

March 25, 2021

Jamie Connell, Director  
Bureau of Land Management, Colorado State Office  
2850 Youngfield Street  
Lakewood, CO 80215  
[blm\\_co\\_statedirector@blm.gov](mailto:blm_co_statedirector@blm.gov)

**Re: Mountain Coal Company's Request for Royalty Relief on Federal Coal Leases COC1362, COC67232, COC56447, and D44569**

Dear Director Connell:

It has come to our attention that on January 15, 2020, the Bureau of Land Management (BLM) received a Royalty Rate Reduction application from Mountain Coal Company (MCC) for Federal Coal Leases COC1362, COC67232, COC56447, and D44569, and that this request is undergoing review. With the Biden Administration's policy precluding subsidies to fossil fuels, High Country Conservation Advocates, Wilderness Workshop, Sierra Club, WildEarth Guardians, and Center for Biological Diversity implore BLM to ensure consistency with this policy direction by denying this royalty reduction request. Denying this request is also consistent with the Biden administrations' acknowledgement of the climate crisis and the recognition that federal agency actions need to be responsive to this reality in their decisionmaking. In addition, MCC's illegal and "negligent" behavior should also not be rewarded with continued subsidization of its West Elk coal mining operation.

On January 27, 2021, President Biden committed to taking swift action to address the climate crisis, which included halting federal agencies from subsidizing fossil fuels. Per Executive Order 14,008, *Tackling the Climate Crisis at Home and Abroad*, the Biden Administration recognized that "[t]he United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents."<sup>1</sup> President Biden announced that under his administration, "we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy."<sup>2</sup>

This bold and necessary policy precludes further subsidies for fossil fuel development. Indeed, issuing MCC's sought-after royalty rate reductions would directly contravene Executive Order 14,008 (EO). Section 209 of the EO calls for the heads of agencies to identify fossil fuel subsidies provided by their agency and "then take steps to ensure that, to the extent consistent with applicable law, Federal

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<sup>1</sup> Executive Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

<sup>2</sup> *Id.* at 7622 (Sec. 201).

funding is not directly subsidizing fossil fuels.”<sup>3</sup> This section also calls for the “eliminat[ion of] fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter.”<sup>4</sup>

The Interior Department has long recognized that royalty rate reductions are a type of subsidy. And it is undeniable that the royalty reduction MCC seeks would be direct subsidization of fossil fuels as it would reduce production costs to encourage coal mining.<sup>5</sup> Because the Mineral Leasing Act permits – but does not require – the Secretary of the Interior to reduce royalty rates, denying this reduction is possible under the law.<sup>6</sup> Compliance with EO requires BLM to reject MCC’s requested royalty reduction in order to comply with EO 14008’s mandate to end fossil fuel subsidies.

We also note that royalty relief is one of the categories of decisions that must go through additional review per the Department of the Interior’s Secretary’s Order 3395. According to a March 19, 2021 memorandum to Bureau Directors from the Principal Deputy Assistant Secretary for Land and Minerals Management, “[a]pplications for royalty relief” are one of the “matters” that “bureaus shall continue to provide ... to the Office of the Assistant Secretary for Land and Minerals Management for review prior to taking a final action on ... or publicly announcing decisions.”<sup>7</sup>

On the day he was inaugurated, President Biden committed to overturning the prior administration’s failure to address – and its outright denial of – the climate emergency.

*It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.*

To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and *to immediately commence work to confront the climate crisis.*<sup>8</sup>

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<sup>3</sup> *Id.* at 7625 (Sec. 209).

<sup>4</sup> *Id.*

<sup>5</sup> See <https://www.doioig.gov/sites/doioig.gov/files/01-l-297.txt> (discussing the “reduced royalty subsidy”).

<sup>6</sup> See *e.g.* 30 U.S.C. § 209; 43 C.F.R. § 3473.3–2(e) (“The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof”).

<sup>7</sup> Letter from Laura Daniel-Davis to Bureau Directors (March 19, 2021), attached as Exhibit 1.

<sup>8</sup> Executive Order 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021) at Sec. 1 (emphasis added).

Subsidizing coal mines through ongoing royalty relief directly contributes to the climate crisis, contradicting this administration’s policy. The West Elk mine not only produces a product – coal – that will be burned, further worsening the climate crisis, but the mine has for years been the single largest industrial source of methane pollution in Colorado, emitting 414,191 tons CO2e of methane in 2019.<sup>9</sup> This is roughly the equivalent of the annual emissions from more than 98,000 cars.

