PMT for bond calculation after revisions to the PMT have been agreed upon." Exhibit 15.

October 14, 2024: Decker submits MR 209 to DEQ (approved November 12, 2024) to update the Mine's Certificate of Insurance in ePermit. Exhibit 16.

October 18, 2024: BLM declares West Decker Federal coal leases to be mined out such that "[t]he Decker mine is relieved of any continued operation requirement" and "there is no production requirement." Exhibit 17, pp. 2, 3.

November 8, 2024: Regarding MR207, DEQ sends a second deficiency letter, this time asking that Decker "move forward with addressing the bond calculation based on the interim surface," not a revised PMT. Exhibit 18.

November 12, 2024: Decker staff meets with DEQ staff in Helena to discuss both the East and West Decker Mines.

November 21, 2024: Decker submits MR 210 (still pending approval) requesting removal of 2.207 acres of Railroad Right of Way from the Mine's permit area because the land was purchased by BNSF Railway Company on October 4, 2024. Exhibit 19.

January 9, 2025: Regarding MR207 (bond calculation), Decker responds to DEQ's second deficiency letter using the interim surface as DEQ requested and noting that there are no changes to the timetable previously provided. Exhibit 20. DEQ provided a third deficiency letter on March 10, 2025.

January 28, 2025: DEQ inspects the West Decker Mine. Although the inspection report notes that Minor Revisions 207, 208, 210 and DEQ's mid-permit review were pending, the Order Decker would receive the following day was not mentioned. Exhibit 21.

January 29, 2025: DEQ issues Decker an Order to Revise West Decker Mine's permit ("Order"). Exhibit 22.

January 30, 2025: Decker receives a revised proposal to update West Decker Mine's PMT and surface water hydrology from CDG Engineering.

February 12, 2025: Decker notifies CDG Engineering it would like to move forward with their proposal to update West Decker Mine's PMT and surface water hydrology.

February 13, 2025: Decker appeals DEQ's January Order to the Board of Environmental Review.

February 25, 2025: CDG Engineers confirms with Decker that it will redesign the PMT and informs Decker that they will begin work the week of March 10, 2025 and estimate completing the PMT by mid-June 2025 and the hydrologic restoration plan by the end of July 2025.

February 28, 2025: Decker amends its appeal of DEQ's Order.

February 28, 2025: Decker responds directly to DEQ regarding its January 29, 2025 Order. Regarding the first new item requested, Decker notes that a PMT update is pending and estimated it would be submitted in September 2025. Regarding the six remaining new items, Decker provides citations to previous submissions. Exhibit 23.

II. LEGAL STANDARD

DEQ agrees that 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.” Neither the Order nor DEQ’s arguments provide any different valid legal standard; therefore, the operative analysis for this Board is whether Decker is entitled to temporary relief pursuant to ARM 17.24.425.

III. ARGUMENT

Of the four requirements for temporary relief found in ARM 17.24.425(3), DEQ only argues about the one – “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.” ARM 17.24.425(3)(b). Therefore, the remaining three requirements for temporary relief are satisfied and the Board may narrow its analysis to the “substantial likelihood” requirement.

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

Preliminary injunctions issued in civil cases also rely on the concept of a “substantial likelihood of prevailing on the merits;” therefore, case law involving preliminary injunctions is helpful here. The Board need “not determine the underlying merits of the case in resolving a request for preliminary injunction.” *Weems v. State by & through Fox*, 2019 MT 98, ¶ 18, 395 Mont. 350, 440 P.3d 4. Instead, “[a]n applicant need only establish a prima facie¹ case, not entitlement to final judgment.” Case law indicates that the Board “should restrict itself to determining whether the applicant has made a sufficient case to warrant preserving a right in status quo until a trial on the merits can be had.” *Id.* (citing *Knudson v. McDunn*, 271 Mont. 61,

¹ “‘Prima facie’ means literally ‘at first sight’ or ‘on first appearance but subject to further evidence or information.’” *Weems v. State by & through Fox*, 2019 MT 98, ¶ 18, 395 Mont. 350, 440 P.3d 4 (citing *Prima facie*, *Black’s Law Dictionary* (10th ed. 2014)).

65, 894 P.2d 295, 298 (1995)). The term “status quo” is defined as “[t]he situation that currently exists.” *STATUS QUO*, *Black's Law Dictionary* (12th ed. 2024).

The Board need not make an ultimate determination of this contested case at this juncture. As shown in the case law, the Board may consider whether, on an initial review of Decker’s arguments, Decker has made its case in a manner that warrants maintaining the status quo – that no further enforcement or adverse action stemming from the Order shall occur while the Board conducts a hearing; receives evidence and testimony; considers the evidence, testimony, and legal arguments from both sides; and issues findings of fact, conclusions of law, and an order with a final decision on this matter. 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 does not dispute, and the Order itself makes clear, that DEQ relies on ARM 17.24.414 for its authority to issue the Order. Ex. 3 (Order)², p. 1 (“ARM 17.24.414 states that DEQ may order changes in the permit as are necessary to ensure compliance with the Act. DEQ orders [Decker] to revise the reclamation as follows...”); DEQ Br., p. 6 (“DEQ’s January 29, 2025 Order provided ample justification ... in conformance with ARM 17.24.414”). The rule upon which DEQ’s authority is premised, ARM 17.24.414, provides:

REVIEW OF EXISTING PERMITS

- (1) The department shall review each operating permit issued during the term of the permit. This review must occur not later than the middle of the permit term.
- (2) After this review, the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the Act and this sub-chapter.
- (3) The department shall send a copy of its decision to the permittee.
- (4) Any order of the department requiring revision or modification of permits

² Exhibits 1 through 3 are attached to Decker’s opening brief and not reattached here.

must be based upon written finding and must be subject to the provisions for administrative review provided in ARM 17.24.425.

Instead of arguing that the rule does not apply, DEQ argues that it has “Broad Authority” and cites, with little explanation, four other statutes and four other rules. DEQ Br., p. 1, 6. Of those citations, only ARM 17.24.414(2) is cited in the Order as a source of DEQ authority to “order changes in the permit.” Ex. 3, p. 1. Section 82-4-234, MCA is cited in the Order, but only as a standard for a reclamation plan. Ex. 3, p. 1 (“Pursuant to Section 82-4-234, Montana Code Annotated (MCA), reclamation plans must be kept current with the operation”). DEQ now implies that its authority stems from that law (DEQ Br., p. 9, n.1.) but in fact, the law does what the Order implies – it sets a standard for the operator to meet; it does not give DEQ authority to order changes in a permit:

The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the department, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current.

§ 82-4-234, MCA. The law provides what the “operator shall” do but says nothing about DEQ or its authority to “order” anything. In general, DEQ might be able to enforce this law, but DEQ must do so pursuant to its statutory or regulatory enforcement authority. DEQ did not do that here. What’s more, DEQ’s citation to this statute is directly at odds with the federal government’s review of the West Decker Mine just last August, when OSM concluded that Decker was “Mining with a Valid Permit,” Decker had met its reclamation obligations, and Decker’s reclamation was “keeping current with contemporaneous reclamation requirements” as

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required by Montana rule. Ex. 14, pp. 2, 3, 4. Decker’s reclamation plan was sufficient and detailed enough for OSM in August 2024.

Whatever “broad authority” DEQ might have under MSUMRA must still be exercised within the confines of and in accordance with the laws and rules. Here, the source of DEQ’s authority is ARM 17.24.414, which provides that DEQ may order “reasonable” permit revisions “after” its mid-permit review, which in this case must have been complete by September 2023, and that the ordered revision “must be based upon written finding” stemming from the mid-permit review. ARM 17.24.414. Decker has made a *prima facie* showing that DEQ lacked authority to issue the Order under ARM 17.24.414 because DEQ failed to make any written findings, did not timely order revisions and instead initiated the Minor Revision Process, and that DEQ ordered unreasonable changes not tethered to its Mid-Permit Review.

a. DEQ Failed to Make Written Findings.

The Order must be based upon written findings,³ or statements of fact. ARM 17.24.414(4). DEQ argues that the “findings” on which the Order is based are 1) that DEQ had previously sent the Deficiency Letter upon conclusion of the mid-permit review and 2) that more than four months later Decker submitted a request for permanent cessation of mining. DEQ Br., p. 7. Regarding DEQ’s first alleged finding of fact, a statement that DEQ issued a deficiency letter, does not in itself provide the basis for an order. If it did, DEQ could issue any self-serving, non-descript document, then cite to that as the basis for an order. Even so, DEQ’s Deficiency Letter does not offer written findings. DEQ’s briefing does not point to a single

³ As this Board knows, “findings of fact” must be based on some evidence – documents, testimony, or something. They cannot be conclusory statements without any basis at all. § 2-4-621, MCA.

statement of fact from the Deficiency Letter. DEQ never explains how its bald requests to “review,” “update,” or to “provide” information equate to any finding of fact. There is no way that DEQ’s new request items 2, 3, 4, 5, and 7 can be supported by the Deficiency Letter because those items and issues are not mentioned anywhere in the Deficiency Letter. DEQ does not argue otherwise. Absent any written findings or facts, the Order cannot stand. ARM 17.24.414(4). This is not a heavy burden or an “exacting standard” as DEQ complains – it is the bare minimum required by rule.

Regarding DEQ’s proclaimed second finding – the cessation of mining as confirmed by BLM – DEQ admits that “fact” is not tied to the mid-permit review. DEQ Br., p. 8. Therefore, the timing does not work – the later BLM decision cannot support an order for revisions stemming from the earlier mid-permit review. Furthermore, DEQ ignores the fact that upon formal approval of the cessation of mining, Decker agreed it would then be appropriate to develop a new PMT. *Supra* § I (Background – September 9, 2024 entry). DEQ also ignores the fact that until the BLM issued its final decision on October 18, 2024 concluding that Decker was “relieved of any continued operation requirement,” the leases retained value and Decker remained potentially liable for mining and not wasting coal within those leases. As a prudent operator, Decker should not have proceeded with reclamation in accordance with a final Post-Mining Topography (“PMT”) until it received BLM’s final decision. Even so, Decker was on top of this issue and began seeking proposals for an updated PMT in February 2024, requested an updated proposal after the October 2024 BLM decision, received that proposal on January 30, 2025, accepted that proposal, and relayed the estimated timeline for completion of the final PMT to DEQ on February 28, 2025 (to which DEQ has not yet responded). *Supra* § I (Background).

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DEQ's second proffered "fact" occurred more than a year after the mid-permit review Deficiency Letter and therefore cannot support the Order because the timing is wrong. In any event, Decker had already initiated revisions to address the cessation of mining – namely an updated PMT – such that no Order was necessary.

DEQ also argues that the requirement found in ARM 17.24.501(6), requiring that "[b]ackfilling and grading must be kept current with mining operations" somehow supports DEQ's use of the 2024 cessation of mining to support the Order, which stems from the 2023 mid-permit review. The timing is obviously wrong, but also, as noted above (*Supra* § III.A.1.), the argument fails because it is contrary to OSM's express findings:

OSMRE has determined that the West Decker Mine is keeping current with contemporaneous reclamation requirements as defined by the ARM and contained within the permit.

Ex. 14, p. 4. SMCRA requires states that hold primacy for coal mining regulation, such as Montana, must regulate coal mining *in accordance with and consistent with* SMCRA. *Annaco, Inc. v. Hodel*, 675 F. Supp. 1052, 1055 (E.D. Ky. 1987) (*citing* 30 U.S.C. § 1253). DEQ's conclusions, which are exactly the opposite of OSM's conclusions, are not in accordance with or consistent with SMCRA and are therefore wrong. Decker has made a prima facie showing that DEQ's Order is insufficient and therefore illegal because it is not supported by written findings.

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

DEQ argues that Decker "never resolved the original deficiencies" (DEQ Br., pp. 7-8), but DEQ fails to acknowledge any of Decker's efforts, through minor revisions, to address the matters raised in the Deficiency Letter. Aff. S. Temple, ¶¶ 8-9.⁴ After receiving the Deficiency

⁴ Attached to Decker's Opening Brief.

Letter, Decker responded, noting it was proceeding with Minor Revisions 205 and 207 (which were already in-progress) and by 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). As DEQ knows, the minor revision process is not always as speedy as it seems like it should be. See *Supra* § I. (Background - April 11, 2024 entry for Minor Revision 207, which remains outstanding after three DEQ deficiency letters and two Decker responses). Nonetheless, Decker continues to respond to DEQ's alleged deficiencies and continues to plan for updating the PMT. DEQ presents no credible argument to the contrary.

DEQ makes the incredible argument that Decker was somehow required to appeal DEQ's Deficiency Letter, despite the fact that the Deficiency Letter cannot – and should not – be construed as an "order" subject to administrative review through a contested case. DEQ Br., p. 6. Decker's right to administrative review through this Board is only relevant to an "order." ARM 17.24. 414(4). The word "order" is not found anywhere in DEQ's Deficiency Letter. DEQ itself refers to the September 27, 2023 letter as a "deficiency letter" not an "order." DEQ Br., pp. 6, 7, 8, 9 (specifically referring to the letter not as an order, but as a "deficiency letter").

Legally, DEQ's position is untenable. DEQ's Deficiency Letter does not represent a final DEQ action that could be subject to challenge. A "final" agency action "mark[s] the 'consummation' of the agency's decisionmaking process," and is not "of a merely tentative or interlocutory nature." *Bennett v. Spear*, 520 U.S. 154, 178 (1997). Here, DEQ's Deficiency Letter is not a final decision. Instead, it is tentative or interlocutory in nature because it does not grant or deny anything – it merely requests additional information in order to process a minor

revision application (which did not exist at the time).

Practically, DEQ's position is unworkable. Certainly, DEQ's position cannot be that all of its deficiency letters may be appealed to this Board. If that were the case, DEQ and this Board could be facing many appeals each year. For example, just for Minor Revision 207, which was an updated bond calculation submitted by Decker on April 11, 2024, DEQ has issued three separate deficiency letters. If, as DEQ suggests, each deficiency letter is appealable, Decker could have filed three separate appeals to this Board in less than one year – all for one minor revision application. If that was the allowable process, permit revisions would stall.

Appealing deficiency letters that are not final DEQ determinations is contrary to the law and impractical. DEQ's September 27, 2023 Deficiency Letter is just that – a deficiency letter requesting additional information. It is not an order; therefore, it is not subject to the appeal right provided in ARM 17.24.414(4). Decker was not required to appeal DEQ's Deficiency Letter and Decker has not waived any arguments regarding the actual Order issued by DEQ on January 29, 2025. DEQ's arguments to the contrary are wrong. Decker has made a *prima facie* showing that DEQ's Order is insufficient and may not stand because DEQ did not timely order any revisions as a result of its mid-permit review; instead, DEQ adopted the Minor Revision Process to resolve its Mid-Permit Review, which is working and should continue.

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

DEQ does not dispute that the new, unauthorized, and unlawful changes in the Order (Items 1 through 7) go far beyond and are not related to its original Deficiency Letter. DEQ admits that the facts which gave rise to the new, unauthorized, and unlawful changes arise from the 2024 letters regarding cessation of mining. Because those letters did not exist prior to the deadline for DEQ's mid-permit review (September 2023), DEQ may not rely on those in the

Order. ARM 17.24.414(1) (requiring the mid-permit review to “occur not later than the middle of the permit term” or September 2023 in this case). Proving this point, DEQ acknowledges that Items 2, 3, 4, 5, and 7 of its Order are not found anywhere in DEQ’s original Deficiency Letter. DEQ Br., p. 7; *Compare* Ex. 3, p. 2 with Ex. 1. Decker has made a *prima facie* showing that DEQ’s Order is insufficient and therefore illegal because DEQ did not timely order any revisions and instead adopted the Minor Revision Process, which is on-going and has already resolved many of DEQ’s mid-permit review concerns.⁵

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

DEQ’s brief now cites regulatory language that appears nowhere in its Order. DEQ Br., pp. 10-11. DEQ now cites ARM 17.24.313(d)(i) through (iii), requiring “a description of the final location of all overburden and prating materials,” “a narrative and cross-sections” for highwall backfilling, “the derivation of the bulking factor” – but none of those were mentioned in the Order. Decker argues that DEQ has no authority to order “detailed steps and dates of completion,” “exact sequences,” a “[t]imetable for mine pit dewatering,” a “sequence” of soil laydown and seeding. Ex. 3, pp. 1-2; Decker Br., pp. 9-10. DEQ does not defend its request for those items. Those terms are not found anywhere in ARM 17.24.313(d). The terms are therefore not “reasonable” as required by ARM 17.24.414.

Tellingly, DEQ never explains why Decker’s current plan is insufficient. Clearly, DEQ understands the reclamation plan and the metrics to which Decker will be held – even summarizing those requirements in its Order. Ex. 3, p. 2, item 7. The federal regulators

⁵ DEQ’s request “that the Board issue a final order” so DEQ can “proceed to simply reissuing its Order under the multitude of other statutory or regulatory provisions” fails for the same reason – DEQ cannot show that Decker’s permit requires any revision that is not already in progress. DEQ’s threat is brazen indeed, given that DEQ has not even responded to Decker’s February 28, 2025 response to the Order. Ex. 23.

understand the reclamation plan too – clearly enough to determine whether Decker is in compliance (it is) and whether Decker’s reclamation is being kept “current” (it is). Ex. 14. DEQ does not and cannot explain why this is insufficient.

DEQ accuses Decker of making “a flawed policy argument” for flexibility – but the evidence supporting Decker is found by simply looking at the East Decker Mine case, BER-2025-02-SM. There, Decker provided detail in its reclamation plan by listing the types of equipment it intended to use to backfill the pits. That proved to be a mistake when DEQ used that list in a game of “gotcha” to issue a Notice of Noncompliance for not using a specific type of equipment – despite the fact that, by the end of 2024, Decker moved more than 9,000,000, LCY of material more than required. Balking at DEQ’s over-zealous request for details beyond what the rules require is necessary in light of the consequences being suffered at East Decker.

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

In the same brief where DEQ asserts that it will “simply reissue[] its order under multitude of other statutory or regulatory provisions” (DEQ Br., p. 9) and while prosecuting a parallel matter against Decker at the East Decker Mine for an alleged “noncompliance,” DEQ cannot credibly claim that Decker is not at risk of harm in this matter.

In the same brief where DEQ argues, despite the clear language in ARM 17.24.425(2) (“[t]he hearing is a contested case”), that this matter is not a MAPA contested case and therefore, Decker has no due process right to an evidentiary hearing, DEQ cannot credibly argue that Decker will not “be deprived of life, liberty, or property without due process of law” in violation of the Article II, Section 17 of the Constitution of the State of Montana.

Decker does not have to prove “irreparable harm” in this case – but the reality is that Decker is most likely to suffer harm absent temporary relief pending the Board’s final decision

in this MAPA contested case. DEQ's intentions are clear. MAPA is also clear – this contested case must provide an “[o]ppportunity” for “all parties to respond to and present evidence and argument on all issues involved.” § 2-4-612(1), MCA. DEQ's argument that this contested case is not a MAPA contested case is unavailing. If not a MAPA contested case, then what other type of contested case would it be? No other type exists. This is a MAPA contested case, complete with “due process safeguards” which may not be ignored. § 2-4-101(2)(b), MCA. To ensure that DEQ does not pursue further enforcement pending a final decision in this contested case such that Decker's due process right would be diminished or negated, temporary relief is appropriate.

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 MAPA contested case.

Dated this 25th 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 25th day of April, 2025:

☐ U.S. Mail	Sandy Moisey Scherer, Board Secretary
☐ FedEx	Board of Environmental Review
☒ Email	1520 E Sixth Avenue
☐ Sharefile	P.O. Box 200901
	Helena, MT 59620-0901
	deqbersecretary@mt.gov

☐ U.S. Mail	Sam King
☐ FedEx	Chief Legal Counsel
☒ Email	Jeremiah Langston
☐ Sharefile	Sam Doxzon
	Legal Counsel
	Department of Environmental Quality
	P.O. Box 200901
	Helena, MT 59620-0901
	samuel.king@mt.gov
	jeremiah.langston2@mt.gov
	samuel.doxzon2@mt.gov

*Attorneys for Montana Department of
Environmental Quality*

/s/Victoria A. Marquis
VICTORIA A. MARQUIS

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.

September 27, 2023

Page 5 of 5

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,

A handwritten signature in blue ink that reads "Dan Walsh".

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



MINING BUREAU FIELD INSPECTION REPORT

Mining Bureau Chief
Department of Environmental Quality
P. O. Box 200901
Helena MT 59620-0901
(406) 444-4970

Permit Information	Inspection Information
Permit Number: C1987001C Mine Name: West Decker Coal Mine Operator Name: Decker Coal Company, LLC Operator Address: P.O. Box 12 Decker, MT 59025-0000	Inspector(s): Ashley Eichhorn, Michael Glenn Inspection Type: Partial Inspection Reason: Periodic Inspection Date(s): 10/3/2023 11:00:00 AM, 10/3/2023 Other Persons Present: Sabrina Temple

Inspection Topic Summary

NOTE: Y=Observed, F=Follow-Up Item, M=Maintenance Item, N=Non-Compliance, Blank=Not Observed

YAdministrative
YAir Resource Protection
YBackfill & Grading
.....Blasting
.....Coal Conservation
YContaminant Control
.....Cultural Resources
.....Drilling
.....Excavation
YFacilities
YFish & Wildlife

YHydrology
.....Mine Plan
YOff-Site Impact
YOther
.....Permit Stipulations
.....Processing Waste
YRail Loops and Roads
.....Subsidence
YSediment Control
.....Signs & Markers
.....Soils
YVegetation

Inspection Topic Observations

Administrative:

When entering West Decker's permit through the ePermit system, the company was entered as an "individual" instead of a "company". We walked through what needed to be updated so Decker will fix this issue when they reply to MP1.

Air Resource Protection:

Light rain was occurring during inspection, so no dust was observed.

Backfilling & Grading:

No backfilling and grading was occurring in West Decker.

Contaminant Control:

The landfarm was not visited due to muddy road conditions. The operator will contact Brian Schrage, in the coal program, for sampling protocols to determine if the material in this landfarm is eligible to be removed.

Facilities:

The facilities area was tidy and clean. No spills or leaks were noted.

Fish & Wildlife:

Mule deer and antelope were observed. Rabbits were also observed near the plastic piping at the base of pond creek above the mud sump.

Hydrology:

MPDES Outfall WD001 was visited. With the reservoir being so high, the water had backed up into the outfall over the past year.

Off-Site Impact:

The eastern permit boundary north of pit 16 was observed and no off-site impacts were observed.

Other:

The coal smoker that has prevented a portion of field N1u-F96 from passing bond release was observed. No smoke was observed on a day where it would have been expected based on the conditions. This may have burned out the coal that was buried in this area. This should be reviewed in the spring again to see if there is any additional evidence of burning coal in this location.

Rail Loops and Roads:

Some roads were impassable due to mud from current rain.

Sediment Control:

No sediment control issues were observed.

Vegetation:

It was stated that the contractor recently sprayed weeds again in the bond release area. Decker submitted a map of the areas sprayed with the deficiency response to SL8 on October 03, 2023.

NOTE: Follow-up, Maintenance Items, Non-Compliance will display on next page.

FOLLOW-UP AND MAINTENANCE SECTION

Follow-Up Item Summary

Date & Sequence Number: 8/9/2023 12:30:00 PM - 1

Resolution Due Date: 9/4/2023

Resolution Date: 10/3/2023

Description: Vegetation - 8/22/2023: Weed spraying has been applied once this summer. The company wants to spray another application within the next couple weeks, or by the end of September. September Inspectors, please follow-up on weed spraying completion. ARM 17.24.716(4) states: To the extent possible, the operator shall utilize seed mixes free of weedy or other undesirable species and shall utilize the best reclamation and land management techniques available to prevent establishment of noxious weeds on all disturbed and reclaimed areas. The operator shall control noxious weeds in accordance with the Noxious Weed Management Act (7-22-2101 through 7-22-2153 , MCA, as amended). The department urges the company completes weed spraying!

Narrative: October 2023: Weed spraying has been completed. This item is closed.

Date & Sequence Number: 8/17/2022 8:00:00 AM - 2

Resolution Due Date:

Resolution Date: 10/3/2023

Description: Vegetation - Weed infestation identified in the SL8 Phase III inspections require treatment prior to bond release completion. Items noted during the inspection dates below.

7/5/2022: Tamarisk was observed at the pothole WHEF near field E9m2-F01 (blue dot on Tamarisk removal map). This must be eradicated before the foliage dies off prior to fall.

8/17/2022: Documentation of spraying Canada thistle along with the spraying/eradicating of tamarisk must be sent to DEQ before bond release is approved acceptable, ARM 17.24.308(f), and ARM 17.24.716(4)

17.24.308 OPERATIONS PLAN

(1) Each application must contain a description of the operations proposed to be conducted during the life of the mine including, at a minimum, the following:

(f) a plan to prevent the establishment of, or to control, noxious weeds on all lands within the proposed permit area until phase IV bond release, in accordance with the Noxious Weed Management Act, 7-22-2102 through 7-22-2153, MCA, as amended.

17.24.716 METHOD OF REVEGETATION

(4) To the extent possible, the operator shall utilize seed mixes free of weedy or other undesirable species and shall utilize the best reclamation and land management techniques available to prevent establishment of noxious weeds on all disturbed and reclaimed areas. The operator shall control noxious weeds in accordance with the Noxious Weed Management Act (7-22-2101 through 7-22-2153 , MCA, as amended).

Narrative: September 2022: A contract sprayer was on site during inspection. DEQ is waiting for a map of spray locations.

October 2022: The operator had submitted a preliminary map to DEQ. Alex Mackey is working with Decker to identify areas that need additional spraying; a weed control plan for 2023 is needed for the permit area.

February 2023: Provided map with additional areas to be sprayed identified to the Operator.

April 2023: The operator intends to spray weeds in the coming months and submit proof as a response to bond release application SL8.

May 2023: DEQ and Decker are still working through a resolution to finalize spraying and allow for the bond release application to progress.

June 2023: Sabrina was on vacation at the time of the inspection. Matt Guptell was not familiar with the specifics of the issue and it was deferred to the next inspection.

July 2023: Weed spraying had not happened in July; but at the time of the July inspection, weed spraying was planned within the following two weeks. August inspectors should confirm that weed spraying has been completed.

August 2023: Weed spraying has recently been conducted. The department is waiting on a map to be submitted to the department and the weed spraying invoice from the company.

October 2023: The operator submitted a deficiency response to SL8 including a weed spraying map of the application area. This item is now closed.

Number of complete inspections this quarter: 0

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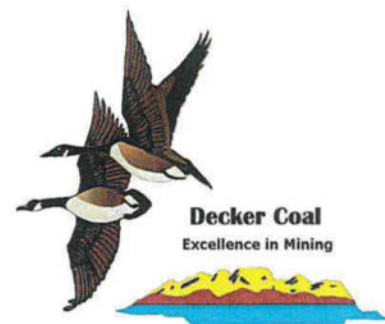
Maintenance Item Summary

Non-Compliance Item Summary

Signature of Inspector(s): Ashley Eichhorn Michael Glenn	Date: October 16, 2023
Reviewed by: Emily Lodman	Date: October 16, 2023

February 1, 2024

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



Permit ID: C198700IC
Revision Type: NA
Permitting Action: Permanent Cessation of Operations
Reference #:

Dear Eric:

Decker Coal Company (DCC) will no longer be mining coal, and as such, has relinquished the right to mine and will continue as a reclamation company until West Decker has satisfied ARM 17.24.522. DCC submits this as our formal request for Permanent Cessation of Operations at West Decker.

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

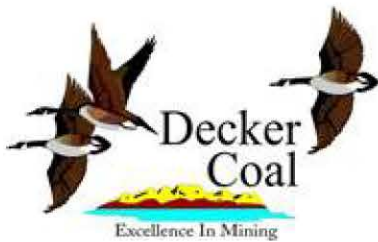
Gilbert, Sharona

From: Sabrina Temple <s.temple@aecoal.com>
Sent: Thursday, February 1, 2024 3:22 PM
To: DEQ AEMD Coal
Cc: Matt Guphill
Subject: [EXTERNAL] West Decker Permanent Cessation
Attachments: West Permanent Cessation Letter.pdf

Please see the attached letter requesting Permanent Cessation of Operations at West Decker.

Sabrina Temple
Permit Coordinator
Decker Coal Company

t 406-300-0929
c 406-939-5357
e s.temple@deckercoal.com



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February 16, 2024

Sent via electronic mail

Sabrina Temple
Decker Coal Company, LLC
West Decker Coal Mine
P.O. Box 12
Decker, MT 59025-0000

Permit ID: C1987001C
Revision Type: Bond Release
Permitting Action: Approval
Subject: Approval of Bond Release Application SL8

Dear Sabrina Temple:

Bond Release Application SL8 for Phase II and III release of liability only, on 23 Phase II and 1,700 Phase III acres of reclaimed lands at West Decker Coal Mine, has been approved. Enclosed is a copy of the signed release document. A copy of this release has been sent to your surety company.

Please feel free to contact Michael Glenn at (406) 444-3401 with questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Eric Dahlgren".

Eric Dahlgren, Acting Coal Section Supervisor
Mining Bureau
Phone: (406) 444-5245
Fax: 406-444-4988
Email: edahlgren@mt.gov

Cc: Surety Company (see Bond Release Document)
Jeff Fleischman, Office of Surface Mining

Enclosure: Bond Release Document

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
MINING BUREAU
COAL SECTION
AND OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
PHASE II and III BOND RELEASE
FOR FEDERAL LANDS

Pursuant to Title 82, Chapter 4, Part 232(6), MCA, and Title 30 CFR 800.40, the Department of Environmental Quality (DEQ) and the Office of Surface Mining Reclamation and Enforcement (OSMRE), approve Phase II and III Bond Release as follows:

Company: Decker Coal Company, LLC
Address: P.O. Box 12
Decker, MT 59025-0000

Date of Application: November 2, 2021

Acreage Requested: 23 acres Phase II &
1,700 acres Phase III

Dollars Approved: \$0, Liability Only

Bonding Company: Multiple companies
Address: See attachment

Title of Exhibit showing Acres Requested and Released: Acceptability Determination Bond Release Application SL8;

Dated: December 22, 2023

Legal Description of Release Area:

T8S, R40E, Sections: 28 and 33

T9S, R40E, Sections: 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, and 22

Pursuant to ARM-17.24.1113 and 30 CFR 800.40, DEQ and OSMRE conducted a Bond Release inspection on August 17, 2022.

Based upon the results of the bond release inspection and the application and associated materials in their accepted final form, the permittee has fulfilled the requirements for Phase II and III Bond Release on the subject 23 Phase II acres and 1700 Phase III acres pursuant to ARM 17.24.1116(6)(b) and 17.24.1116(6)(c).

Therefore Phase II and III Bond Release is approved for 23 Phase II acres and 1,700 Phase III acres and \$ 0, Liability Only.

I HEREBY CERTIFY THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Signed: N. W. Wake, Bureau Chief

JEFFREY FLEISCHMAN
Digitally signed by JEFFREY FLEISCHMAN
Date: 2024.02.13 12:55:17 -07'00'

Approved: JEFFREY FLEISCHMAN, Office of
Surface Mining Reclamation and Enforcement

Date: 02/15/2024

Date: _____

Attachment: Bonding Companies for Decker Coal Company, LLC , Permit No. C1987001C

Fidelity and Deposit Company of Maryland
1299 Zurich Way
5th Floor
Schaumburg, IL 60196-0156

Westchester Fire Insurance Company
436 Walnut Street
P.O. Box 1000
Philadelphia, PA 19106-0000

DECKER COAL COMPANY



WEST PERMIT C1987001
2024 BOND CALCULATION

April 2024

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TABLE OF CONTENTS

Cost Estimate of Reclamation for Bonding.....	4
Bond Calculation Methodology.....	4
Backfill Operations.....	5
Topsoil Operations.....	5
Revegetation Costs.....	6
Monitoring Costs.....	6
Other Costs.....	6
Bond Development Procedure.....	6
Pit Area Spoil Projection.....	6
Interim Post-Mine Topography Development Procedure.....	6
Overburden Material Movement Determinations.....	6
Topsoil Movement Determinations.....	7
Facilities Removal.....	7

COST ESTIMATE OF RECLAMATION FOR BONDING

Decker Coal Company (DCC) will adjust the amount of the reclamation bond on a yearly basis. To avoid the situation of “rolling” financial responsibility of the performance bond from one area of the mine to another and skipping the requirements of ARM 17.24.1111, DCC commits to a yearly bond release request. The revised bond estimate will be submitted for Department approval, as a minor revision to the permit on or before April 15 of each year. The bond calculation will be based on the most recently available surveyed topography. Because DCC is in permanent cessation, the need for projected disturbance is not needed as only reclamation activities will take place. **Tables 1-10** referenced in this document can be found in **Appendix A**.

All costs assume work will be completed by an independent contractor utilizing a fleet of D11 Dozers and Truck/Loader equipment. The summary shown presents the results of detailed earthwork estimates required to achieve stable post-mining landforms. The bond amount, inclusive of administrative, profit, overhead and contingency, is summarized in **Table 1**.

The total disturbance area to reclaim the mining and material borrow areas, as well as acres that currently do not have Phase II Bond Release are found in **Table 10**.

BOND CALCULATION METHODOLOGY

The amounts included for reclaiming the mine are based on achieving the interim post-mining topography (PMT) illustrated in **EX 313_4**. The topography was designed to represent reasonable drainage patterns and provide adequate topographic relief while limiting the amount of borrow material to construct the proposed surface. All through drainages, including all remaining disturbed sections of Spring Creek, Pearson Creek, and Pond Creek, have been reconstructed to approximate their pre-mine slopes and therefore, restore, to the extent possible, pre-mine hydrologic functions in terms of capacity and erosional stability.

The initial step in preparing the bond estimate was evaluating the West Decker Reclamation Plan and determining the “worst-case” level of disturbance. The topographic conditions in 2024 reflect the worst case disturbance and are illustrated on **EX 313_5**.

The next step focused on establishing drainages and designing the interim post-mine topography for the remainder of the disturbed area. Particular attention was paid establishing diverse topographic features for the given conditions under which the bond was calculated and also providing a sustainable transition to both undisturbed ground and areas previously regraded. Final highwall areas along the western limits of Pit 11 and Pit 16W were reduced using variable concave slopes, but maintaining a maximum slope of 3h:1v. The Interim PMT was developed by cutting multiple sections across the disturbed topography and drawing lines for a sustainable and easily balanced PMT. This was done using Carlson software. The topography illustrated on **EX 313_4** represents the culmination of this effort.

Once the interim post-mine topography was approximated, work shifted to defining available internal overburden material volumes and determining the extent of borrow required. Volumes were measured

between the triangulated surfaces of **EX 313_4** and **EX 313_5** using a projected material swell of 25% in undisturbed borrow areas consisting of overburden materials not including scoria. Density for the earthwork estimate is based on the overall undisturbed overburden density used in the approved ground control plan.

Available internal materials consist of dragline spoils and spoil dumps where the elevation exceeds the proposed interim topography. Balanced dozer cut/fill polygons and truck/shovel borrow polygons were made by comparing the 2024 disturbed surface topography to the interim PMT surface designed as the bond surface. This was also done using Carlson software. A section was cut across each polygon with lines representing both the Interim PMT and EOY Disturbance. To figure dozer grades and push distances, a line was drawn from one “cut” centroid to the corresponding “fill” centroid. The resulting grade and distance represent the approximate grade and distance for dozer work in that area. Weighted averages for both grade and distance were calculated and used in the calculations seen in **Table 3**. Each of the polygons are shown on **EX 313_6** and are accounted for in the bond calculation estimate.

Tables 2, 3, 4 and 5 provide the detailed cost and quantity summaries of all grading work.

Equipment selections used to construct the bond surface were chosen based on experience and the current equipment fleet in use at Decker Coal. Fleet assignments in the bond reclamation plan were selected based on haul distance, available volume, depth of cut (face height), and accessibility. Productivity estimates for dozer and truck material movement were selected from published data tables in Caterpillar Performance Handbooks based on a weighted average distance and grade for the earthwork movement. Costs for each fleet were obtained from various published data sources and are referenced in the attached tables.

BACKFILL OPERATIONS

EX 313_7 shows cut and fill contours for the material moved as part of the reclamation estimate. Gross earthwork volume is calculated for each polygon area and topsoil removal is subtracted from the borrow quantity where applicable. For borrow areas and highwall reductions, material that is blasted is assumed to swell 25% by volume.

TOPSOIL OPERATIONS

All topsoil volumes can be found in **Table 8** and the associated topsoil costs can be found in **Table 9**. All surfaces are to be scarified before topsoil laydown, and any roads not included in the earthwork plan will be ripped prior to scarification.

EX 313_8 shows the planned topsoil replacement work associated with the bond estimate. The estimate was developed by balancing topsoil placement from stockpiles and determining makeup volumes required from borrow sources. Distance from stockpile areas and topsoil volume by soil horizon were measured from the disturbed surface plan. Weighted average distance and grade is calculated and unit costs applied to the volume, distance, and grade estimate.

REVEGETATION COSTS

Revegetation costs for the bond include seed bed preparation, seed stock, and application charges for native grasses. Revegetation information can be seen in **Table 10**.

MONITORING COSTS

Monitoring costs are detailed in **Table 7**. Monitoring includes vegetation, wildlife, surface and groundwater activities over the 10-year monitoring time frame.

OTHER COSTS

A total of 22.8% indirect costs are added to the bond estimate to cover contractor profit, administration, inflation and various contingency items during the project.

BOND DEVELOPMENT PROCEDURE

Below is a detailed description of the steps used to develop the bond estimate.

PIT AREA SPOIL PROJECTION

The initial step in the bond calculation was the determination of the disturbed topography as a result of the mining operation. There was no additional mining assumed to take place at the West Decker Operation.

DEVELOP INTERIM POST-MINE TOPOGRAPHY

In the mining pits, the primary objective for the PMT is to reestablish stable stream channel gradients for Spring Creek, Pearson Creek, and Pond Creek. Along with the main channel gradients, secondary goals centered on restoring, to the extent possible, pre-mine drainage areas and tributaries and slopes as well as blending disturbed topography with undisturbed topography. An effort was made to reduce the large overburden stockpile along the south highwall of the Pit 16S by removing the smallest amount of dirt and reduce the side slopes to 3h:1v. Additionally, remaining highwalls were laid back at a 3h:1v slope.

After determining the interim post-mine topography contours, modeling was conducted to determine the volume disparity between the as-built spoil topography and the interim PMT. With the borrow volume determined, Carlson was also used in an iterative process to modify borrow area elevations in order to match the swelled borrow volume to the volume required to construct the interim PMT. Where possible, slopes for the exposed surfaces within the borrow area were also maintained at pre-mine values or less to promote long-term stability and assist with revegetation efforts. Stream channel gradients were designed using concave profiles to ensure stability.

OVERBURDEN MATERIAL MOVEMENT DETERMINATIONS

After balancing total cut/fill volumes for the pits, smaller balance polygons were developed for determining material movement parameters of distance and grade. Through an iterative process with

Carlson, the polygon areas were manipulated until cut and fill volumes were balanced, assuming 25% swell of native non-scoria cut material. Drawing polylines between the cut and fill centroids yield haul distance and grade parameters used to estimate unit cost for material movement. After determining dozer cut/fill sections, the remaining cut and fill polygons were assigned to the truck/shovel fleet. Once balanced, polygon centroids were used to estimate material movement and grade. **EX 313_6** depicts the planned overburden movement distance used in the detailed bond calculation spreadsheet.

TOPSOIL MOVEMENT DETERMINATIONS

Topsoil movement and volumes were determined in similar fashion to overburden. Topsoil is either recovered from adjacent stockpiles or cut from borrow areas and placed on reclaimed surfaces. **EX 313_8** depicts the planned distribution of topsoil over the disturbed surface. Distance and grade from stockpiles or topsoil borrow areas is measured from the drawing to the laydown polygon and recorded in the bond spreadsheet. A weighted average unit cost is subsequently applied to the material movement plan. Graded overburden polygons areas are first scarified prior to placing topsoil. The polygon is then seeded with the appropriate vegetation cover.

FACILITIES REMOVAL

Items included in demolition and disposal costs are detailed in **Table 6**. Where available, published unit cost data were used to estimate costs for each facility component. Quantities for each facility (i.e., building type, volume, foundation details, etc.) were taken from facility drawings maintained by DCC.

After removal of all structural facilities, soil testing will be conducted. The soil testing will be conducted on a 100-foot grid spacing covering the entire facilities area of 47 acres and includes the plant, truck dump, and main complex areas. Soil samples will be collected and analyzed for TPH and reported as TPH, gasoline range organics (GRO), and diesel range organics (DRO), per Method 8015. The analytical results from this sampling plan will be compared to the applicable soil action level of 200 parts-per-million. Additional soil sampling will be conducted as necessary to adequately define the extent of any soil contamination.

November 8, 2024

Sent via ePermit system

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

Permit ID: C1987001C
Revision Type: Minor Revision
Permitting Action: Deficiency
Subject: MR207; Bond Calculation-Round 2 Acceptability Deficiency

Dear Tyler:

The Department of Environmental Quality (DEQ) has reviewed your submittal. The following deficiencies must be adequately addressed before DEQ can determine the application acceptable:

Administrative Rules of Montana (ARM) 17.24.313(1)(b): Please update the **313.1.b Reclamation Timetable** document in your permit. The version currently in the permit is general and not year specific. Since no additional mining is proposed, a detailed timetable of reclamation operations is expected. This schedule should align with Exhibit 313-5 so DEQ can better understand which areas are expected to be addressed with each year's reclamation commitments for Truck Shovel, Dragline/Dozer, and Seeding. Section 82-4-234, Montana Code Annotated (MCA), requires "grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation (...)". Please ensure the **313.1.b Reclamation Timetable** reflects the current operations at the West Decker mine.

ARM 17.24.313(1)(c): Since mining operations have ended at West Decker, an updated PMT will be required. Based on the comparison of the existing PMT and the Interim bond surface, Exhibit 1, there is a 5MCY shortfall in the material movement component of the bond calculation. Please move forward with addressing the bond calculation based on the interim surface.

Please provide proof of availability for 993k loaders and 730E trucks. Mobilization timeframe also needs to be provided for DEQ consideration.

The Loader & Truck fleet needs to be updated to represent realistic utilization. Please update the number of trucks in the fleet from 4.5 to 5.

Facilities removal does not include all necessary elements for successful reclamation. Each building and associated structure should have the following RS Means cost codes applied: Concrete slab demolition (specific to reinforcement and slab thickness), Footer demolition (specific to reinforcement and dimensions), Steel building demolition (volumetric calculation to estimate demolition cost either by explosion/implosion or mechanical means), and Concrete disposal (on or off site)(applied to each building specifically).

Seeding costs per acre within revegetation costs have changed from the initial submittal. DEQ has no record of 2024 seeding efforts. Please adjust these values to align with the original submittal.