**Methane pollution (in tons CO2e) from all industrial sources in Colorado where the source emitted more than 290,000 tons CO2e of methane in any year between 2011 and 2019**

	<b>West Elk mine</b>	<b>Bowie No. 2 mine</b>	<b>Elk Creek mine</b>
2019	414,191	<i>(none reported)</i>	<i>(none reported)</i>
2018	291,652	<i>(none reported)</i>	<i>(none reported)</i>
2017	441,942	<i>(none reported)</i>	<i>(none reported)</i>
2016	402,876	271,827	<i>(none reported)</i>
2015	485,112	514,703	20
2014	651,233	417,374	19,945
2013	752,128	293,343	108,599
2012	922,434	331,656	1,151,883
2011	1,235,400	227,588	1,336,633
<b>Total:</b>	<b>5,596,968</b>	<b>2,056,492</b>	<b>2,617,080</b>

Source: EPA, Facility Level Information on Greenhouse gases Tool, available at <https://ghgdata.epa.gov/ghgp/main.do> (last viewed March 25, 2021).

Royalty rate reduction that sustains climate change pollution of this magnitude is inconsistent with direction from the Biden administration that aims to meaningfully address climate change, necessitating that BLM deny MCC’s royalty request.

In addition, BLM should not grant a royalty rate reduction that would reward MCC’s pattern of illegal and negligent behavior, most recently demonstrated by its road and methane venting pad bulldozing in a Colorado Roadless forest in defiance of a federal court order, and what the Colorado Division of Reclamation, Mining and Safety (DRMS) deemed MCC’s “negligence” in allowing a significant subsidence event that swallowed a creek.

Regarding the former, in June of 2020 MCC ignited a still-burning storm of controversy when it illegally bulldozed nearly a mile-long road in the Sunset Roadless Area of the Gunnison National Forest, despite a Tenth Circuit March 2020 decision that required vacatur of the North Fork Exception to the Colorado Roadless Rule and thus prohibited MCC from road building in that area.<sup>10</sup> In response to MCC’s decision to ignore the federal court order, on June 17, 2020, DRMS issued a Cessation Order that Mountain Coal “must immediately cease all surface disturbing activities . . . at the West Elk Mine.”<sup>11</sup> On October 29, 2020, the Tenth Circuit Court of Appeals issued an injunction blocking further construction for a

<sup>9</sup> See <https://ghgdata.epa.gov/ghgp/main.do#>.

<sup>10</sup> *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217, 1229 (10th Cir. 2020).

<sup>11</sup> Cessation Order Number CO-2020-001, attached as Exhibit 2.

proposed coal mine expansion in the Sunset Roadless Area pending appeal.<sup>12</sup> Neither the public, nor Gunnison County Commissioners, were alerted prior to MCC ignoring the court order, the latter stating that “the Board of County Commissioners does not condone activity found to be illegal by the 10<sup>th</sup> Circuit Court of Appeals.”<sup>13</sup> MCC’s “build first, ask questions later” approach and lack of transparency undermines public process and the rule of law, and such behavior should not be subsidized by the federal government and the public.

More recently, in November 2020, Colorado regulators fined the West Elk mine \$3,500 for a significant subsidence that swallowed a part of South Prong Creek the preceding month.<sup>14</sup> The hole, approximately 40 feet across, had opened up on the surface, just upstream of the confluence with the North Fork of South Prong Creek in Gunnison County, causing 160 gallons per minute of water to flow from the creek into the mine workings. According to DRMS: “[t]his violation was a result of negligence given the lack of diligence and reasonable care to predict and control subsidence in a manner protective of South Prong Creek given the shallow depth of the overburden where the impact occurred.”<sup>15</sup> MCC’s decision to disregard a federal court order has resulted in unnecessary and illegal damage to a Colorado Roadless Area and its lack of diligence and reasonable care has resulted in a gaping hole in the earth that swallowed a pristine mountain stream. The BLM should not be in the business of subsidizing a company that engages in this behavior.