Pit pumping assumptions for Pit 16S should include inflow considerations from historic data. MPDES outfall flow data for WD007 during 2014-2015 shows average inflow into Pit 16S ranging from 5-6 acre/ft/day. Please recalculate pumping costs considering specific inflow conditions and re-submit.

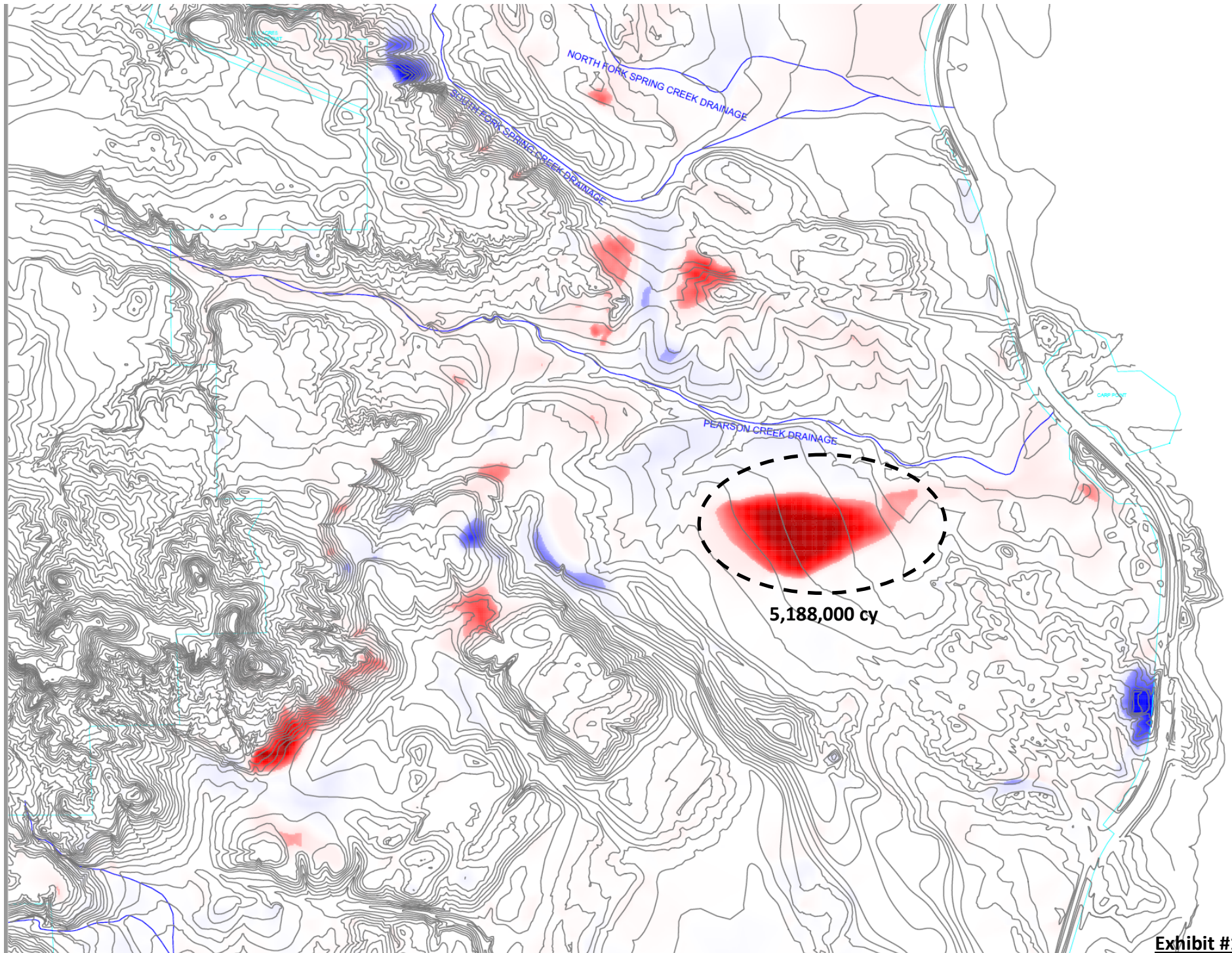
Please feel free to contact me with questions regarding this letter.

Sincerely,



Eric Dahlgren, Acting Bureau Chief
Mining Bureau
Phone: 406-444-5245
Email: edahlgren@mt.gov

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



MINING BUREAU FIELD INSPECTION REPORT

Coal Section
Department of Environmental Quality
P. O. Box 200901
Helena MT 59620-0901
(406) 444-4970

Permit Information	Inspection Information
Permit Number: C1987001C Mine Name: West Decker Coal Mine Operator Name: Decker Coal Company, LLC Operator Address: P.O. Box 12 Decker, MT 59025-0000	Inspector(s): Alex Mackey Inspection Type: Complete Inspection Reason: Periodic Inspection Date(s): 6/26/2024 8:30:00 AM, 6/26/2024 Other Persons Present: Sabrina Temple

Inspection Topic Summary	
NOTE: Y=Observed, F=Follow-Up Item, M=Maintenance Item, N=Non-Compliance, Blank =Not Observed	
YAdministrative YAir Resource ProtectionBackfill & GradingBlastingCoal Conservation YContaminant ControlCultural ResourcesDrillingExcavation YFacilities YFish & Wildlife	YHydrologyMine PlanOff-Site ImpactOtherPermit StipulationsProcessing Waste YRail Loops and RoadsSubsidenceSediment Control YSigns & Markers YSoils YVegetation

Inspection Topic Observations
Administrative: Before the onsite inspection took place, a discussion took place with company personnel regarding deficiency letters Montana DEQ sent to the Decker mine for various permit actions. MR207 (Bond Calculation Update) and MP1 (Mid-Permit Review). The discussion outcome was that the company is working on a response for the deficiencies. The topic of additional equipment being supplied to the Decker mine was also discussed. The company responded that they are still waiting for company headquarters to approve the equipment. Air Resource Protection: Dust particulates were only observed along the Main Haul Road with vehicle traffic. Contaminant Control: The landfarm was visited. It had been tilled early in the month. No trash items were present. North of the facilities where two haul trucks were parked in the equipment storage area was inspected in reference to April's inspection report. Tarps had been removed, a bucket remained under a haul truck to catch any drips, and the area looked clean of any spills. Facilities: The fuel islands were visited at the area office. No issues were observed. Fish & Wildlife: Pronghorn antelope and several song birds were observed.

Hydrology:

The wetlands in B-Valley were observed and only one of the ponds was holding water.

Rail Loops and Roads:

The rail loop was being removed by a third party. Railroad ties were stacked as well as metal rail line. No issues noted.

Signs & Markers:

Soil signage of soil piles 71C, 43AB 44C, and 52C1 were observed along Harrys Meadow.

Permit boundary markers were observed along highway.

Soils:**Vegetation:**

DEQ monitored 3 fields that were seeded in the fall of 2021. Fields were 18-uss-F21, N32ass-F21, and E20-uss-F21. All three fields had several patches of sweet clover and cheatgrass. However, several species of vegetation were also abundant; such as green needle grass, western wheatgrass, slender wheatgrass, basin wildrye, purple coneflower, prairie coneflower, foxtail barley, yarrow, goatsbeard, fringe sagewort, Wyoming big sage brush, silver sage brush, and cottonwoods within depressions holding moisture. It appears the vegetation component is establishing. These fields will continue to be monitored.

NOTE: Follow-up, Maintenance Items, Non-Compliance will display on next page.

FOLLOW-UP AND MAINTENANCE SECTION

Follow-Up Item Summary

Date & Sequence Number: 4/23/2024 11:15:00 AM - 1

Resolution Due Date: 7/31/2024

Description: Vegetation - Vegetation – Field D21uss-sh-F17. Approximately 3.5 acres of bare ground in the northern end of this field need to be checked for signs of vegetation by June and/or July 2024 inspectors. Approximately 5 acres in the central portion of this field, and approximately 5 acres in the eastern portion of this Field D21uss-sh-F17 also need to be checked for signs of vegetation establishment by June and/or July 2024 inspectors. Waiting until June/July will allow for enough of the early growing season to have passed to determine the status of vegetation in these areas. Because seeding of this field originally occurred in November 2017, if bare areas visited in late April 2024 or visible in aerial imagery for Field D21uss-sh-F17 are not showing signs of vegetation by June/July 2024, these areas will need to be interseeded.

Narrative: See Photo 12 in April 2024 Inspection Report for detailed map of Field D21uss-sh-F17, including bare areas examined in April, and additional expanse of bare areas in central and eastern portions of this field. Areas of bare ground where vegetation does not appear to be establishing are concerns for weed encroachment, erosion, soil stabilization, and areas that are not trending toward Phase III reclamation and will need follow-up examination by the June and/or July 2024 inspectors. Based on the 2023 Annual Mine Report – Reclamation Methods Data Sheet - Field D21uss-sh-F17 was seeded with Upland Shrub Steppe seed mix, with additional shrubs seeded.

June 20, 2024 Aerial: A portion of this field is clearly not as well vegetated as the rest. A ground investigation would be required to determine if adequate growth has established. (See Photo 1).

Maintenance Item Summary

Non-Compliance Item Summary

Signature of Inspector(s):

Alex Mackey

Date: July 8, 2024

Reviewed by:

Eric Dahlgren

Date: July 8, 2024

Number of complete inspections this quarter: 1



MINING BUREAU
Coal Section Inspection Photo Log
West Decker Coal Mine
Inspector(s): Alex Mackey
Date: June 26, 2024



MINING BUREAU FIELD INSPECTION REPORT

Coal Section
Department of Environmental Quality
P. O. Box 200901
Helena MT 59620-0901
(406) 444-4970

Permit Information	Inspection Information
Permit Number: C1987001C Mine Name: West Decker Coal Mine Operator Name: Decker Coal Company, LLC Operator Address: P.O. Box 12 Decker, MT 59025-0000	Inspector(s): Julian Calabrese, Allison Calkins, Joshua Bridgeman Inspection Type: Partial Inspection Reason: Periodic Inspection Date(s): 7/24/2024 8:00:00 AM, 7/24/2024 Other Persons Present: Sabrina Temple

Inspection Topic Summary	
NOTE: Y=Observed, F=Follow-Up Item, M=Maintenance Item, N=Non-Compliance, Blank =Not Observed	
YAdministrative YAir Resource Protection YBackfill & GradingBlastingCoal Conservation YContaminant ControlCultural ResourcesDrillingExcavationFacilities YFish & Wildlife	YHydrology YMine PlanOff-Site ImpactOtherPermit StipulationsProcessing WasteRail Loops and RoadsSubsidenceSediment ControlSigns & MarkersSoils YVegetation

Inspection Topic Observations
Administrative: MR 201 Bond Calculation: This minor revision is in progress. The Operator indicated a request was made for updated information from the RS-means tables. The Company's request was made Monday 7/22/2024 and the Department reply was sent on 7/26/2024. MP1 Mid permit review: The company reported their response is in progress with roughly half the deficiencies addressed. We discussed and encouraged submitting the items that are complete so that the list can be reduced moving this action forward. Air Resource Protection: There were no activities on site to promote production of air particulates. Backfilling & Grading: A portion of Pit 16 is being evaluated as an area to conduct the annual grading commitment of 25,000 cy. Contaminant Control: The Land farm had ripper furrows. Judging by vegetation the ripping consistently occurred in the same rows limiting the usefulness of the treatment. It was reported that a new equipment operator will be taking this task over. (July photo #1) Fish & Wildlife: A herd of prong horn antelope were observed in reclamation. Hydrology: Conditions were very dry. Water was present where voids backfilled from lakeside groundwater or where the catchment of large drainage areas store large volumes of the season's runoff. Mine Plan:

The operator asked about permanent cessation status for the permit. Changing the permit's status will become available after MP1 is complete.

Vegetation:

A weed contractor has been out for thistle treatment and is scheduled to be back in August for tamarisk and other species. Note that the tamarisk in the E Pit/North haul ramp SW 1/4 of Section 8 has specimens escaping to the south (July Photo # 2, 3) and north. Treatment should continue in the areas marked as weed spraying on both the 2022 and 2023 field maps.

NOTE: Follow-up, Maintenance Items, Non-Compliance will display on next page.

FOLLOW-UP AND MAINTENANCE SECTION

Follow-Up Item Summary

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Narrative: See Photo 12 in April 2024 Inspection Report for detailed map of Field D21uss-sh-F17, including bare areas examined in April, and additional expanse of bare areas in central and eastern portions of this field. Areas of bare ground where vegetation does not appear to be establishing are concerns for weed encroachment, erosion, soil stabilization, and areas that are not trending toward Phase III reclamation and will need follow-up examination by the June and/or July 2024 inspectors. Based on the 2023 Annual Mine Report – Reclamation Methods Data Sheet - Field D21uss-sh-F17 was seeded with Upland Shrub Steppe seed mix, with additional shrubs seeded.

June 20, 2024, Aerial: A portion of this field is clearly not as well vegetated as the rest. A ground investigation would be required to determine if adequate growth has established. (See Photo 1).

July 25, 2024: This area was not viewed. Record High temperatures and smoke from fires inhibited long hikes, and fire risk inhibited vehicle travel across vegetated areas.

Maintenance Item Summary

Non-Compliance Item Summary

Signature of Inspector(s):

Julian Calabrese
Allison Calkins
Joshua Bridgeman

Date: August 7, 2024

Reviewed by:

Emily Lodman

Date: August 7, 2024

Coal Mining Section
Inspection Photo Log
Permit: Decker (West)

Inspector(s): Julian Calabrese, Alli Calkins, Josh Bridgeman

Date: 07/24/2024



Photo #: 1

File: west_decker_soil_farm_1.JPG

Topic: Contaminant Control

Location: -106.83868, 45.06282

Date, Time: 2024/07/25, 09:06:58

Description: Landfarm demonstrating vegetation growth in furrow ridges where tillage was not occurring.



Photo #: 2

File: west_decker_tamarisk_1.JPG

Topic: Vegetation

Location: -106.86312, 45.05765

Date, Time: 2024/07/25, 08:46:37

Description: Tamarisk escaping south out of northern E Pit Ramp for next weed treatment event.



Photo #: 3

File: west_decker_tamarisk_2.JPG

Topic: Vegetation

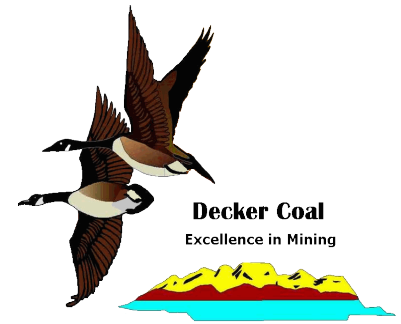
Location: -106.86313, 45.05766

Date, Time: 2024/07/25, 08:47:01

Description: Tamarisk that has escaped south out of the E Pit north ramp. These are next to treated stems from 2023 treatment as marked on the 2023 annual report map.



August 1, 2024



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

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 ARM 17.24.723. 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)(i): Please update bond maps as appropriate in meeting commitments approved through MR200.

MR208 Mid Permit Review

August 1, 2024

Page 3

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

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Temple', written over a horizontal line.

Sabrina Temple

Permit Coordinator

Email: s.temple@deckercoal.com

Phone: (406) 300-0929

**EXHIBIT****14**

U.S. DEPT. OF THE INTERIOR OFFICE OF SURFACE MINING Mine Site Evaluation State Program



1. Permittee/Person DECKER COAL COMPANY LLC		9. Permit Number C-1987-001C		10. Permit Type PP									
2. Address PO BOX 12		11. Field Visit Date 8/14/2024 mm - dd - yyyy		12. Purpose OPI									
3. City DECKER		14. Permit Status A		15. Site Status MC									
4. State MT		16. Facility Type ADFG		13. SRA Present Y									
5. Zip Code 59025		17. OSM Office # 010		18. CCID # 									
6. Phone Number 		19. Land Code SF		20. M.S.H.A. ID # 24-00839									
7. Operator Name, if Different than Permittee DECKER COAL CO		21. State Abbrev. MT		22. County/Burrough BIG HORN									
8. Mine Name WEST DECKER		23. AVS Permittee Entity ID Number 255589		24. State Office 									
25. Hours <table border="1" style="width:100%; border-collapse: collapse;"><tr><td>2.0</td><td>a. Permit Review</td></tr><tr><td>2.0</td><td>b. Site Visit Time</td></tr><tr><td>3.0</td><td>c. Travel Time</td></tr><tr><td>2.0</td><td>d. Report Writing</td></tr></table>		2.0	a. Permit Review	2.0	b. Site Visit Time	3.0	c. Travel Time	2.0	d. Report Writing	26. Signature Block Signature: Frank Bartlett, ID#549 Inspector's Name: Date: 8/19/2024		27. Reviewing Official: Signature: Reviewer's Name: Date:	
2.0	a. Permit Review												
2.0	b. Site Visit Time												
3.0	c. Travel Time												
2.0	d. Report Writing												
Permit Type - Item 10 IP = Interim Program PP = Permanent Program NP = No Permit													
Purpose Type Codes - Item 12 Oxx...Oversight Rfx...Reclamation Fees CCR...Citizen Complaint Referral (non-site visit) Axx...Assistance Fxx...Federal Actions CC...Citizen Complaint (initial site visit) CCF...Assistance													
Joint Inspection - Item 13 A joint inspection is when a state inspector accompanies an OSM inspector at any time during the review of the mine site													
Permit Status - Item 14 A Active: Coal mining activities occurring or permitted but not yet disturbed. IN Inactive (Permanent Program Permit): Phase II completed or Temporary Cessation of Operations. (Interim Program Permit): Coal mining completed and reclamation activities initiated. BR Bond Release: Reclamation completed and State Regulatory Authority(RA) has released all of the bond (Phase III Release). AB Abandoned: All surface and underground coal mining activities have ceased and operator has left the site without completing reclamation as defined in 30 CFR 840.11(g). AB1 Bond Forfeiture: Bond forfeiture officially in process or completed and reclamation in progress or not yet commenced. AB2 Partially Reclaimed Forfeiture: Forfeited site where all bonds have been used to reclaim site, but site not reclaimed to Program standards. AB3 Reclaimed Forfeiture: Forfeited site that has been reclaimed to Program standards. NA Not Applicable: When site is unpermitted.													
Site Status - Item 15 ND No Disturbance: No coal mining and reclamation operations have been started. EX Coal Exploration: Coal exploration operations have started and where coal mining operations have not begun. AP Active Coal Producing: Coal surface mining activities are occurring. AN Active Non-Producing: Active non-producing facility such as tippie or preparation plant. NM No Mining: The Permit Status is active, site is not in Temporary Cessation, no surface coal mining activity, and site not regraded. MC Mining Complete: No mining activity on site, site regraded and awaiting bond release. TC Temporary Cessation: The RA has granted cessation of mining pursuant to 30 CFR 816/817:13(b). P1 Phase I Release: At least Phase I bond release granted for entire permitted area. For interim permits, partial bond release. P2 Phase II Release: At least Phase II bond release for the entire permitted area. P3 Phase III Release: Reclamation completed and the RA has released all bond. NS Non-Site Visit: Status of site not determined. FP Forfeiture Pending: The RA is pursuing actions to revoke the permit, collect the performance bond(s), and/or reclamation of forfeited site is in progress. FR Forfeited and Reclaimed: Forfeiture reclamation completed. FO Abandoned Site: Abandoned site that is permitted but there is no bond. WC Wildcat: Coal mining and reclamation operations have or are taking place and the activity is not covered by the required permits from the RA.													
Facility Type Codes - Item 16 A....Surface D....Ancillary (Haulroad, Conveyor, and/or Rails H....Exploration Permits K....Government Financed Construction Exemption B....Underground E....Refuse and/or Impoundment I....Notice of Intent to Explore L....Remining site permitted under 30 CFR 785.25 C....Preparation Plant F....Loading Facility and/or Tipple J....Exempt 16 and 2/3 G....Stockpiles													
Small Business Regulatory Enforcement Fairness Act (SBREFA) Your Comments are Important The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).													
Page 1													

U.S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING
Mine Site Evaluation

Permittee/
Person **DECKER COAL COMPANY LLC**

Permit
Number **C-1987-001C**

Field Visit
Date **8/14/2024**

State Program
Continuation Page

28. Performance Standard Categories

Codes:1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited, 7=Permit Defect

A. Administrative

1. 1 Mining within Valid Permit
2. Mining within Bonded Area
3. Terms & Conditions of Permit
4. Liability Insurance
5. Ownership and Control
6. Temporary Cessation
7. AML Rec. Fees - Non-Respondent
8. AML Rec. Fees - Failure to Pay

B. Hydrologic Balance

1. 1 Drainage Control
2. Inspections & Certifications
3. 1 Siltation Structures
4. Discharge Structures
5. Diversions
6. Effluent Limits
7. Ground Water Monitoring
8. Surface Water Monitoring
9. Drainage - Acid-Toxic Materials
10. 1 Impoundments
11. Stream Buffer Zones

C. Topsoil & Subsoil

1. 1 Removal
2. Substitute Materials
3. Storage and Protection
4. 1 Redistribution

D. Backfilling & Grading

1. Exposed Openings
2. 1 Contemporaneous Reclamation
3. Approximate Original Contour
4. 1 Highwall Elimination
5. 1 Steep Slopes (includes downslope)
6. Handling of Acid and Toxic Materials
7. 1 Stabilization (rills and gullies)

E. Excess Spoil Disposal

1. Placement
2. Drainage Control
3. Surface Stabilization
4. Inspections & Certifications

F. Coal Mine Waste (Refuse Piles/Impoundments)

1. Drainage Control
2. Surface Stabilization
3. Placement
4. Inspections & Certifications
5. Impounding Structures

G. Use of Explosives

1. Blaster Certification
2. Distance Prohibitions
3. Blast Survey/Schedule
4. Warnings & Records
5. Control of Adverse Effects

H. Subsidence Control Plan

I. Roads

1. 1 Road Construction
2. Certification
3. Drainage
4. Surfacing and Maintenance
5. 1 Reclamation

J. Signs & Markers

1. 1 Signs
2. Markers

K. Distance Prohibitions

L. Revegetation

1. 1 Vegetative Cover
2. Timing

M. Postmining Land Use

N. Other

General
Performance
Category

Performance Standard Categories 30 CFR Counterparts

A. Administrative

1. Valid Permit 773.11
2. Mining within Bonded Area 773.11
3. Terms & Conditions of Permit 773.17
4. Liability Insurance 800.60
5. Ownership and Control 778.13
6. Temporary Cessation §42.11(e) & §16/817.131
7. AML Rec. Fees - Non-Respondent §70.15(b)
8. AML Rec. Fees - Failure to Pay §70.15(a)

B. Hydrologic Balance (816/817.41-57)

1. Drainage Control 45
2. Inspections & Certifications 49(a)(10)
3. Siltation Structures 46
4. Discharge Structures 47
5. Diversions 43
6. Effluent Limits 42
7. Ground Water Monitoring 41(c)
8. Surface Water Monitoring 41(e)
9. Drainage--Acid - Toxic Materials 41(f)
10. Impoundments 49
11. Stream Buffer Zones 57

C. Topsoil & Subsoil (816/817.22)

1. Removal 22(a)
2. Substitute Materials 22(c)
3. Storage and Protection 22(c)
4. Redistribution 22(d)

D. Backfilling & Grading (816/817.95-107)

1. Exposed Openings §16/817.13, 14, 15, & §23.11 & 21
2. Contemporaneous Reclamation 100
3. Approximate Original Contour 102(a)(1)
4. Highwall Elimination 102(a)(2)
5. Steep Slopes (includes downslope) 107
6. Handling of Acid & Toxic Materials 102(c)
7. Stabilization (rills and gullies) 95(b)

E. Excess Spoil Disposal (816/817.71-74)

1. Placement 71(e)
2. Drainage Control 71(f)
3. Surface Stabilization 71(g)
4. Inspections & Certifications 71(h)

F. Coal Mine Waste (Refuse Piles/Impoundments) (816/817.81-84)

1. Drainage Control 83(a)
2. Surface Stabilization 83(b)
3. Placement 83(c)
4. Inspections and Certifications 83(d)
5. Impounding Structures 84

G. Use of Explosives (816/817.61-68)

1. Blaster Certification 61(c)
2. Distance Prohibitions 61(d)
3. Blast Survey/Schedule 62-64
4. Warnings & Records 66 & 68
5. Control of Adverse Effects 67

H. Subsidence Control Plan (817.121-122)

I. Roads (816/817.150-151)

1. Road Construction 150(c)
2. Certification 151(a)
3. Drainage 150(b)-151(d)
4. Surfacing and Maintenance 150(e)-151(d)
5. Reclamation 150(f)

J. Signs & Markers (816/817.11)

1. Signs 11(a),(b),(c)
2. Markers 11(a),(b),(d),(e),(f)

K. Distance Prohibitions (761.11)

L. Revegetation (816/817.111-116)

1. Vegetative Cover 111 & 116
2. Timing 113

M. Postmining Land Use (816/817.133)

OSM Action

- 1) Deferred to State Action
- 2) TDN Issued
- 3) NOV Issued
- 4) FTA-CO Issued
- 5) IH-CO Issued
- 6) ID-CO Issued (Imminent Danger to Public)
- 7) Previously cited by RA, abatement pending
- 8) Abated during or before OSM inspection
- 9) Follow-up of Federal Action
- 0) Off-site impact with no violation

Off-Site Impacts

- For each type of impact and resource affected, enter "N, D, or J" to describe the degree of off-site impact:
- N - Minor Occurrence
 - D - Moderate Occurrence
 - J - Major Occurrence

CASPER AREA OFFICE
INSPECTION NARRATIVE

COMPANY: Decker Coal Company
MINE: West Decker
PERMIT NO: C1987001C
DATE OF INSPECTION: August 14, 2024
WEATHER: Partly cloudy, mild, warming to 85°F
COMPANY OFFICIALS: Sabrina Temple
STATE OFFICIALS: Mike Glenn, Theo Lewis
OSMRE OFFICIALS: Frank Bartlett *FPB*

Partial Oversight Independent Inspection

The Office of Surface Mining Reclamation and Enforcement (OSMRE) conducted a partial oversight independent inspection of Decker Coal Company's West Decker Mine to review the status of specific items covered below in addition to contemporaneous reclamation. This inspection included a review of previously recorded inspection reports and a site inspection. The permit area is currently active. Access to and around the mine was unrestricted.

Mine Reclamation

The West Decker Mine has a permit commitment of moving 25,000cy of spoil into a pit. This commitment has been met for the year. No additional spoil movement is anticipated at the West Decker Mine as the focus is reclamation at the East Decker Mine. A coal fire was observed in a reclamation field (N1u-F96) (see photos). Decker Mine personnel will continue to monitor this area.

Blasting

No blasting occurs at the West Decker Mine.

Topsoil Handling

All topsoil piles observed were labeled and protected from surface erosion with adequate vegetation establishment, including topsoil piles 70AB and 75C.

Facilities and Land Farm

No issues were noted with the facilities areas. The fueling tanks have been decommissioned. The land farm had not been recently tilled. The MT DEQ suggested sampling the land farm material and if acceptable, dispose of the material thus allowing the West Decker Mine to move towards closing the land farm.

Wildlife

Mule deer and Pronghorn were all observed either in active mining or reclamation during the inspection.

Weed Control

Contracted weed spraying occurred in June. The contractor will return in August for additional weed spraying as needed.

Contemporaneous Reclamation

During evaluation year 2024 (July 1, 2023 – June 30, 2024), the West Decker Mine disturbed 0 acres. Cumulatively (through evaluation year 2024), the East Decker Mine has disturbed a total of 5,578 acres, and has backfilled, graded, top-soiled and seeded 3,369 acres. Approximately 35% of the cumulative disturbed lands consist of facilities, such as buildings, ponds, haul roads, soil and overburden stockpiles and other long-term disturbances. The total current size of the facilities at the West Decker Mine is 1,120 acres. When subtracting the acreage of the facilities from the cumulative disturbance (5,578 acres – 1,120 acres), the ratio of reclamation to net disturbance ($1,120 \text{ acres} / 4,458 \text{ acres}$) is 0.25, or 25% of the cumulative acres disturbed (minus coal facilities) have been reclaimed to the point of being backfilled and graded, top-soiled and seeded.

OSMRE reviewed the 2023 Annual Mining Report submittal by the West Decker Mine, which among other information, provides acres disturbed, acres backfilled and graded, and acres that have achieved various phases of bond release. Based on this information, OSMRE has determined that the West Decker Mine is keeping current with contemporaneous reclamation requirements as defined by the ARM and contained within the permit.

No fugitive dust issues were noted and there were no other specific compliance issues or concerns noted during the field inspection. Photos taken during the inspection are included below.



Coal fire in reclamation. This area was removed from a bond release application area and is being monitored.



Coal fire scorched area in reclamation. This area was removed from a bond release application area and is being monitored.



Coal fire scorched area in reclamation. This area was removed from a bond release application area and is being monitored.

CC: MT DEQ-Coal Section of the Mining Bureau
East Decker Mine



September 9, 2024

Sent via ePermit system

Department of Environmental Quality
Mining Bureau
1520 East Sixth Ave
PO Box 200901
Helena, MT 59620

Permit ID: C1987001C
Revision Type: Minor Revision
Permitting Action: Deficiency Response
Subject: MR207; Bond Calculation-Round 1 Acceptability Deficiency Response

Dear:

The purpose of this letter is to respond and address the deficiency comments on MR207 :

ARM 17.24.1102(3): The pumping costs for dewatering have been removed from the bond calculation summary and total. They must be added back and the total revaluated.

Response: Pumping cost have been updated.

ARM 17.24.1116(5): Please add the following statement to the "Cost Estimate of Reclamation for Bonding" section of the Bond Calculation narrative: "A new bond will be in place before the end of the year in which the revised bond calculation was submitted."

Response: Please provide clarification as to how the above rule requires Decker Coal Company to change the approved permit language. ARM 17.24.1116(5) relates to bond release. Neither monetary bond release or bond liability release are requested as part of the annual bond calculation.

ARM 17.24.303(1)(c): The ePermit system is indicating a change was made to the Surface and Mineral Ownership table, but no change was included in the cover letter. If a change was made to this table, please call out those changes in the deficiency response so they can be adequately reviewed.

Response: No changes were made to the Surface and Mineral Ownership table

ARM 17.24.303(1)(d): The ePermit system is indicating a change was made to the Surface and Mineral Ownership table, but no change was included in the cover letter. If a change was made to this table, please call out those changes in the deficiency response so they can be adequately reviewed.

Response: No changes were made to the Surface and Mineral Ownership table

ARM 17.24.313(1)(b): Please update the "313.1.b Reclamation Time Table" document in your permit. Since no additional mining is proposed, a detailed timetable of reclamation operations is expected. This should also align with Exhibit 313-5 so DEQ can better understand which areas are expected to be addressed with each year's reclamation commitments for Truck Shovel, Dragline/Dozer, and Seeding.

Response: No changes in mining operations have occurred since the 313.1.b Reclamation Time Table document was agreed upon.

ARM 17.24.313(1)(c): Since mining operations have ended at West Decker, please use the PMT instead of an Interim Bond Surface as final topography in the bond calculations.

Please update the bond calculation spreadsheet with 2024 costs.

In the current submittal overall cut and fill volumes do not appear to balance. The cut volume is about 40 million cubic yards while fill volume is roughly 33 million cubic yards. In the next submittal please demonstrate that the proposed final topography can be achieved.

In reference to the "Overburden Material Movement Determinations" on Page 6 of the Bond Calculation narrative please show (on relevant drawings) the "polylines (drawn) between cut and fill centroids" used to determine "haul distance and grade parameters" for each of the dozer and truck/shovel polygons. Please also include centroid elevations or other data necessary to confirm reported "grade parameters".

Dozer and truck/shovel cut and fill polygon volumes presented in the tables do not appear to be entirely accurate. Dozer polygon DZ01, for example, shows a cut volume of 2,468,113 lcy and a fill volume of 2,452,447 lcy. AutoCAD/Carlson modeling of the same polygon yields 1,958,667 lcy of cut volume and 2,374,076 lcy of fill. Please ensure accurate volumes in the next submittal.

Response: No changes have been made to mining operations since the last bond calculation in 2019. DCC will update the bond calculation with the minimal earthwork volumes and current costs. As noted in the mid permit review (MP1) under ARM 17.24.313(1)(d)(iv) the currently approved postmine topography includes areas of mine disturbance from coal cuts that were not mined. Once DEQ approves permanent cessation of West Decker Mine, the PMT will need to be updated to account for cuts that will not be mined. DCC will use the PMT for the bond calculation after revisions to the PMT have been agreed upon.

Bond calculation spreadsheet has been updated with 2024 costs.

The changes to cut and fill volumes has been minimal since the approved bond calculation in 2019. Please revisit this calculation and other previously approved calculations for

September 9, 2024

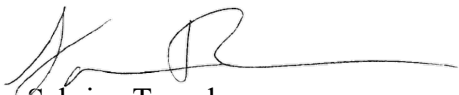
Page 3 of 3

clarification. Some additional information relating to calculations can be found in West Decker's Backfill and Grading plan.

No changes have been made to overburden material movement determination methods since the previously approved bond calculations. DZ02 and DZ34 are the only polygons that have had a volume change since the 2019 bond calculation.

Dozer polygons DZ02 and DZ34 are the only polygons that have had a volume change since the 2019 bond calculation. Please revisit this calculation and other previously approved calculations for clarification. Some additional information relating to calculations can be found in West Decker's Backfill and Grading plan.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Temple', with a long horizontal flourish extending to the right.

Sabrina Temple

Permit Coordinator

Email: s.temple@deckercoal.com

Phone: (406) 300-0929

October 14, 2024

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 209
Reference #: MR209 COI Update

Dear Eric:

Decker Coal Company is submitting Minor Revision 209 to update the Certificate of Insurance (COI) in ePermit.

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

Sincerely,

A handwritten signature in black ink, appearing to read "S. Temple", written over a horizontal line.

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



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana/Dakotas State Office
5001 Southgate Drive
Billings, MT 59101
<https://www.blm.gov/montana-dakotas>

EXHIBIT

17

October 18, 2024

In Reply Refer To:

MTM 0057934, MTM 0057934A, MTM 0061685, MTM 037604,
MTM 101098, MTM 101100, MTM 105019, MTM 107327, MTM 083088
3482 (921.jz)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Mr. Mathew Guptill	:	
General Manager	:	Federal Coal Leases
Decker Coal Company	:	West Decker Mine
P.O. Box 12	:	
Decker, MT 59025-0012	:	

Resource Recovery and Protection Plan Approved

On March 6, 2024, the Bureau of Land Management (BLM) received a Resource Recovery and Protection Plan (R2P2) modification from Decker Mining Company (Decker) requesting that eight federal coal leases be declared mined out at their West Decker property to include:

MTM 0057934, MTM 0057934A, MTM 0061685, MTM 037604, MTM 101098, MTM 101100, MTM 105019, and MTM 107327

Following review of the application, we find it to be complete and in conformance with the requirements of the Minerals Leasing Act of 1920, as amended, and the applicable regulations at 43 CFR 3480. BLM approves this R2P2 effective August 6, 2024.

The BLM conducted a mined-out inspection of the West Decker Mine on August 1, 2024, followed by a review of all production verification submissions by Decker over the life of the leases. The BLM found that while some coal resource may remain, there are no recoverable reserves remaining in the subject leases due to the Decker Mine bankruptcy, lack of customer, and negative cash flow to mine the leases. Therefore, the BLM, Montana Dakotas State Office, Branch of Solid Minerals declares the subject leases "mined-out" at the West Decker Mine. The Decker mine is relieved of any continued operation requirement and as such, Logical Mining Unit MTM 083088 is hereby dissolved.

Mineral Leasing Act of 1920 (MLA Diligence Requirements)

The federal coal leases listed in this letter have met their MLA Section 7(b) diligence requirements. The regulations are silent regarding the MLA diligence obligations under Section 7(b) now that the leases are mined-out; however, the Interior Board of Land Appeals (IBLA) issued a decision April 13, 1995, which provides guidance for this situation (Ark Land Co., 132 IBLA 241).

The regulation at 43 CFR 3472.1-2(e)(5) provides that a mined-out coal lease can be held for reclamation purposes without the lessee being disqualified from holding other mineral leases under Section 2(a)(2)(A) of the MLA. The IBLA references this regulation in its decision and offers the interpretation that, since there are no recoverable reserves in a mined-out lease, there is no production requirement. The IBLA then applies this interpretation to the MLA Section 7(b) diligence requirements:

In the absence of recoverable coal reserves, we find that the lessee is also discharged of the requirement to maintain continued operations (or pay advance royalty in lieu of continued production)

Based on this IBLA interpretation, West Decker may hold the above listed coal leases for reclamation purposes and does not have to maintain continued operations or pay advance royalty.

Appeal Information

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board pursuant to Part 4, Subpart B, 4.21 of Title 43, Code of Federal Regulations, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions, please contact Ms. Tessa Wallace at 406.896.5086 and tlwallace@blm.gov.

Sincerely,

TESSA WALLACE

Digitally signed by TESSA
WALLACE
Date: 2024.10.18 09:16:07 -06'00'

Tessa Wallace
Chief, Branch of Solid Minerals

Enclosures (2):

- 1- West Decker Specific Lease Locations
- 2- Appeal Information Sheet

cc:

Office of Natural Resources Revenue
Solid Minerals and Geothermal ACM
PO Box 25165, Mail Stop 62300B
Denver, CO 80225-0165

Mr. Charlie Kwak
Office of Surface Mine Reclamation and Enforcement
P.O. Box 25065
Lakewood, Colorado 80225-0065

Mr. Franklin Bartlett
Program Analyst
Office of Surface Mining Reclamation and Enforcement
Casper Area Office
100 East "B" St., Room 4100
Casper, WY 82602

Mr. Eric Dahlgren
Acting Bureau Chief, Mining Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59260

Attachment 1:

West Decker Specific Lease Locations

MTM 0057934

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 03, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N2SE $\frac{1}{4}$ SW $\frac{1}{4}$, E2NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,

A tract of land in the SE $\frac{1}{4}$ more particularly described as follows: Beginning at the South $\frac{1}{4}$ of Section 3, being the True Point of Beginning; thence N2°09'31" a distance of 1301.27 feet; thence N87°16'58"E a distance of 664.02ft; thence N2°10'14" a distance of 435 feet to a point on a curve; thence along said curve to the left, having a radius of 2,415.00 feet and a central angle of 7°58'04", an arc distance of 335.79 feet to the point of tangency; Tangent bearing into curve being S34°05'33E and tangent bearing out of curve being S42°03'37"E, Chord bearing from P.C. to P.T. being S38°18'24" and chord distance to P.T. being 335.52 feet; thence S45°00'08E a distance of 268.93 feet; thence S46°17'46"E a distance of 408.54 feet; thence S2°15'18" a distance of 318.62 feet; thence S87°19'49"W a distance of 664.55 feet; thence S2°12'22"E a distance of 651.16 feet to a point on the south line of Section 3; thence S87°22'40"W along the south line a distance of 665.09 to the True Point of Beginning at the South $\frac{1}{4}$ of Section 3.

Sec. 04, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 10, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$

The area described aggregate 200.17 acres.

MTM 0057934A

Montana Prime Meridian, Montana

T. 09 S., R 40E

Sec 03, A tract of land in the East $\frac{1}{2}$, more particularly described as follows: Beginning at the south $\frac{1}{4}$ of Section 3, thence N2°09'29"W, a distance of 1,301.27 feet to the True Point of Beginning; thence N2°09' 29W a distance of 1,960.95; thence N87°19'22"E a distance of 249.50 feet; thence S14°48'25"E a distance of 461.25 feet; thence S14°48'25" a distance of 273.17 feet to the point of spiral curve to the left; thence along said spiral curve a distance of 268.98 feet, through a 3°45' spiral angle, to the point of a circular curve to the left; thence along said circular curve to the left, having a radius of 2200.08 feet, through a central angle of 15°14'38", an arc distance of 585.29 feet (from the "point of spiral-to-curve", S26°10'42"E a chord distance of 583.61 feet to the end of the circular curve to the left); thence S2°10'14" a distance of 435.11 feet; thence S87°16'58"W a distance of 664.02 feet to the "True Point of Beginning"; thence S2°09'31"W a distance of 1301.27 feet to the "Point of Beginning" at the S $\frac{1}{4}$ of section 3.

Sec. 04, SW $\frac{1}{4}$ Lot 2

Sec. 10, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

The area described aggregate 120.73 acres.

MTM 0061685

Montana Prime Meridian, Montana

T. 08 S., R. 40 E.

Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 33, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

T. 09 S., R. 40 E.

Sec. 04, NE $\frac{1}{4}$ Lot 3, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 09, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

The area described aggregate 250.1 acres.

MTM 037604

Montana Prime Meridian, Montana

T. 09 S., T. 40 E.,

Sec. 05, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 08, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

The area described aggregate 50.0 acres.

MTM 101098

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec.03, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

The area described aggregate 40.0 acres.

MTM 101100

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 08 SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;

The area described aggregate 210.0 acres.

MTM 105019

Montana Prime Meridian, Montana

T. 09 S., R. 40 E.,

Sec. 08, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 09, W $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 17, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 20, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

The area described aggregate 390.0 acres.

MTM 107327

Montana Prime Meridian, Montana

T.09 S., R. 40 E.,

Sec. 03 $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$,
 $SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, and the portion of the $SE\frac{1}{4}SE\frac{1}{4}$, lying southwesterly of the
southwesterly right-of-way of the Burlington Northern Santa Fe Railroad.;

Sec. 04, $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;

Sec. 09, $N\frac{1}{2}NE\frac{1}{4}$;

Sec. 10, $NE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$;

The area described aggregate 530.57 acres.

November 8, 2024

Sent via ePermit system

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

Permit ID: C1987001C
Revision Type: Minor Revision
Permitting Action: Deficiency
Subject: MR207; Bond Calculation-Round 2 Acceptability Deficiency

Dear Tyler:

The Department of Environmental Quality (DEQ) has reviewed your submittal. The following deficiencies must be adequately addressed before DEQ can determine the application acceptable:

Administrative Rules of Montana (ARM) 17.24.313(1)(b): Please update the **313.1.b Reclamation Timetable** document in your permit. The version currently in the permit is general and not year specific. Since no additional mining is proposed, a detailed timetable of reclamation operations is expected. This schedule should align with Exhibit 313-5 so DEQ can better understand which areas are expected to be addressed with each year's reclamation commitments for Truck Shovel, Dragline/Dozer, and Seeding. Section 82-4-234, Montana Code Annotated (MCA), requires "grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation (...)". Please ensure the **313.1.b Reclamation Timetable** reflects the current operations at the West Decker mine.

ARM 17.24.313(1)(c): Since mining operations have ended at West Decker, an updated PMT will be required. Based on the comparison of the existing PMT and the Interim bond surface, Exhibit 1, there is a 5MCY shortfall in the material movement component of the bond calculation. Please move forward with addressing the bond calculation based on the interim surface.

Please provide proof of availability for 993k loaders and 730E trucks. Mobilization timeframe also needs to be provided for DEQ consideration.

The Loader & Truck fleet needs to be updated to represent realistic utilization. Please update the number of trucks in the fleet from 4.5 to 5.

Facilities removal does not include all necessary elements for successful reclamation. Each building and associated structure should have the following RS Means cost codes applied: Concrete slab demolition (specific to reinforcement and slab thickness), Footer demolition (specific to reinforcement and dimensions), Steel building demolition (volumetric calculation to estimate demolition cost either by explosion/implosion or mechanical means), and Concrete disposal (on or off site)(applied to each building specifically).

Seeding costs per acre within revegetation costs have changed from the initial submittal. DEQ has no record of 2024 seeding efforts. Please adjust these values to align with the original submittal.

Pit pumping assumptions for Pit 16S should include inflow considerations from historic data. MPDES outfall flow data for WD007 during 2014-2015 shows average inflow into Pit 16S ranging from 5-6 acre/ft/day. Please recalculate pumping costs considering specific inflow conditions and re-submit.

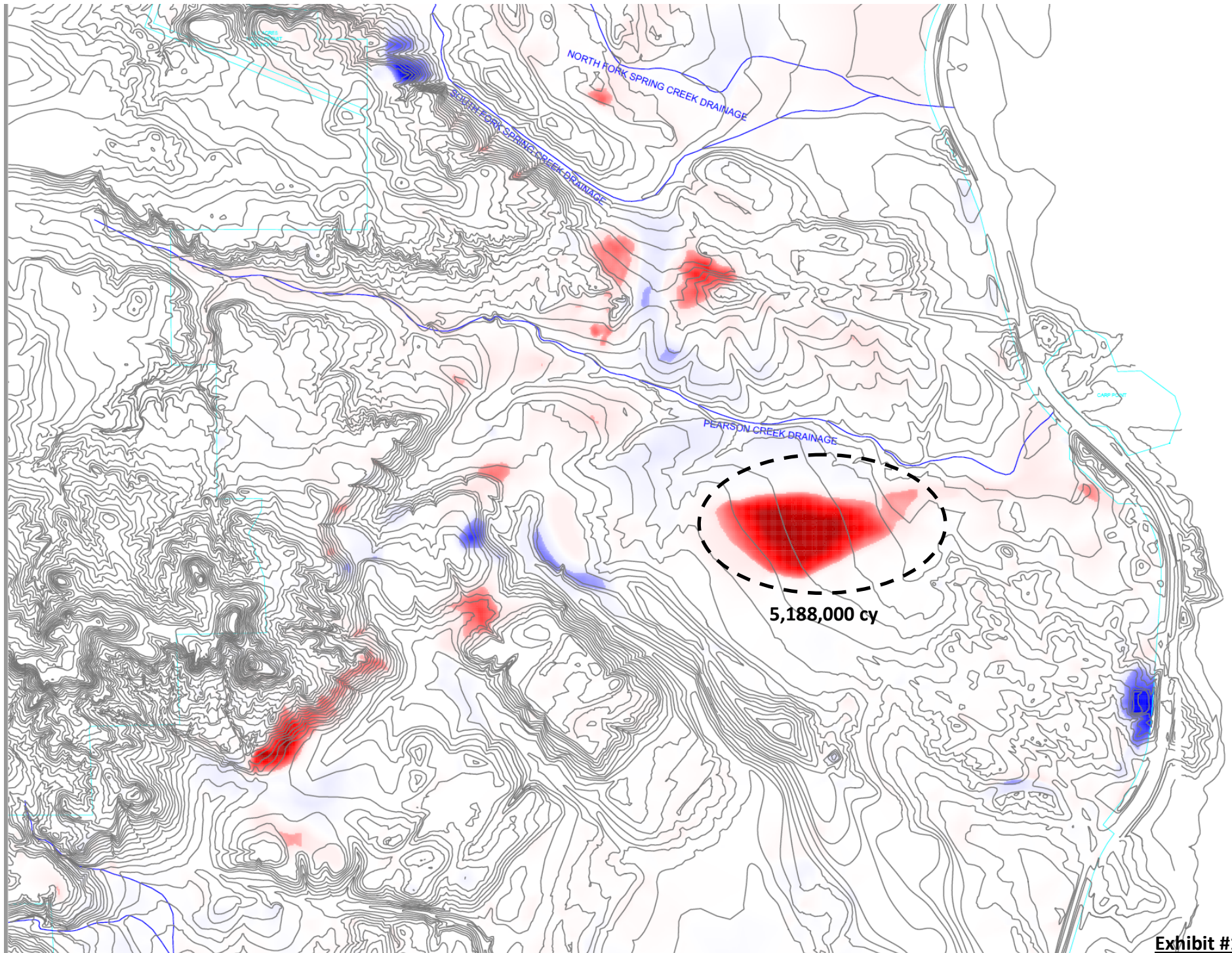
Please feel free to contact me with questions regarding this letter.

Sincerely,



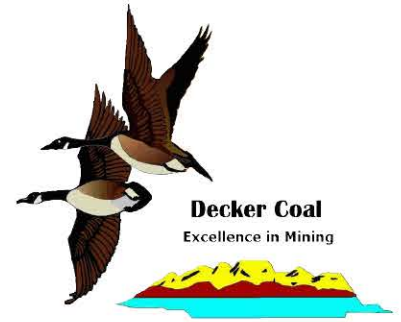
Eric Dahlgren, Acting Bureau Chief
Mining Bureau
Phone: 406-444-5245
Email: edahlgren@mt.gov

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



November 21, 2024

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 210
Reference #: MR210 Land Update

Dear Eric:

Decker Coal Company is requesting the removal of 2.207 acres of Railroad ROW from our permit area. This land was purchased by BNSF Railway Company on October 4, 2024. Please see the attached Bill of Sale and Assignment.

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

Sincerely,

A handwritten signature in black ink, appearing to read "S. Temple", written over a horizontal line.

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

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("**Bill of Sale**") is entered into to be effective as of this 04th day of October, 2024 (the "**Effective Date**"), by **DECKER COAL COMPANY, LLC**, a Montana limited liability company ("**Seller**"), for the benefit of **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Purchaser**").

WHEREAS, Seller is conveying to Purchaser certain real property located in Big Horn County, Montana, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference ("**Land**"), and assigning to Purchaser all of Seller's right, title, and interest in and to that certain Right-of-Way Deed by and between Seller and The Montana Department of Natural Resources & Conservation, as successor in interest to The Montana Water Resources Board, dated May 25, 1971, and recorded in Book 78, Page 239 of the Deed Records of Big Horn County, Montana as to that certain portion of land being more particularly described on **Exhibit "B"** attached hereto and incorporated herein by reference ("**Railroad ROW Area**"), together with certain improvements located on the Land and the Railroad ROW Area; and

WHEREAS, Seller desires to assign to Purchaser certain rights and interests relating to the Land, Railroad ROW Area, and/or Improvements.

NOW, THEREFORE, Seller, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Seller by Purchaser, does hereby grant, sell, assign, transfer, convey and deliver to Purchaser all of Sellers' right, title, and interest in and to the following:

1. All utility infrastructure, transportation infrastructure, trackage and appurtenances thereto (including crossings, ballast, ties, rail, switches, and all associated hardware), and other improvements, if any, located on the Land (the "**Land Improvements**");
2. All that certain trackage and appurtenances (including crossings, ballast, ties, rail, switches, and all associated hardware) located on the Railroad ROW Area (together with the Land Improvements being collectively referred to in this Bill of Sale and Assignment as the "**Improvements**")
3. All tangible personal property located on the Land and Railroad ROW Area and used in connection with the operation or maintenance of the Improvements, together with any replacements or additions thereto between the Effective Date and Closing, if any (collectively, the "**Personal Property**");
4. All permits, licenses, certifications, authorizations, entitlements, and approvals of any governmental authority relating to the ownership, construction, use, development, maintenance, or operation of the Land and Improvements including, but not limited to, any right-of-way permits, if any (collectively, "**Permits**"), save and except that certain West Decker Coal Permit No. C1987001C issued to Seller by the State of Montana, acting through the Department of Environmental Quality, and the United States of America, acting through the Department of the

Interior, Office of Surface Mining Reclamation and Enforcement, and further save and except the Existing Coal Lease defined and described below;

5. Any other assignable rights affecting any portion of the above-described Land, Improvements, and Personal Property, but only if Purchaser desires to receive assignment thereof, but specifically excluding the Existing Coal Lease, defined below ("**Other Rights**"); and

6. Seller's interest in and to the Surviving Contracts and Leases, which are listed on **Exhibit "C"** attached hereto and incorporated herein, but specifically excluding the Existing Coal Lease, defined below.

All of the above described interests are collectively referred to in this Bill of Sale as the "**Property**."

Seller warrants to Purchaser that Seller is the sole owner of all right, title, and interest in and to the Property subject only to the terms and conditions contained in the Permits and all of the "**Permitted Encumbrances**" as defined in that certain Special Warranty Deed of even date herewith from Seller to Purchaser relating to the conveyance of the Land and Land Improvements.

Reference is made to that certain Modified Coal Lease dated October 1, 1963, under Serial No. MTM 057934A (as may be amended, the "**Existing Coal Lease**"), between the United States of America, through the Bureau of Land Management, as Lessor, and Western Minerals, Inc. and Kiewit Coal Properties, Inc., a joint venture d/b/a Decker Coal Company, as Lessee, which affects a portion of the Property. Notwithstanding anything to the contrary in this Bill of Sale, the Existing Coal Lease is excluded from the conveyance and assignment of the Property, and Seller reserves and retains its rights and obligations under the Existing Coal Lease. Seller does not intend to assign, transfer, or convey the Existing Coal Lease, nor any of its rights or obligations as Lessee thereunder, to Purchaser by this Bill of Sale. Likewise, Purchaser does not intend to assume the Existing Coal Lease, nor any of the Lessee's rights or obligations thereunder, from Seller by this Bill of Sale.

This Bill of Sale shall be construed and enforced in accordance with and governed by the laws of the State of Montana.

This Bill of sale shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

This Bill of Sale may be executed in counterparts, each of which shall be deemed to be an original; but, such counterpart when taken together shall constitute but one agreement

To have and to hold the Property unto Purchaser, its legal representatives and assigns forever.

WITNESS THE EXECUTION HEREOF to be effective as of October 04, 2024 (the "Effective Date").

GRANTOR:

DECKER COAL COMPANY, LLC,
a Montana limited liability company

By: [Signature]
Name: Tay Torozzi
Title: President and CEO

THE STATE OF Utah §
§
COUNTY OF Salt Lake §

This instrument was acknowledged before me on the 26 day of September, 2024, but to be effective as of the Effective Date, by Tay Torozzi, President and CEO of **Decker Coal Company, LLC**, a Montana limited liability company, on behalf of said limited liability company.



Kathie Chahanovich
Notary Public, State of Utah

Kathie Chahanovich
Notary's Typed or Printed Name

My Commission Expires: 2/22/28

Exhibit A

Legal Description of the Land

PARCEL 1

That part of Sections 10 and 15, Township 9 South, Range 40 East, of the Principal Montana Meridian, in Big Horn County, Montana, described as Parcel 1, of Certificate of Survey No. 778 on file in the office of the Clerk and Recorder of said County, under Document #370826.

PARCEL 2

That part of Sections 10 and 15, Township 9 South, Range 40 East, of the Principal Montana Meridian, in Big Horn County, Montana, described as Parcel 2, of Certificate of Survey No. 778 on file in the office of the Clerk and Recorder of said County, under Document #370826.

Exhibit "B"

Legal Description of the Railroad ROW Area

A PARCEL OF LAND SITUATED WITHIN THE NORTHEAST QUARTER OF SECTION 15 TOWNSHIP 9 SOUTH, RANGE 40 EAST, M.P.M., BIG HORN COUNTY, MONTANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 10, BEING MARKED BY A 3 1/4" BRASS CAP FROM WHENCE THE EAST QUARTER CORNER OF SAID SECTION 10 BEARS N 87°42'21" E, A DISTANCE OF 5296.16 FEET, BEING MARKED BY A BRASS CAP;

THENCE S 46°47'13" E, A DISTANCE OF 4929.22 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 78, PAGE 239 OF THE BIG HORN COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N 16°35'32" E, A DISTANCE OF 552.15 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL;

THENCE ALONG THE NORTHERLY BOUNDARY OF THAT PARCEL DESCRIBED IN BOOK 78, PAGE 239, S 58°53'02" E, A DISTANCE OF 154.95 FEET;

THENCE S 16°35'32" W, A DISTANCE OF 720.87 FEET TO A POINT ON THE MOST SOUTHEASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 78, PAGE 239;

THENCE ALONG SAID SOUTHERLY LINE THE NEXT TWO (2) COURSES;

FIRST N 39°20'02" W, A DISTANCE OF 15.09 FEET;

THENCE N 18°02'02" W, A DISTANCE OF 241.98 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 96,140 SQUARE FEET OR 2.207 ACRES, MORE OR LESS.

Exhibit "C"

Surviving Contracts and Leases

None.



January 9, 2025

Sent via ePermit system

Department of Environmental Quality
Mining Bureau
1520 East Sixth Ave
PO Box 200901
Helena, MT 59620

Permit ID: C1987001C
Revision Type: Minor Revision
Permitting Action: Deficiency Response
Subject: MR207; Bond Calculation-Round 2 Acceptability Deficiency Response

Dear:

The purpose of this letter is to respond and address the deficiency comments on MR207 :

ARM 17.24.313(1)(b): Please update the 313.1.b Reclamation Timetable document in your permit. The version currently in the permit is general and not year specific. Since no additional mining is proposed, a detailed timetable of reclamation operations is expected. This schedule should align with Exhibit 313-5 so DEQ can better understand which areas are expected to be addressed with each year's reclamation commitments for Truck Shovel, Dragline/Dozer, and Seeding. Section 82-4-234, Montana Code Annotated (MCA), requires "grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation (...)". Please ensure the 313.1.b Reclamation Timetable reflects the current operations at the West Decker mine.

Response: No changes have been made since the DEQ approved the 313.1.b Reclamation Timetable document. ARM 17.24.313(1)(b) does not have yearly requirements.

ARM 17.24.313(1)(c): Since mining operations have ended at West Decker, an updated PMT will be required. Based on the comparison of the existing PMT and the Interim bond surface, Exhibit 1, there is a 5MCY shortfall in the material movement component of the bond calculation. Please move forward with addressing the bond calculation based on the interim surface.

Please provide proof of availability for 993k loaders and 730E trucks. Mobilization timeframe also needs to be provided for DEQ consideration.

The Loader & Truck fleet needs to be updated to represent realistic utilization. Please update the number of trucks in the fleet from 4.5 to 5.

January 9, 2025

Page 2 of 2

Facilities removal does not include all necessary elements for successful reclamation. Each building and associated structure should have the following RS Means cost codes applied: Concrete slab demolition (specific to reinforcement and slab thickness), Footer demolition (specific to reinforcement and dimensions), Steel building demolition (volumetric calculation to estimate demolition cost either by explosion/implosion or mechanical means), and Concrete disposal (on or off site)(applied to each building specifically).

Seeding costs per acre do not align with historic actual seed costs for 2018 and 2021 reported in prior revisions. Please correct and re-submit.

Pit pumping assumptions for Pit 16S should include inflow considerations from historic data. MPDES outfall flow data for WD007 during 2014-2015 shows average inflow into Pit 16S ranging from 5-6 acre/ft/day. Please recalculate pumping costs considering specific inflow conditions and re-submit.

Response: Calculations are based on the interim surface.

Proof of availability for 993k loaders and 730E trucks included.

Updated to number of trucks in the fleet to 5.

No changes have been made to facilities since the previously approved bond calculation. Current RS means numbers were provided by the DEQ for this calculation.

Seeding costs were updated based on quotes received from subcontractors in 2024.

Inflow is included in this calculation.

Sincerely,



Sabrina Temple

Permit Coordinator

Email:

s.temple@deckercoal.com

Phone: (406) 300-0929



MINING BUREAU FIELD INSPECTION REPORT

Coal Section
Department of Environmental Quality
P. O. Box 200901
Helena MT 59620-0901
(406) 444-4970

Permit Information	Inspection Information
Permit Number: C1987001C Mine Name: West Decker Coal Mine Operator Name: Decker Coal Company, LLC Operator Address: P.O. Box 12 Decker, MT 59025-0000	Inspector(s): Julian Calabrese, Joshua Bridgeman Inspection Type: Partial Inspection Reason: Periodic Inspection Date(s): 1/28/2025 1:00:00 PM, 1/28/2025 Other Persons Present: Sabrina Temple

Inspection Topic Summary	
NOTE: Y=Observed, F=Follow-Up Item, M=Maintenance Item, N=Non-Compliance, Blank =Not Observed	
YAdministrative YAir Resource ProtectionBackfill & Grading YBlasting YCoal Conservation YContaminant ControlCultural Resources YDrillingExcavation YFacilities YFish & Wildlife	YHydrologyMine PlanOff-Site ImpactOtherPermit StipulationsProcessing Waste YRail Loops and RoadsSubsidenceSediment ControlSigns & MarkersSoilsVegetation

Inspection Topic Observations
Administrative: The West Decker permit has the following outstanding revisions and actions: MR207: Bond calculation. Decker sent a response to the round 2 acceptability deficiency on 01/09/2025. The response is currently under review by DEQ. MR208: Various updates. DEQ sent an acceptability deficiency on 09/16/2024. MR210: BNSF Railroad right-of-way. Decker filed the MR on 11/21/2024. DEQ sent an acceptability deficiency on 12/19/2024. AD6: Request for permanent cessation. Decker sent the request to DEQ on 02/01/2024. MP1: DEQ sent a deficiency to Decker on 09/27/2023. Air Resource Protection: Decker recently received 4-5 inches of snow, and the weather was cold with minimal wind. No fugitive dust was noted during the inspection. Blasting: No blasting is being conducted at West Decker. Coal Conservation: Some coal smokers were observed along the west portion of Pit 16 along the haul road. Contaminant Control: No hydrocarbon or other regulated material spills were observed. The diesel storage tanks and containment were inspected and appeared to be in good condition (Photo #1). Drilling:

Drilling is not currently being conducted at West Decker.

Facilities:

The facilities and staged equipment were inspected and appeared to be in good condition (Photo #2).

Fish & Wildlife:

Mule deer were observed within the permit site.

Hydrology:

Pond 21 and Sump 15 were observed. These ponds were frozen.

Rail Loops and Roads:

Roads were dry and generally in good condition

NOTE: Follow-up, Maintenance Items, Non-Compliance will display on next page.

FOLLOW-UP AND MAINTENANCE SECTION

Follow-Up Item Summary

Maintenance Item Summary

Non-Compliance Item Summary

Signature of Inspector(s):	Date: February 6, 2025
Julian Calabrese	
Joshua Bridgeman	
Reviewed by:	Date: February 6, 2025
Emily Lodman	

Coal Mining Section
Inspection Photo Log
Permit: Decker (West)

Inspector(s): Joshua Bridgeman, Julian Calabrese

Date: 01/28/2025



Photo #: 1

File: IMG_5002.JPG

Topic: Contaminant Control

Location: -106.82427, 45.05611

Date, Time: 2025/01/28, 13:06:13

Description: Diesel storage containment.



Photo #: 2

File: IMG_5004.JPG

Topic: Facilities

Location: -106.82439, 45.05425

Date, Time: 2025/01/28, 13:07:23

Description: Staged heavy equipment.





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 *it* 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(l)(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, 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

Victoria A. Marquis
500 Transwestern Plaza II
490 North 31st Street, Suite 500
P. O. Box 2529
Billings, MT 59103-2529
DIRECT DIAL - 406-255-7298
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vmarquis@crowleyfleck.com

February 28, 2025

VIA EMAIL ONLY

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
edahlgren@mt.gov

RE: *Response to January 29, 2025 Order to Revise Permit C1987001C*
Our File No. 025087-000042

Dear Mr. Dahlgren,

Please accept this letter as Decker Coal Company's ("Decker") response to DEQ's January 29, 2025 Order to Revise Permit C1987001C (West Decker Mine) ("Order"). By submitting this response, Decker does not waive any claims, arguments, contentions, or issues within or relevant to *In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1987001C (West Decker Mine) and Permit C1983007 (East Decker Mine)*, currently pending before the Board of Environmental Review, Case No. BER 2025-01 SM. Decker offers this response in a good faith effort to clarify misunderstandings and resolve issues where possible.

Decker does not believe that DEQ has authority to order revisions to the permit. See Amended Request for Hearing, *In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1987001C (West Decker Mine) and Permit C1983007 (East Decker Mine)*, Cause No. BER 2025-01 SM (February 28, 2025). Alternatively, and without waiving any claims, arguments, contentions, or issues within or relevant to Cause No. BER 2025-01 SM, Decker provides initial responses below and requests an extension of time to provide additional responses to DEQ's Order.

Revision of the PMT and hydrologic restoration plan cannot reasonably be completed by a consultant, reviewed by Decker, and submitted to DEQ until approximately September 2025. **Exhibit A**, attached. The PMT will drive many of the other reclamation tasks for which DEQ requested additional information, including pit reclamation and soil laydown. Therefore, if

required to revise the PMT, Decker requests an extension until September 30, 2025 to respond to the Order. In the meantime, Decker offers the following information and responses:

DEQ requested that Decker “[u]pdate the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1).” The rule requires “a description of the reclamation operations proposed,” which Decker has provided, in compliance with the rule as explained below.

DEQ’s Request: 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.”

Decker’s Response: ARM 17.24.313(1)(b) requires “a detailed timetable for the estimated completion of each major step in the reclamation plan.” While pit backfilling may be considered a “major step in the reclamation plan,” the exact sequence of dragline and truck-shovel operations is not. MR200, including “Exhibit 313-5 R1,” was approved on March 17, 2022 to fulfill requirements of ARM 17.24.313(1). Please see “Exhibit 313-5 R1,” which provides an approved timetable, including details about how much backfill will be completed each year. The 2024 Bond Calculation currently under DEQ review as MR207 includes “EX 313_7_CutFill_24,” which provides additional detail. This figure shows remaining cut and fill, and which type of equipment is predicted to be used in each area. However, due to DEQ’s policy of prohibiting the use of draglines in bond calculations, the dragline is not included. In reality, the dragline is the most efficient and effective reclamation tool and Decker will continue to use it to complete the cut and fill. If the PMT is revised, both “Exhibit 313-5 R1” and “EX 3137 CutFill 24” will be updated to reflect the new PMT.

DEQ’s Request: 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.

Decker’s Response: Please see the 2024 Bond Calculation currently under DEQ review as MR207 includes “EX 313_7_CutFill_24”. Figures within the 2024 Bond Calculation show the plan for backfilling and soil replacement, in compliance with the requirements of ARM 17.24.313(1)(b, d, g).

DEQ’s Request: c) Timetable for mine pit dewatering in relation to the pit backfill sequence(ARM 17.24.313(1)(b, d, g)).

Decker’s Response: Please see Tables 11, 12, and 13 of “Appendix A Tables 1-10_2024 R3”. These tables were included in the 2024 Bond Calculation currently under DEQ review as MR207. The third revision to the 2024 Bond Calculation was submitted to DEQ on January 9, 2025.

DEQ's Request: d) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).

Decker's Response: Please see Table 8 of "Appendix A Tables 1-10_2024 R3".

DEQ's Request: 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.

Decker's Response: MR199 was submitted to fulfill requirements of ARM 17.24.313(1)(h). MR119 received approval August 4, 2021. Crested wheatgrass will be removed from the Pastureland seed mix.

DEQ's Request: 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)).

Decker's Response: Please see the attached letter from CDG Engineers (CDG) describing an estimated timeline for a revised PMT.

DEQ's Request: Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).

Decker's Response: Please see "308.1.d Fire Contingency Plan".

DEQ's Request: Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).

Decker's Response: Please see the Weed Management Plan submitted as MR204, approved January 23, 2024.

DEQ's Request: Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

Decker's Response: The cited rule does not apply to removal of buildings and other support facilities.

DEQ's Request: 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)).

Dahlgren
Decker Coal Company
West Response
February 28, 2025
Page 4 of 4

Decker's Response: Please see the **FACILITIES REMOVAL** section of "313_Bond_24". This document is part of the 2024 Bond Calculation currently under DEQ review as MR207. The third revision to the 2024 Bond Calculation was submitted to the DEQ January 9, 2025.

If you have questions or concerns with this response, please contact me.

Sincerely,

CROWLEY FLECK PLLP

/s/ **Victoria A. Marquis**

VICTORIA A. MARQUIS

VAM:db



CDG Engineers Architects Planners, Inc.



2340 Wetlands Drive, Suite 101
Sheridan, Wyoming 82801
T. 307 673 1644 F. 307 673 1448

www.cdgenengineers.com

February 25, 2025

Ms. Sabrina Temple
Decker Coal Company
12 Lakeshore Drive
Decker, MT 59025

RE: WEST DECKER POST-MINE TOPOGRAPHY PROJECT

Dear Sabrina,

This letter is to confirm our process in advance of redesigning the post-mine topography (PMT) and completing the associated hydrologic control plan for West Decker. Decker Coal Company accepted CDG Engineer's ("CDG") proposal for the project on February 12, 2025 in an email authored by you. We plan to commence work on the project during the week of March 10, 2025 and propose to have a draft PMT for review by mid-May 2025. A final PMT is estimated to be completed by mid-June 2025 at which time work on the hydrologic restoration plan will commence and will be completed by the end of July 2025.

Please contact me if you have any questions regarding this proposed schedule for the project.

Regards,

A handwritten signature in black ink, appearing to read "Ronald E. Destefano".

Ronald E. Destefano, P.E.
Vice-President/ Project Manager
CDG Engineers

cc: M. Morneau

TO: Terisa Oomens, Board Attorney
Elena Hagen, Paralegal
Board of Environmental Review

FROM: Sandy Moisey Scherer, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: April 29, 2025

SUBJECT: Board of Environmental Review Case No. BER 2025-03 HRM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW	
OF THE STATE OF MONTANA	
IN THE MATTER OF: YOGO SAPPHIRE GROUP, LLC EXPLORATION LICENSE NO. 00886	Case No. BER 2025-03 HRM

On April 28, 2025, the BER received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Nick Whitaker Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901	Sam King Chief Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901
---	--

Attachments



**WORDEN
THANE P.C.**
ATTORNEYS AT LAW

Established in 1924

Donovan Worden, Sr.
(1892 – 1967)
Donovan Worden, Jr.
(1918 – 2001)
Jeremy G. Thane
(1927 – 2016)

Ronald A. Bender
Martin S. King
Reid J. Perkins
William E. McCarthy
Amy M. Scott Smith
Chris A. Johnson (MT, WA)
Dana L. Hupp
Martin Rogers

Brand G. Boyar
Natalie L. Black
Elizabeth W. Erickson
Dillon Kato
Erika D. Colstad
Noah P. Hill
Emily Bruner
Erika L. Johnson
Jamie B. Ross (CA)

April 28, 2025

Via email

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
Email: deqbersecretary@mt.gov

Nicholas Whitaker
Attorney
Montana Department of Environmental Quality
E-mail: Nicholas.Whitaker@mt.gov

Re: Yogo Sapphire Group, LLC
Exploration License No. 00886
Our File No. 17573.005

Ms. Scherer:

On behalf of Worden Thane P.C.'s client, Yogo Sapphire Group, LLC, please find attached a notice of appeal of the Montana Department of Environmental Quality's denial of Yogo Sapphire Group's application for an exploration license, along with related exhibits. Please contact my office if you require additional information.

Sincerely,

Dillon Kato
Attorney

Martin S. King
WORDEN THANE P.C.
321 W. Broadway St., Ste. 300
Missoula, MT 59802
(406) 721-3400
mking@wordenthane.com

Electronically Filed with the
Montana Board of Environmental Review
4/28/25 at 4:45 PM
By: Sandy Moisey Scherer
Docket No: BER 2025-03 HRM

Attorneys for Yogo Sapphire Group, LLC

STATE OF MONTANA BOARD OF ENVIRONMENTAL REVIEW

IN THE MATTER OF: YOGO SAPPHIRE
GROUP, LLC EXPLORATION LICENSE
No. 00886

**NOTICE OF APPEAL AND
REQUEST FOR HEARING**

Yogo Sapphire Group, LLC (“YSG”), through counsel and under Mont.
Code Ann. § 82-4-353(2) hereby gives notice that it appeals the denial of its
exploration license application, Exploration License No. 00886, which was denied
by letters from the Montana Department of Environmental Quality on March 28,
2025 and April 23, 2025 and requests a hearing before the Board.

YSG respectfully requests that the Board reverse the decision by the DEQ.
The DEQ’s conclusions with respect to the exploration license application were
affected by errors of law, are clearly erroneous, are arbitrary and capricious, and/or

are otherwise in violation of law.

Specifically, the DEQ erred when it concluded:

1. That the activity proposed by YSG in its exploration license application constituted “mining” as opposed to “exploration”;
2. That a Stipulation the DEQ entered into with Roncor, Inc. in a bankruptcy related to the subject area prohibited YSG from obtaining an exploration license; and
3. That a Memorandum of Agreement between the DEQ and Roncor regarding the subject area prohibited YSG from obtaining an exploration license.

BACKGROUND

On or about February 12, 2025, YSG filed an exploration license application with the DEQ, Exploration License, No. 00886. (“Application”)

The application relates to exploration of mining property that previously had been leased by Yogold U.S.A. Corporation from landowner Roncor, Inc. In January 2024, Yogold declared bankruptcy. As part of that bankruptcy, Roncor purchased substantially all the assets of Yogold. Roncor, the DEQ, and the bankruptcy trustee entered into a Stipulation (attached as Exhibit A)¹ related to Yogold’s reclamation bonds and Roncor’s assuming of certain reclamation duties related to the site. The DEQ and Roncor also entered into a Memorandum of Agreement, No. 525040 (“MOA”) (attached as Exhibit B) on the same subject.

¹ This Stipulation replaced an earlier one between the same parties to take into account a development in the bankruptcy case, but for all purposes relevant to this matter is the same.

In a March 28, 2025 letter, Mark Odegard, reclamation specialist with the DEQ, responded to YSG regarding its exploration license application. In his letter (attached as Exhibit C) Mr. Odegard stated that YSG’s application would not be approved, including on the following grounds:

1. Because the activity and methods proposed by YSG in its application include “methods of beneficiation and refining” the proposed activity “meets the definition of mining, not exploration, under Section 82-4-303[.]”; and
2. The Stipulation and MOA do not allow YSG to obtain an exploration license.

Counsel for YSG responded to the DEQ in a letter dated April 18, 2023 addressed to Nicholas Whitaker, attorney for the DEQ. A copy of that letter is attached as Exhibit D.

In the letter, YSG noted:

1. The statutory definition of exploration includes “all activities” for the purpose of determining the location, extent, depth, grade and economic viability of mineralization, and that this clearly must include some amount of beneficiation and refining;
2. State regulations define exploration as including operations related to testing of ore materials not to exceed 10,000 short tons to determine the

development potential of an ore body, and that YSG would not be exceeding that limit;

3. The statutory definition of mining includes that mining of ore or minerals must be in “commercial quantities” or that the taking of bulk samples of be in excess of 10,000 short tons, which YSG would not exceed; and
4. Neither the Stipulation nor MOA provided that YSG could not obtain an exploration license.

Mr. Whitaker responded in a letter dated April 23, 2025, and attached as Exhibit E. In his response, Mr. Whitaker wrote that while the department “does not disagree with the general premise” that exploration may include the testing of material extracted under that exploration, he nevertheless concluded that YSG’s proposed activity was mining. YSG’s proposed actions, Mr. Whitaker wrote, go beyond some unspecified level of “permissible testing of ore materials associated with exploration[.]”

Mr. Whitaker did agree that neither the Stipulation nor MOA themselves prevented YSG from obtaining an exploration license. However, Mr. Whitaker also noted that those agreements did include responsibilities for Roncor to complete certain reclamation activities by certain dates, and that those dates would not be subject to amendment through YSG’s application for an exploration license.

BASIS OF APPEAL

YSG asserts that the DEQ's reasons, as stated in the Odegard and Whitaker letters, are insufficient to justify the denial of YSG's exploration license for the following reasons.

YSG's proposed activity is exploration

The activity proposed by YSG in its exploration license application is exploration, and not mining, under state law and regulation.

As noted in YSG counsel's letter to the DEQ, the statutory definition of exploration includes "*all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation[.]*" Mont. Code Ann. § 82-4-303(12)(a) (emphasis added).

This definition clearly indicates that some amount of beneficiation and refining and material will be necessary. YSG's purpose with its proposed exploration license is to determine whether it appears there is enough productive ore remaining for a new commercial mining effort to be economically viable. It cannot do so without the processing of ore and examination of the quality of any sapphires found to determine if full mining operations are warranted given what it can determine through exploration of ore bodies' location, extent, and depth, and the quality of resulting sapphires that may be able to be recovered from them. It is

unclear how YSG can evaluate the economic viability of mineralization without examining the sapphires found as a result of exploration.²

While the DEQ does not, in its responses to YSG, identify any clear delineation supporting its conclusion that YSG’s proposed activity is mining rather than exploration, state law does specify that a project is only “mining” when it is in “commercial quantities” or when the taking of bulk samples is in excess of 10,000 short tons. Mont. Code Ann. § 82-4-303(17).

Additionally, under state regulation, exploration can clearly include pilot or processing plants and testing of ore materials, so long as that activity does not exceed 10,000 short tons. A.R.M. § 17.24.102(1). YSG’s application for its exploration license includes that it would not exceed that amount.

And while it is the case that YSG may recover some amount of sapphires as part of its proposed exploration, the limited scope of the exploration and the costs of conducting it make it clear that this exploration will not yield “commercial quantities” and that the value of any stones will be eclipsed several times over by the cost of the exploration project. YSG is simply attempting to determine if the expense and investment necessary for a mining operation, including obtaining an operating permit, is warranted, especially given the difficulties other operators have faced at the site throughout its history. Its proposed scope of work is clearly

² Based on Mr. Odegard’s letter, it appears the DEQ believes that the recovery of *any* amount of stones from exploration activity would necessitate a full operating permit.

within the concept of exploration as outlined in state law and regulation, and the DEQ has not articulated a clear standard in deciding otherwise.

Neither the Stipulation nor the MOA prevent YSG from receiving an exploration license.

Although in his letter Mr. Odegard alleges that the Stipulation and MOA executed by Roncor (the landowner) in the bankruptcy of Yogold U.S.A. Corporation prevent YSG from obtaining an exploration license, DEQ appears to no longer argue that position. In his April 23, 2025 letter, Mr. Whitaker wrote that “nothing in the Stipulation and MOA . . . precludes Roncor or YSG from obtaining and exploration license under the MMRA.”

Further, both documents clearly do protect contemplate that activity under an exploration license at the site is allowable. (Exhibit A, ¶ 11 (“Nothing herein shall modify the rights and obligations of Roncor under its existing MMRA exploration license.”); Exhibit B, p. 3, ¶ 8 (“Nothing herein shall modify the rights and obligations of Roncor under its existing Exploration License.”))

While the DEQ has also raised Roncor’s reclamation obligations in denying YSG’s application, YSG understands that it will also be required to file a reclamation bond as part of its exploration activities and is fully prepared to do so.

CONCLUSION

YSG’s proposed activity in its application for an exploration license clearly falls under the legal definitions of exploration, not mining, and DEQ has provided

no clear basis for its conclusion to the contrary. Further, nothing in the agreements signed by Roncor prevents YSG from applying for and obtaining an exploration license. The DEQ's denial of Exploration License No. 00886 should be reversed, and YSG requests a hearing before the Board regarding its application.

DATED: April 28, 2025.

WORDEN THANE P.C.
*Attorneys for Yogo Sapphire Group,
LLC*

/s/ Martin S. King
Martin S. King

CERTIFICATE OF SERVICE

I certify that on April 28, 2025, I served a copy of the preceding document by e-mail on the following:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
Email: deqbersecretary@mt.gov

Nicholas Whitaker
Attorney
Montana Department of Environmental Quality
E-mail: Nicholas.Whitaker@mt.gov



Nicholas Whitaker
Kaitlin Whitfield
Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
Tel: (406) 444-5690
Fax: (406) 444-4386
Nicholas.Whitaker@mt.gov
Kaitlin.Whitfield@mt.gov

Attorneys for Montana Department of Environmental Quality

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re: YOGOLD U.S.A. CORPORATION Debtor(s).	Case No. 4:24-bk-40001-BPH
STIPULATION OF THE CHAPTER 7 TRUSTEE, THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, AND RONCOR, INC.	

Richard J. Samson, the duly appointed Chapter 7 trustee in the above-captioned chapter 7 case (the “Trustee”); the Montana Department of Environmental Quality (“DEQ”); and Roncor, Inc. (“Roncor”) (collectively, the “Parties”) hereby stipulate and agree to resolve objections to the *Amended Motion of the Chapter 7 Trustee Pursuant to 11 U.S.C. § 105(a), 363(b) and 363(f), and Fed. R. Bankr. P. 2002(a)(2) and 6004 for Orders: (A) Approving the Sale of Personal and Intangible Property Free and Clear of Liens, Claims, Interests and Encumbrances Subject to the Opportunity for Upset Bids and an Auction* (“Sale Motion”) (ECF156).¹

¹ This Stipulation replaces the prior stipulation filed by the Parties at ECF 150.

BACKGROUND

DEQ is charged with the administration and enforcement of the Metal Mine Reclamation Act, Title 82, chapter 4, part 3, Montana Code Annotated (the “MMRA”) and promulgating administrative rules in furtherance of its purpose. Section 82-4-321, MCA.

Debtor Yogold U.S.A. Corporation (“Debtor”) holds Small Miner Exclusion Statement (“SMES”) #36-083 under the MMRA related to its mining operations at property it had leased from Roncor in Judith Basin County, Montana (“Yogo Mine”). *See* Claim 28-1 Part 2, DEQ Proof of Claim Attachment (Oct. 8, 2024).

In accordance with the MMRA, Debtor has posted reclamation bonds with DEQ totaling \$19,588 for its operations under SMES #36-083. *See* Claim 28-1 Part 2, DEQ Proof of Claim Attachment (Oct. 8, 2024).

On January 4, 2024, Debtor filed a voluntary Chapter 11 petition, commencing this bankruptcy case. ECF 1.

On March 4, 2024, Debtor’s lease of the Yogo Mine site from Roncor expired. ECF 64.

On June 3, 2024, the Court converted the bankruptcy case to Chapter 7. ECF 111.

On October 3, 2024, the Trustee filed the Sale Motion. ECF 137.

On October 24, 2024, the Trustee, DEQ, and Roncor filed a stipulation resolving DEQ’s objections to the Sale Motion (ECF 137) and Asset Purchase Agreement (ECF 137-1). ECF 150.

On October 29, 2024, the Trustee filed the Amended Sale Motion. ECF 156.

In support of the Amended Sale Motion, the Trustee included an Amended Asset Purchase Agreement executed between the Trustee and Roncor. ECF 156-1.

Relevant to this Stipulation, the Amended Asset Purchase Agreement contains provisions related to reclamation of the Yogo Mine site and treatment of the reclamation bonds Debtor posted to DEQ:

Assumption of Reclamation Costs. Buyer shall assume approximately \$200,000 in costs for all clean up, remediation, and reclamation costs of the Roncor Mine Property. Buyer will receive the benefit of the existing reclamation bond(s) posted with Montana Department of Environmental Quality (“DEQ”). Buyer will not assume responsibility or liability for penalties or fines that may be imposed against Debtor by the DEQ, Montana Department of Natural Resources and Conservation, the Bureau of Land Management, the United State Forest Service, or any regulatory authority.

ECF 156-1, Amended Asset Purchase Agreement, Section 2.iv.

DEQ requested the Parties enter the following Stipulation to align the Amended Asset Purchase Agreement’s proposed treatment of the reclamation liability and posted reclamation bonds with the procedures specified in the MMRA.

STIPULATION

Therefore, the Parties stipulate as follows:

1. DEQ agrees that its objections to the Amended Sale Motion are resolved, contingent upon the approval of this Stipulation.
2. The Trustee agrees that Yogold has not reclaimed the Yogo Mine site as required by the MMRA and SMES #36-083.
3. The Trustee agrees that DEQ may revoke SMES #36-083 and forfeit bonds posted by Yogold to DEQ pursuant to § 82-4-305(5), MCA. Notwithstanding the notice provisions in § 82-4-305(5), MCA, the Trustee agrees that DEQ may immediately cause revocation of SMES #36-083 and forfeiture of existing bonds posted to DEQ upon approval of this Stipulation.

4. Roncor agrees to be responsible for reclamation of the Yogo Mine site pursuant to a separate Memorandum of Agreement (“MOA”) with DEQ. DEQ will file notice with the Court once the MOA is executed by DEQ and Roncor.

5. Notwithstanding the Amended Asset Purchase Agreement, Roncor agrees that it may only receive proceeds of bonds held by DEQ in accordance with the procedures set out in this Stipulation and the MOA.

6. Roncor agrees to stabilize the Yogo Mine site to prevent offsite pollution as soon as practicable.

7. Roncor shall complete earthwork and reseedling of the Yogo Mine site by December 31, 2025.

8. If Roncor fails to complete reclamation by July 31, 2026, or by an extended deadline agreed to by DEQ, Roncor shall be liable to DEQ for DEQ’s reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. Roncor’s liability for reclamation costs to DEQ shall not exceed \$209,573, which is the current reclamation cost estimate prepared by DEQ.

9. If Roncor receives a final MMRA operating permit on or before December 31, 2025, or by an extended deadline agreed to by DEQ, that incorporates the existing disturbance at the Yogo Mine site into an operating permit, DEQ shall release the proceeds of the forfeited bond associated with SMES #36-083 to Roncor, as contemplated in the Amended Asset Purchase Agreement. Release of bond proceeds to Roncor under this paragraph shall occur following DEQ’s acceptance of a full performance reclamation bond associated with Roncor’s operating permit.

10. Nothing in the Amended Asset Purchase Agreement, MOA, or this Stipulation authorizes any mining disturbance. Mining can only occur through Roncor obtaining an operating permit.

11. Nothing herein shall modify the rights and obligations of Roncor under its existing MMRA exploration license.

12. The Parties may enforce reclamation requirements outlined in this Stipulation and the MOA outside of bankruptcy court.

13. This Stipulation and the MOA shall only become effective upon the sale following approval by the Court.

WHEREFORE, the parties respectfully request the Court enter its Order approving this Stipulation and its terms and incorporating the same into an Order approving the Amended Sale Motion.

DATED: November 12, 2024.

/s/ Nicholas Whitaker

Nicholas Whitaker
Attorney for the Montana Department of
Environmental Quality

DATED: November 12, 2024.

/s/ Richard J. Samson

Richard J. Samson
Chapter 7 Trustee

DATED: November 12, 2024.

/s/ Martin S. King

Martin S. King
Attorney for Roncor, Inc.

CERTIFICATE OF SERVICE

Under penalty of perjury, I, the undersigned, do hereby certify that on the 12th day of November 2024, a copy of the **Stipulation** was served via CM/ECF to all parties requesting special notice or otherwise entitled to the same.

/s/ Nicholas Whitaker

Nicholas Whitaker

**MEMORANDUM OF AGREEMENT
FOR DISBURSEMENT OF METAL MINE RECLAMATION ACT BOND PROCEEDS
FOR LANDOWNER-CONDUCTED RECLAMATION
Between
DEPARTMENT OF ENVIRONMENTAL QUALITY
and
RONCOR, INC.**

This Memorandum of Agreement (MOA) is hereby made between the DEPARTMENT OF ENVIRONMENTAL QUALITY, hereinafter referred to as DEQ, and RONCOR, INC., hereinafter referred to as Landowner, collectively referred to as the Parties. The purpose of the MOA is to establish the Parties' respective responsibilities for Landowner to reclaim a hard rock mine located on Landowner's property and for DEQ to disburse payments from forfeited reclamation bonds to reimburse landowner for conducting such reclamation. The hard rock mine was operated by Yogold U.S.A. Corporation (Yogold) under Small Miner Exclusion Statement No. 36-083 filed with DEQ in accordance with the Metal Mine Reclamation Act, Title 82, chapter 4, part 3, MCA. The MOA's initial term is from the date of contract execution, with the effective date being the date of the latter of the two signatures, through July 31, 2026. In no event is this MOA binding on the State unless the State's authorized representative has signed it.

WHEREAS, Landowner owns a parcel of real property located in the County of Judith Basin, Montana, more particularly described as T13N R11E, Sections 20, 21, and 22 (the Property). The Property was leased by Roncor to Yogold, said Lease which has been terminated;

WHEREAS, in 2020, Yogold filed Small Miner Exclusion Statement (SMES) #36-083 with DEQ pursuant to the Metal Mine Reclamation Act to operate a hard rock mine at the Yogo Mine (Site) on the Property;

WHEREAS the Metal Mine Reclamation Act and SMES # 36-083 required Yogold to reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas;

WHEREAS, pursuant to Section 82-4-305, MCA, Yogold posted a cash bond to secure reclamation of Yogold's placer mining operations (the Placer Bond) in the amount of \$10,000.00 made payable to the State of Montana conditioned upon Yogold's full compliance with the Metal Mine Reclamation Act, DEQ's rules promulgated thereunder, and SMES #36-083;

WHEREAS, pursuant to Section 82-4-303(30)(b)(ii), MCA, Yogold also posted a cash bond to secure the reclamation of access roads to the Site (the Access Road Bond, and collectively with the Placer Bond, the "Bonds") in the amount of \$9,588.00 made payable to the State of Montana conditioned upon Yogold's full compliance with the Metal Mine Reclamation Act, DEQ's rules promulgated thereunder, and SMES # 36-083;

WHEREAS, Yogold's operations at the Site ceased no later than March 4, 2024;

WHEREAS, reclamation remains to be completed at the Site as of the date of this MOA;

WHEREAS, pursuant to a Court-approved stipulation entered in *In re Yogold U.S.A. Corporation*, 4:24-bk-40001 (the Bankruptcy Stipulation), Yogold has agreed that DEQ is authorized to forfeit the Bonds pursuant to Section 82-4-305(5), MCA, and the terms of the Bonds based on Yogold's failure to reclaim the Site;

WHEREAS, pursuant to the Bankruptcy Stipulation, DEQ forfeited the Bonds in the amount of

\$19,588.00 (the Bond Funds) on or about November 2024 as a consequence of Yogold's non-compliance with the Metal Mine Reclamation Act, DEQ's rules promulgated thereunder, and SMES #36-083;

WHEREAS, the Montana Legislature enacted the Metal Mine Reclamation Act with the intent to, among other things, "provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources" and provide "protection of human health and the environment" Section 82-4-301(2)(a)(i), MCA;

WHEREAS, the purposes of the Metal Mine Reclamation Act include providing for reclamation that mitigates post-reclamation visual contrast between reclamation lands and adjacent lands; that provides for reclamation that affords some utility to humans or the environment; and that mitigates or prevents undesirable offsite environmental impacts. Section 82-4-302(1)(d), (e), and (g), MCA;

WHEREAS, pursuant to the Bankruptcy Stipulation, Landowner has agreed to conduct the reclamation of the Site that was required to be conducted by Yogold in accordance with the Metal Mine Reclamation Act, subject to the approval and under conditions imposed by DEQ, for a contract amount not to exceed \$19,588.00 (the Work);

WHEREAS, Landowner has assumed responsibility for debris/equipment removal, backfill, grading, revegetation and weed control of the disturbance area in connection with reclaiming the site pursuant to the Scope of Work in Attachment A, and nothing in this MOA relieves Landowner of that responsibility, or imposes any remunerative obligation(s) upon DEQ, in connection with revegetation and weed control associated with the Work;

NOW, THEREFORE, the parties to this MOA, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

1. Landowner shall conduct and complete the Work as required herein.
2. The Work shall be conducted in 2 phases as described in Attachment A, Scope of Work.
3. Landowner shall permit representatives of DEQ access to the Site to inspect the Work, including but not limited to, the DEQ optional and mandatory inspections described in the Scope of Work. DEQ shall provide Landowner with at least 3 days-notice. Should DEQ believe it necessary for Landowner to be on-site during the inspection, DEQ will coordinate its inspections to coincide with a day and time when Landowner will be onsite.
4. Landowner shall be reimbursed for the Work after completion of each phase, dependent upon acceptance by DEQ on any required site inspection. If DEQ determines from the site inspection that the reclamation was not completed per the defined Scope of Work for each phase, DEQ will send an Inspection Report detailing the work that needs to be completed before payment will be made.
5. Upon DEQ's acceptance of the work at each phase, Landowner shall submit to DEQ an invoice, provided with Attachment A, to request payment for the work. DEQ will, within 30-days of receipt of the invoice, process the payment for transmittal to Landowner. Landowner, in consideration of the remuneration received for conducting and completing the Work, the sufficiency of which is hereby stipulated and agreed to, does hereby for himself, his heirs, executors, successors, administrators, agents and assigns, release and forever discharge DEQ and the State of Montana from all claims of damages, demands, and any actions, causes of action, or suits of any kind whatsoever, at law or in equity, known or unknown, in any manner arising out of the Work. Invoices included with Attachment A, which are made part hereof, require Landowner to sign the invoice. Landowner's signature is their agreement to release and discharge DEQ consistent with this Paragraph from any future claims specific to the Work

under that phase in accordance with the disclaimer language on the invoice.

6. WORK: The Work is described in detail in Attachment A hereto (Scope of Work) which is made part hereof.

7. DISCRIMINATION: DEQ does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible. DEQ shall comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subcontracting necessary as a result of this MOA must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing under a subsequent contract.

8. MODIFICATIONS AND INTEGRATION: The parties may modify this MOA by mutual consent at any time during the term of this MOA. Such modification shall be written and numbered and become part of this MOA upon signature by duly authorized representatives of Landowners and DEQ. This instrument contains the entire MOA between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in this written MOA, are valid or binding, and this MOA may not be enlarged, modified or altered except as provided herein. Nothing herein shall modify the rights and obligations of Roncor under its existing Exploration License.

9. SUCCESSORS AND ASSIGNS: This MOA is binding on all successors and permitted assigns of DEQ and Landowner, including successors in interest.

10. RECORDING: Landowner shall, at Landowner's sole expense, cause a copy of this MOA to be filed in the land records of Judith Basin County, Montana and indexed to the Property.

11. TERMINATION: This MOA shall continue in full force and effect and govern all transactions between the parties until the Work is accomplished. In the event of Landowner's material breach of this MOA, however, DEQ reserves the right to terminate this MOA upon written notice by certified mail, or personal service. Once the Work is accomplished DEQ will record notice of said completion in the land records of Judith Basin County, Montana terminating the MOA.

12. MONTANA LAW AND VENUE: The laws of the State of Montana govern this MOA. The parties agree that any litigation concerning MOA must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

13. EXECUTION: This MOA consists of ten (10) numbered pages including Attachment A. The originals are to be retained by DEQ and by Landowner. This MOA may be executed in counterparts and shall be deemed to be an original for all purposes; and all such counterparts together shall constitute one and the same instrument. As between DEQ and Landowner, any signature hereto delivered by either party hereto by facsimile or other electronic transmission (including scanned documents delivered by email) shall be deemed an original hereto. To express the parties' intent to be bound by the terms of this MOA, they have executed this document on the dates set out below.

RONCOR, INC., LANDOWNER

11/15/2024

DATE

Signed by:

Ronald Kunisaki, Roncor President

76797B4DCAA8412...
Ronald Kunisaki, President

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

11/13/2024

DATE

Signed by:

Dan Walsh

91B03A9D7ECC4E3...
Dan Walsh, Air, Energy and Mining Division
Administrator

As to Legal Issues Only:

11/13/2024

DATE

Signed by:

Nicholas Whitaker, DEQ Legal Counsel

02A00D54C97D490...
Nicholas Whitaker, DEQ Staff Attorney

Attachment A

Reclamation Scope of Work

Phase 1 Reclamation:

Phase 1 reclamation shall be performed as described below for each disturbance area as identified in Figure 1.

Kelly Coulee

- Landowner shall remove all equipment and debris.
- Landowner shall remove the bridge over Yogo Creek.
- Landowner shall grade all disturbance areas to comparable stability and utility as that of adjacent areas.
- Landowner shall respread stockpiled soils and soil substitutes on the backfilled, regraded overburden surface.

Yogo Mine Site

- Landowner shall remove all equipment and debris.
- Landowner shall backfill the first 25 feet of all adits with waste rock or rip rap which will not contribute to the degradation of any discharge water or secure with a steel bulkhead or other equally effective method to prevent unauthorized entry and ensure public safety.
- Landowner shall drain all ponds and backfill with suitable material so as to prevent subsidence.
- Landowner shall grade all disturbance areas to comparable stability and utility as that of adjacent areas.
- Roads associated with the access easement to adjacent mining claims will be suitably regraded and maintained.

Equipment Graveyard

- Landowner shall remove all equipment and debris.
- Landowner shall grade all disturbance areas to comparable stability and utility as that of adjacent areas.

Hilltop Excavations (Gadsden Trench)

- Landowner shall address the subsidence observed in the partially reclaimed lands by bringing in sufficient material as to return the area to comparable stability and utility as that of adjacent areas.
- Landowner shall address the highwall observed in the partially reclaimed lands by reducing slopes to a grade that achieves comparable stability and utility as that of adjacent areas.

Phase 1 Reclamation shall be completed no later than December 31, 2025.

Upon Completion of Phase 1 work, the Landowner shall send an email to DEQHardRock@mt.gov with the following information populated in the email:

1. Subject Line = Request for Acceptance for Completion of Phase 1 – Roncor – Yogo Mine Site
2. Body of Text = Phase 1 has been completed. This email serves as an official request to have the site inspected to ensure Phase 1 meets the contractual requirements so payment can be made.

DEQ may inspect Phase 1 Work prior to payment and release within 30-days of notice, weather permitting.

Landowner shall provide signed Invoice with Disclaimer of Waiver of Claims upon DEQ acceptance of each Phase of work. NOTE: It is at the risk of the Landowner to move to next phase(s) prior to DEQ acceptance of the current work phase. If issues arise, it will be at the expense of the landowner to re-do the work.

DEQ shall remit \$6,588.00 to Landowner from the Bond Funds upon Landowner's satisfactory completion and documentation of Phase 1 Work, any DEQ inspection of Phase 1 Work, and Landowner's provision of a sequential release to DEQ.

RONCOR, INC., LANDOWNER

Signed by:
Ronald Kunisaki, Roncor President

76797B4DCA8412...
DATE

Signed by:
Ronald Kunisaki, Roncor President

76797B4DCA8412...
Ronald Kunisaki, President

RONCOR, INC.

P.O. Box 7846
Porter Ranch, CA 91327
Email: ronald.kunisaki@gmail.com
Phone: 805-405-3650

**INVOICE
#101**

To:

Department of Environmental Quality
Attention: Hard Rock Mining Section
P.O. Box 200901
Helena, MT 59620
Phone: 406-444-0988

Comments or special instructions:

Yogold U.S.A. Corporation forfeited bond for SMES #36-083
Reclamation Work for Yogo Mine Site: Phase 1 Completion MOA #525040

DESCRIPTION	TOTAL
Phase 1 Completion Costs	\$6,588.00
TOTAL DUE	\$6,588.00

RONCOR, INC.

11/15/2024

DATE

Signed by:

Ronald Kunisaki, Roncor President

76797B4DCAA8412...
Ronald Kunisaki, President

Disclaimer:

RONCOR, INC., pursuant to the Memorandum of Agreement between RONCOR, INC. and the Montana Department of Environmental Quality (the "MOA), in consideration of the remuneration received for RONCOR, INC.'s conducting and completing phase 1 of work described in the MOA-Attachment A, himself, the sufficiency of which is hereby stipulated and agreed to, does hereby for himself, his heirs, executors, successors, administrators, agents, and assigns, release and forever discharge DEQ and the State of Montana from all claims of damages, demands, and any actions, causes of action, or suites of any kind whatsoever, at law or in equity, known or unknown, in any matter arising out of the work described in the MOA-Attachment A.

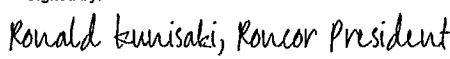
Phase 2 Reclamation:

- Landowner shall purchase seed mix for the Site. DEQ recommends a seed mix with a minimum of 3 species selected from the DEQ Seed Mix Guideline for Pasture or Rangeland mixes to allow for plant diversity, which is conducive to the post-mining land use of pasture. The DEQ Mining Seed Mix Guideline can be found here:
<http://deq.mt.gov/Portals/112/Land/OpenCut/Forms/2019-Guideline-SeedMix.pdf>
- DEQ may require seed tag records and receipts to prove purchase of seed.
- Landowner is responsible for monitoring vegetation establishment and reseeding as appropriate to ensure the establishment of uniform vegetative cover across the entire mining disturbance.
- The Landowner shall demonstrate control of all noxious weeds in the reclaimed area in a manner consistent with Judith Basin County Weed Board requirements and the 2017 Montana Noxious Weed Management Plan.
- Phase 2 Reclamation shall be completed no later than July 31, 2026.
- Upon Completion of Phase 2 Work, the Landowner shall send an email to DEQHardRock@mt.gov with the following information populated in the email:
 1. Subject Line = Request for Acceptance for Completion of Phase 2 – Roncor – Yogo Mine Site
 2. Body of Text = Phase 2 has been completed. This email serves as an official request to have the site inspected to ensure Phase 2 meets the contractual requirements so payment can be made.
- DEQ may inspect Phase 2 Work prior to payment and release within 30-days of notice, weather permitting.
- Landowner shall provide signed Invoice with Disclaimer of Waiver of Claims upon DEQ acceptance of each Phase of work. NOTE: It is at the risk of the Landowner to move to next phase(s) prior to DEQ acceptance of the current work phase. If issues arise, it will be at the expense of the landowner to re-do the work.
- DEQ shall remit \$13,000.00 to Landowner from the Bond Funds upon Landowner's satisfactory completion and documentation of Phase 2 Work, any DEQ inspection of Phase 2 Work, and Landowner's provision of a sequential release to DEQ.

RONCOR, INC., LANDOWNER

11/15/2024

DATE

Signed by:

 Ronald Kunisaki, President

RONCOR, INC.

P.O. Box 7846
Porter Ranch, CA 91327
Email: ronald.kunisaki@gmail.com
Phone: 805-405-3650

**INVOICE
#102**

To:

Department of Environmental Quality
Attention: Hard Rock Mining Section
P.O. Box 200901
Helena, MT 59620
Phone: 406-444-0988

Comments or special instructions:

Yogold U.S.A. Corporation forfeited bond for SMES #36-083 Yogold U.S.A. Corporation forfeited bond for SMES #36-083
Reclamation Work for Yogo Mine Site: Phase 2 Completion MOA #525040

<i>DESCRIPTION</i>	<i>TOTAL</i>
Phase 2 Completion Costs	\$13,000.00
<i>TOTAL DUE</i>	<i>\$13,000.00</i>

RONCOR, INC.

11/15/2024

DATE

Signed by:

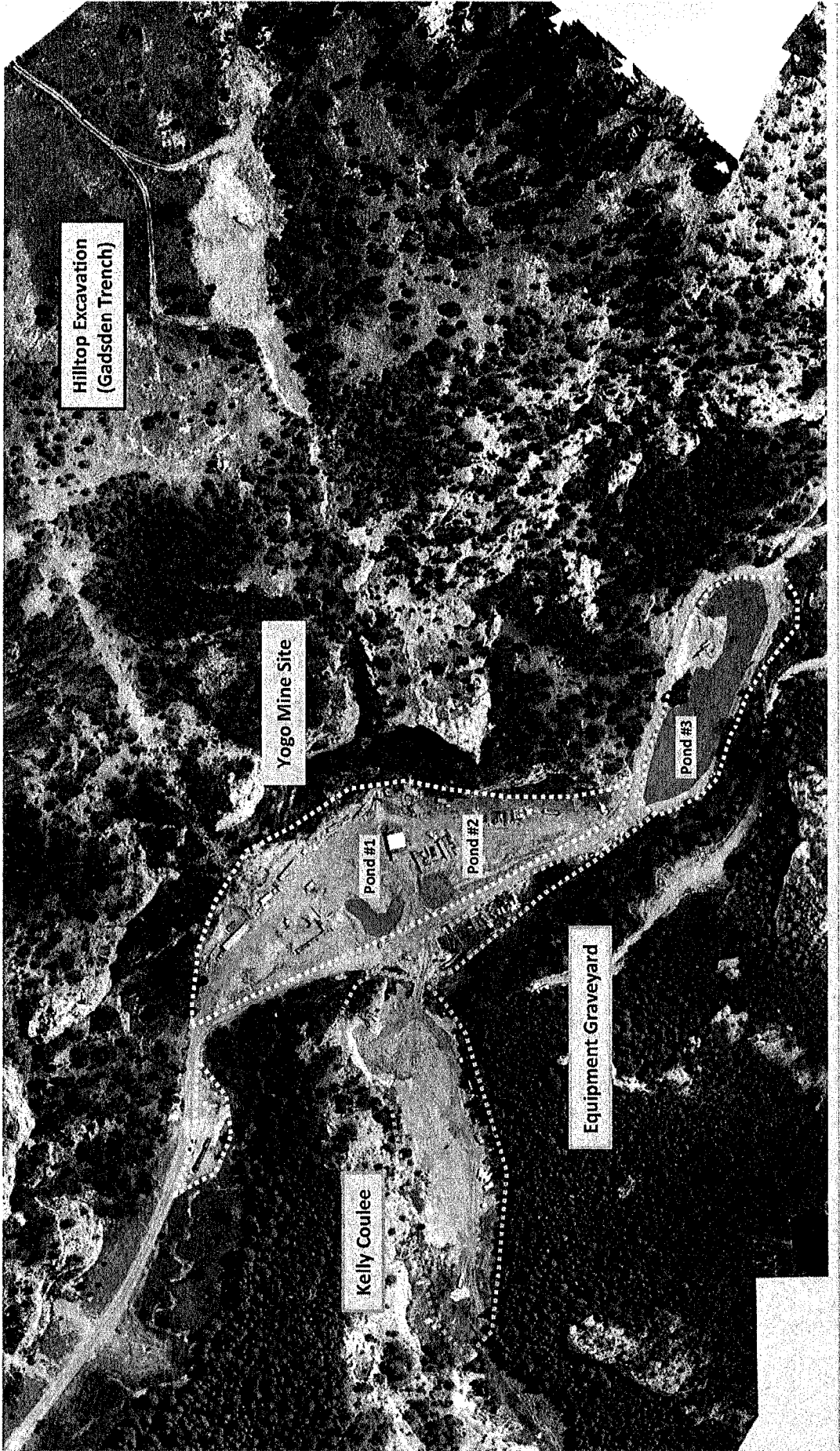
Ronald Kunisaki, Roncor President

76787B4DCAB412...
Ronald Kunisaki, President

Disclaimer:

RONCOR, INC., pursuant to the Memorandum of Agreement between RONCOR, INC. and the Montana Department of Environmental Quality (the "MOA"), in consideration of the remuneration received for RONCOR, INC.'s conducting and completing phase 2 of work described in the MOA-Attachment A, himself, the sufficiency of which is hereby stipulated and agreed to, does hereby for himself, his heirs, executors, successors, administrators, agents, and assigns, release and forever discharge DEQ and the State of Montana from all claims of damages, demands, and any actions, causes of action, or suites of any kind whatsoever, at law or in equity, known or unknown, in any matter arising out of the work described in the MOA-Attachment A.

Figure 1: Disturbance Areas



DEQ CONTRACT COVERSHEET – TCV <\$200KDate: **11/07/2024**

Contract No.: 525040	Task Order No.:	Modification No.:
Federal Grant / Catalog No.: Catalog No. / (Required if federally funded)		
Requestor: Millie Olsen (Contract/Project Manager)	(Phone No)	Program: 50
Return Documents To: Designated Contact Person for Program		Bureau: Mining
Program: Millie Olsen (Designated Contact)	444-2461 (Phone No)	Division: AEMD
Contract Purpose:	The purpose of the MOA is to establish the Parties' respective responsibilities for Landowner to reclaim a hard rock mine located on Landowner's property and for DEQ to disburse payments from forfeited reclamation bonds to reimburse landowner for conducting such reclamation.	
Procurement Justification:		
Contractor Information: (X the box for type of contractor.)		
☒ Owner ☐ LLC ☐ Partnership ☐ Corp ☐ Non-Profit ☐ Education Entity ☐ Gov't Entity		
Company: RONCOR, INC		
Address: PO BOX 7846		
City/State/Zip: PORTER RANCH, CA		
Signatory: RONALD KUNISAKI		Title: ronald.kunisaki@gmail.com
Signatory Name/Email:		
Liaison Name/Email:		
Start Date: 11/07/2024	End Date: 06/31/2026	Account Code:
Organizational Units*	Fiscal Year:	Fiscal Year:
ORG: TBD	Amount: \$	Amount: \$
ORG:	Amount: \$	Amount: \$
ORG:	Amount: \$	Amount: \$
*Please use form: H:\FORMS\CSD\ContractForms\coversheet-more-ORGS.doc if more ORGs are required		
TYPE OF MODIFICATION: ☐ Date Change	Contract Total (with mods): \$19,588.00 (NTE)	
Funding:	Change to Funding: \$	
☐ Increase ☐ Decrease ☐ Other (Language Terms & Conditions)		

PROGRAM/LEGAL/DIVISION REVIEW & APPROVAL

Project Manager/Officer	Date	DocuSigned by:	Date
Signed by:		Elisa Campbell, Fiscal Section Supervisor	11/13/2024
Section Supervisor	Date	Fiscal Officer / Contracts Reviewer	Date
Signed by:		Dan Walsh	11/13/2024
Bureau Chief / Authorizing Agent	Date	Division Administrator	Date
Signed by:			
DEQ Legal Counsel	Date	Financial Analyst	Date
Signed by:		Sent to DEQProcurement@mt.gov DocuSign	Per
		Account for Disbursement to Signatories	DocuSign
		DEQ Agency Procurement Officer	

Martin S. King

From: Whitaker, Nicholas <Nicholas.Whitaker@mt.gov>
Sent: Wednesday, November 13, 2024 3:37 PM
To: Martin S. King
Cc: Ronald Kunisaki
Subject: RE: MOA

Sensitivity: Private

Martin,

The intent of the MOA is for Roncor to conduct only the reclamation related to Yogold's disturbance, as reflected in the fourth full paragraph on page 1 ("SMES #36-083 required Yogold to reclaim all land disturbed by the operations...") and the third full paragraph on page 2 ("Landowner has agreed to conduct the reclamation of the Site that was required to be conducted by Yogold..."). DEQ agrees that the MOA is limited to Yogold's disturbance, and the scope of work described in Attachment A is subject to 82-4-305(1)(d), MCA (requiring SMES operator to reclaim all land disturbed by the SMES operation), and the constraints in the MOA that Roncor is only agreeing to conduct the reclamation of the site that was required to be conducted by Yogold.

As such, Roncor's concerns are addressed in the existing MOA language, and I don't believe any additional modifications are necessary. Further modifications to the MOA at this stage will require me to re-route the entire MOA internally through DEQ, causing delay. Because the MOA already addresses Roncor's concerns, my recommendation is that we keep the language as is.

Thanks
Nick



NICHOLAS WHITAKER | *Staff Attorney*
Montana Department of Environmental Quality
DESK: 406-444-5690
[Website](#) | [Facebook](#) | [Twitter](#) | [YouTube](#)
How did we do? Let us know here: [Feedback Survey](#)

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From: Martin S. King <mking@wordenthane.com>
Sent: Wednesday, November 13, 2024 1:23 PM
To: Whitaker, Nicholas <Nicholas.Whitaker@mt.gov>
Cc: Ronald Kunisaki <ronald.kunisaki@gmail.com>
Subject: [EXTERNAL] MOA
Sensitivity: Private

Nick,

Martin S. King

From: Whitaker, Nicholas <Nicholas.Whitaker@mt.gov>
Sent: Thursday, October 31, 2024 11:30 AM
To: Martin S. King
Cc: Christina K. DiMuro
Subject: RE: Yogold Bankruptcy; Proposed Sale Motion and Reclamation

Martin,

Reclamation of the Hilltop Excavation (aka Gadsden Trench) is limited to the area highlighted on the map included as Figure 1 in the MOA. From DEQ's perspective, this encompasses the area disturbed by Yogold, which DEQ agrees is the extent of what the MOA is intended to address.

March 30, 2026, is very early in the growing season. DEQ suggests the Phase 2 completion date be bumped to July 31, 2026, to ensure vegetation has time to establish.

Nick



NICHOLAS WHITAKER | *Staff Attorney*
Montana Department of Environmental Quality
DESK: 406-444-5690
[Website](#) | [Facebook](#) | [Twitter](#) | [YouTube](#)
How did we do? Let us know here: [Feedback Survey](#)

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From: Martin S. King <mking@wordenthane.com>
Sent: Monday, October 28, 2024 11:04 AM
To: Whitaker, Nicholas <Nicholas.Whitaker@mt.gov>
Cc: rjs@csblawoffice.com; Christina K. DiMuro <cdimuro@wordenthane.com>
Subject: [EXTERNAL] RE: Yogold Bankruptcy; Proposed Sale Motion and Reclamation

Hi Nick,

Roncor's response to the revised MOA:

1. Attachment A: Reclamation Scope of Work -
 - Gadsden Trench - The description of work is very general. The Gadsden Trench has existed since Gadsden's operation (1913). Roncor does not want to sign up for filling in the entire Gadsden Trench. Roncor will only reclaim that portion of the Gadsden Trench that Yogold disturbed.
2. Phase 1....to be completed by no later than December 31, 2025.
3. Phase 2 Reclamation shall be completed by March 30, 2026. Roncor plans to complete the reseeding by 12/31/25 but it may take a few months (i.e. the 1st quarter of 2026) for those seeds to grow (i.e. for the 'vegetation establishment').

Yogo Sapphire Group, LLC.
c/o Ronald Kunisaki
216 Nickel Dr.
Hobson, MT 59452
Sent via e-mail to ronald.kunisaki@gmail.com, BVSpencer@alpineCME.com

Re: Amendment 1 to Exploration License No. 00886

Dear Ronald Kunisaki,

On January 4, 2024, Yogold USA Corporation (Yogold) filed a voluntary Chapter 11 petition commencing Bankruptcy Case No. 4:24-bk-40001-BPH (bankruptcy case) in the United States Bankruptcy Court for the District of Montana. This bankruptcy case was converted to Chapter 7 bankruptcy on June 3, 2024. On October 3, 2024, the Trustee for the bankruptcy case filed the Sale Motion, including an Asset Purchase Agreement (APA) executed between the Trustee and Roncor Incorporated (Roncor); the landowner on which Yogold's disturbance under Small Miners Exclusion Statement No. 36-083 (Yogo Mine Site) is located. The APA contains provisions related to the reclamation of the Yogo Mine Site and the treatment of the reclamation bonds Yogold posted to the Montana Department of Environmental Quality (DEQ). Regarding future activities at the Yogo Mine Site, the APA stipulates: "Nothing in the Asset Purchase Agreement, [Memorandum of Agreement] MOA or this stipulation authorizes any mining disturbance. Mining can only occur through Roncor obtaining an Operating Permit."

On November 15, 2024, Roncor, with Ronald Kunisaki signing as the President of Roncor, entered into MOA No. 525040 with DEQ. The purpose of the MOA is to establish DEQ and Roncor's respective responsibilities for Roncor to reclaim the Yogo Mine Site located on Roncor's property, and for DEQ to disburse payments from forfeited reclamation bonds to reimburse Roncor for conducting such reclamation. The MOA established the Scope of Work and a Reclamation Schedule.

The MOA stipulated that Roncor has assumed responsibility for debris/equipment removal, backfill, grading, revegetation, and weed control of the disturbance area in connection with reclaiming the site pursuant to the Scope of Work as described in Attachment A of the MOA, and nothing in the MOA relieved Roncor of that responsibility, or imposes any remunerative obligation(s) upon DEQ, in connection with revegetation and weed control associated with the Work.

On February 12, 2025, DEQ received a New Exploration License Application (application) from Yogo Sapphire Group, LLC. (YSG), with Ronald Kunisaki signing as the Licensee and President, which proposed Amendment 1 (AMD1) describing proposed activities at the Yogo Mine Site, located in Judith Basin County, Montana. The application was assigned Exploration License No. 00886.

Information provided on the Mineral Exploration License Supplemental Information Form of the application and AMD1 indicates that YSG proposes to evaluate the quality and continuity of previously identified ore bodies through limited exploration extraction of previously identified mineralization. To accomplish this, YSG proposes establishing a new secondary egress portal and use drilling and blasting methodologies underground guided by survey-controlled geological interpretations.

YSG further proposes that extracted material would be brought to the surface for determination of sapphire concentration and quality through standard sapphire concentration and recovery methods, including material weathering, washing, concentration, and recovery. Tailings would be used as backfill material underground. Additionally, YSG proposes surface trenching on the eastern extent of the project site to determine the vertical extent of the mineralization and confirm its continuity.

The activities and methods proposed by YSG in AMD1 to determine sapphire concentration and quality include methods of beneficiation and refining, therefore the process of sapphire concentration and recovery proposed by YSG meets the definition of mining, not exploration, under Section 82-4-303, Montana Code Annotated (MCA). Exploration and Mining are defined as:

82-4-202(12) – “Exploration” means:

- (a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and*
- (b) all roads made for the purpose of facilitating exploration, except as noted in [82-4-310](#).*

82-4-303(17), MCA – “Mining” commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

As a result, activities and methods proposed by YSG in AMD1 cannot be authorized under Exploration License No. 00886. Additionally, under the APA and MOA agreements, signed by Roncor, mining may only occur under an approved Operating Permit. No further processing of AMD1 will occur.

If you have any questions or concerns, please contact me.

Sincerely,



Mark Odegard, P.G.
Reclamation Specialist
Small Miner and Exploration Program



WORDEN
THANE P.C.
ATTORNEYS AT LAW

Established in 1924

Donovan Worden, Sr.
(1892 – 1967)
Donovan Worden, Jr.
(1918 – 2001)
Jeremy G. Thane
(1927 – 2016)

Ronald A. Bender
Martin S. King
Reid J. Perkins
William E. McCarthy
Amy M. Scott Smith
Chris A. Johnson (MT, WA)
Dana L. Hupp
Martin Rogers

Brand G. Boyar
Natalie L. Black
Elizabeth W. Erickson
Dillon Kato
Erika D. Colstad
Noah P. Hill
Emily Bruner
Erika L. Johnson
Jamie B. Ross (CA)

April 18, 2025

Via First Class Mail and Email Nicholas.Whitaker@mt.gov

Nicholas Whitaker, Esq.
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Re: Yogo Sapphire Group, LLC
Exploration License No. 00886
Our File No. 17573.005

Dear Nick:

As I indicated in my voice mail from several days ago, I am reaching out to you in connection with an application for an Exploration License submitted to the DEQ by Yogo Sapphire Group, LLC (YSG), on February 12, 2025. This Exploration License is identified by DEQ as License No. 00886 and relates to the Roncor sapphire mine.

The DEQ, through a letter from Mark Odegaard dated March 28, 2025, denied YSG's application determining that YSG's exploration activities constitutes "beneficiation" and "refining" amounting to impermissible mining, and concluding further that by virtue of paragraph 10 of the Stipulation and Agreement that Roncor entered into with the DEQ and the Chapter 7 Trustee in the Yogold bankruptcy (ECF 150), that Roncor, and therefore YSG, agreed that it was precluded from obtaining an Exploration License.

I am writing to you because Mr. Odegaard's conclusions are inaccurate, including, I believe, misrepresenting the stipulation that you and I executed. As such, YSG respectfully requests that DEQ reconsider its denial.

The definition of "Exploration" at MCA § 82-4-303(12)(a) is:

"All activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation". (Underline ours)

Under the statute, “Exploration” can include “*all activities* that are conducted on or beneath the surface for the purpose of determining the ... grade and economic viability of mineralization”. “*All activities*” necessarily includes some amount of “beneficiation” and “refining” of the ore to determine its grade and value.

A.R.M. § 17.24.102(12) defines “Exploration” as:

"Exploration" includes pilot ore processing plants or sites and associated facilities constructed for the sole purpose of metallurgical or physical testing of ore materials, not to exceed 10,000 short tons, to aid in determining the development potential of an ore body.

Neither the statute nor the corresponding administrative rule prohibit either beneficiation or refining as part of an Exploration License. Moreover, the amount of ore that YSG proposes to remove and test is within the 10,000 short ton limit of A.R.M. § 17.24.102(12).¹

The definition of “Mining” at MCA § 82-4-303(17) is consistent with the definition of “Exploration”, providing that:

"Mining commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons." (underline ours)

Mr. Odegaard seems to read this statute to mean that beneficiation or refining of *any quantity* is prohibited under an Exploration License. His conclusion is not consistent with the statutory definitions (which only prohibits beneficiation or refinery of “commercial quantities”) and is contrary to common sense. YSG must be able to do some beneficiation and refining of ore to determine economic viability, a fact recognized by the statutes.

Regarding the stipulation that Roncor, DEQ and the Trustee executed in the Yogold case, it reads as follows:

10. Nothing in the Asset Purchase Agreement, MOA, or this Stipulation authorizes any mining disturbance. Mining can only occur through Roncor obtaining an operating permit.

11. Nothing herein shall modify the rights and obligations of Roncor under its existing MMRA exploration license.

¹ 10,000 short tons is stated in the license application because YSG was led to believe that 10,000 short tons was the maximum allowed under an Exploration License. YSG has no intention of exceeding that limitation, or really, the capacity to do so.

We did not stipulate that Roncor (or YSG) could not obtain an Exploration License.

As the DEQ website explains, "mining" is not "exploration".

"An Exploration License is required for all mineral exploration activities that may involve surface or subsurface disturbance. The Exploration License is not a mining permit and cannot be used for mining. Likewise, the Operating Permit (OP) and Small Miner Exclusion Statement (SMES) are intended for "mining" and cannot be used for "exploration."

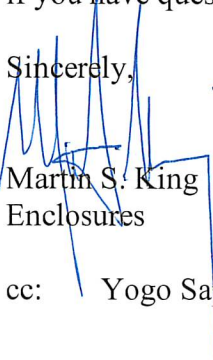
<https://deq.mt.gov/mining/Programs/hardrock>

YSG simply wants to perform some exploration of the site and ore as a precursor to seeking an Operating Permit, presuming that they find there is economic viability of mining at the proposed location. YSG's application meets all of the statutory criteria to support issuance of an Exploration License and YSG understands and is prepared to post a proper reclamation bond as a condition to the issuance of the License. This is precisely how that permitting system is organized, and my client does not understand the unwillingness of DEQ to issue an Exploration License to YSG.

YSG respectfully requests that DEQ reconsider its decision and that it approve YSG's application for issuance of Exploration License No. 00886.

Thank you for your consideration. Please contact me if you would like to discuss further or if you have questions.

Sincerely,


Martin S. King
Enclosures

cc: Yogo Sapphire Group, LLC



April 23, 2025

Martin King, Esq.
Worden Thane P.C.
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Missoula, MT 59802
mking@wordenthane.com

Re: Yogo Sapphire Group, LLC
Exploration License No. 00886

Martin,

This responds to your letter of April 18, 2025, on behalf of Yogo Sapphire Group, LLC (YSG). In the letter, you ask DEQ to reconsider its decision with regard to YSG's application for issuance of Exploration License No. 00886. Your letter asserts first that YSG's proposal conforms to the statutory definition of "exploration" under the Metal Mine Reclamation Act (MMRA), and second that nothing in the Bankruptcy Stipulation or Memorandum of Agreement (MOA) between DEQ and Roncor, Inc., precludes issuance of an exploration license to YSG. I'll address each point below.

Exploration Versus Mining

In your letter, you contend that issuance of an exploration license is appropriate here because "exploration" under § 82-4-303(12)(a), MCA, "necessarily includes some amount of 'beneficiation' and 'refining' of the ore to determine its grade and value." You further state that YSG "must be able to do some beneficiation and refining of ore to determine economic viability." While DEQ does not disagree with the general premise that "exploration" under the MMRA may include some activities to test ore materials extracted as part of exploration, YSG's proposal is readily characterized as "mining" rather than "exploration."

YSG's proposal, as stated in its exploration license application, is to conduct "mineral extraction" of "previously identified mineralization." (YSG Supplemental Information submitted Feb. 24, 2025). YSG further proposes to utilize "standard sapphire concentration and recovery methodology (weather, wash, concentrate, recover)" to determine the "sapphire concentration and quality" of the extracted material. *Id.* Through this mineral extraction and processing, YSG states that it will "recover the stones" (i.e., sapphires) to determine both quantity and quality of the sapphire bearing mineralization. (Kunisaki Letter to DEQ, April 3, 2025, pp. 2-3.)

The activities proposed by YSG—extract the minerals, process the extracted materials, and recover the stones—are the same activities YSG would conduct as part of a mining operation under an MMRA operating permit. While DEQ acknowledges the stated desire to better understand the ore body, the activities proposed by YSG go beyond permissible testing of ore

materials associated with exploration, instead tipping over into mineral extraction and ore processing that must be conducted under an operating permit. It is for this reason that DEQ concluded an operating permit would be required, and nothing in your letter has changed DEQ's determination.¹

YSG further contends that the proposed activities are necessary due to the "unique nugget effect of the sapphires." (Kunisaki Letter to DEQ, April 3, 2025, p. 2.) However, YSG has not adequately explained how its proposed actions would inform future operations, and it is not clear to DEQ how additional data gathered through YSG's proposal would bear on potential future operations given the "nugget effect" of the sapphires in the mineral deposit. DEQ's position is underscored by the fact that the mineralization of the land has been previously identified, the site has been subject to past mining, and DEQ previously determined that additional mining activities at the site would require an operating permit.

Finally, it is worth noting that YSG may not use exploration as a means to recover marketable sapphires. Section 82-4-303(12)(a), MCA (exploration cannot be used for the "production and economic exploitation" of mineral bearing lands). YSG's desire to process extracted material to recover sapphire stones is inconsistent with the statutory definition of exploration. To the extent YSG desires to recover marketable sapphires, YSG must obtain an operating permit.

Bankruptcy Stipulation and MOA

DEQ agrees with the general assertion that nothing in the Stipulation and MOA executed in the Yogold bankruptcy case precludes Roncor or YSG from obtaining an exploration license under the MMRA. Nevertheless, because YSG's proposed activities do not fall within "exploration" under the MMRA, an exploration license is not appropriate here.

Regarding the Stipulation and MOA, however, your client must keep in mind that Roncor committed through the Stipulation and MOA to complete Phase I reclamation activities at the site by December 31, 2025, and Phase II reclamation activities by July 31, 2026. Nothing in the Stipulation or MOA authorizes delay in performing reclamation if an exploration license is obtained from DEQ, yet YSG sought to extend certain reclamation activities into 2027 through the exploration license application it submitted to DEQ. If your client desires to incorporate the existing disturbance at the site into future operations, it may do so under Paragraph 9 of the Stipulation by obtaining a final MMRA operating permit and posting adequate bond.

¹ Further, under § 82-4-335(1), MCA, "a person may not engage in . . . ore processing . . . without first obtaining a final operating permit from the department." "Ore processing" means "milling, heap leaching, vat leaching, or other standard hard-rock mineral concentration processes." Section 82-4-303(20), MCA (emphasis supplied). YSG's proposal, as stated in its exploration license application, is to utilize "standard sapphire concentration and recovery methodology (weather, wash, concentrate, recover)" to determine the "sapphire concentration and quality" of the extracted material. (YSG Supplemental Information submitted Feb. 24, 2025). The proposed activities fall squarely within the statutory definition of "ore processing," for which an operating permit is required under § 82-4-335, MCA.

Conclusion

In sum, DEQ cannot approve YSG's application for issuance of Exploration License No. 00886 as submitted. While it is possible that YSG could propose more limited activity at the site that would be proper under an exploration license, the appropriate course for YSG to undertake the mining activities it proposes is to obtain an operating permit under the MMRA. Further, obtaining an operating permit and posting adequate reclamation bond that incorporates the existing disturbance at the site would allow your client to utilize the agreed upon procedure in Paragraph 9 of the Stipulation to address the reclamation required under the Stipulation and MOA.

Please contact me if you would like to discuss further or if you have any questions.

Sincerely,



Nicholas A. Whitaker

cc: Eric Dahlgren, Don Danesi, Mark Odegard

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Attorneys for Yogo Sapphire Group, LLC

STATE OF MONTANA BOARD OF ENVIRONMENTAL REVIEW

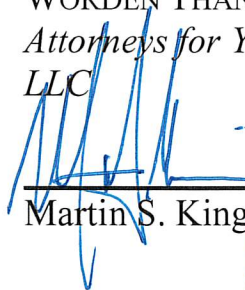
IN THE MATTER OF: YOGO SAPPHIRE
GROUP, LLC EXPLORATION LICENSE
No. 00886

**NOTICE OF DISMISSAL WITHOUT
PREJUDICE**

Yogo Sapphire Group, LLC (“YSG”), by and through counsel, hereby requests the Board to dismiss this matter without prejudice (including specifically without prejudice to seek review of Application No. 00894). The Montana Department of Environmental Quality has been contacted and consents to the dismissal of this matter without prejudice.

DATED: June 6, 2025

WORDEN THANE P.C.
*Attorneys for Yogo Sapphire Group,
LLC*



Martin S. King

CERTIFICATE OF SERVICE

I certify that on June 6, 2025, I served a copy of the preceding document by e-mail on the following:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
Email: deqbersecretary@mt.gov

Nicholas Whitaker
Attorney
Montana Department of Environmental Quality
E-mail: Nicholas.Whitaker@mt.gov