MCC’s past abuse of the royalty system adds insult to injury. In January 2016—despite its parent company Arch Coal (now Arch Resources) undergoing bankruptcy proceedings and MCC’s previous royalty request pending—Arch paid its executives \$8 million in bonuses.<sup>16</sup> That is approximately the same amount that the State of Colorado estimated in 2012 would be given up during the five year period of 2010-2015 under MCC’s previous royalty relief request for two of the same coal leases included in this request.<sup>17</sup> This abuse of the royalty system should not be rewarded with another rate reduction.

In conclusion, current policy prohibits subsidizing fossil fuels and requires BLM to not only acknowledge the climate crisis but to make decisions accordingly. MCC’s behavior merely underscores that it should not be rewarded with another royalty reduction. Methane is the second biggest contributor to global

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<sup>12</sup> Attached as Exhibit 3.

<sup>13</sup> Letter from Gunnison County Board of County Commissioners to Director Ginny Brannon, Colorado Mined Land Reclamation Board (July 13, 2020), attached as Exhibit 4.

<sup>14</sup> Grand Junction Sentinel, *West Elk coal mine faces fine after cave-in impacts creek* (December 22, 2020), attached as Exhibit 5.

<sup>15</sup> Colorado Division of Reclamation, Mining and Safety, Notice of Proposed Amount of Civil Penalty (November 17, 2020), at 4, attached as Exhibit 6.

<sup>16</sup> See B. Hulac & D. Brown, ClimateWire, Arch Coal paid execs \$8M in bonuses on eve of bankruptcy (Mar. 16, 2016), attached as Exhibit 7. See also J. Panank, Wall St. J., Arch Coal Paid \$29M to Insiders in Year Before Bankruptcy (Mar. 11, 2016), available at <https://www.wsj.com/articles/arch-coal-paid-29m-to-insiders-in-year-before-bankruptcy-1457721786>.

<sup>17</sup> Letter of Gov. J. Hickenlooper to L. Bagley, Colorado BLM (Aug. 10, 2012) (“The estimated loss in revenues to the State of Colorado would be \$1,575,000 each year over the term of this reduction”), attached as Exhibit 8.



warming after carbon dioxide and the West Elk mine emits staggering amounts of methane pollution to facilitate the extraction and eventual burning of millions of tons of coal while carving up public lands, including roadless forests, with a spiderweb of roads, pads, and infrastructure. Given the climate change crisis, and the Biden administration's commitment to tackling that crisis, BLM should not subsidize this activity. We urge you to reject the company's request.

Sincerely,



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**TABLE OF EXHIBITS**

- Exhibit 1. Letter from Laura Daniel-Davis to Bureau Directors (March 19, 2021),
- Exhibit 2. Colorado Division of Reclamation, Mining and Safety, Cessation Order Number CO-2020-001 (June 17, 2020).
- Exhibit 3. U.S. 10<sup>th</sup> Circuit Court of Appeals Injunction (October 29, 2020).
- Exhibit 4. Gunnison County Board of County Commissioners Letter to Colorado Mined Land Reclamation Board (July 13, 2020).
- Exhibit 5. D. Webb, Grand Junction Sentinel, West Elk coal mine faces fine after cave-in impacts creek (December 22, 2020).
- Exhibit 6. Colorado Division of Reclamation, Mining and Safety, Notice of Proposed Amount of Civil Penalty (November 17, 2020).

Exhibit 7. B. Hulac & D. Brown, ClimateWire, Arch Coal paid execs \$8M in bonuses on eve of bankruptcy (Mar. 16, 2016).

Exhibit 8. Letter of Gov. J. Hickenlooper to L. Bagley, Colorado BLM (Aug. 10, 2012)

# Exhibit 1



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

March 19, 2021

To: Bureau Directors (BLM, OSMRE, BSEE, BOEM)

From: Laura Daniel-Davis  
Principal Deputy Assistant Secretary  
Land and Minerals Management

Subject: Confirmation of Matters for ASLM Review

I appreciate your work over the last 50+ days coordinating implementation of Secretary's Order (S.O.) 3395, and moving forward with us to take a science-based, all of government approach to addressing climate change, conserving 30% of America's lands and waters by 2030, and meeting our trust obligations to American Indian and Alaska Native tribes.

S.O. 3395, which temporarily elevated specific categories of matters for Departmental review, will expire on March 21, 2021. To ensure a continued appropriate level of review, as of March 22, bureaus shall continue to provide the following matters to the Office of the Assistant Secretary for Land and Minerals Management (ASLM) for review prior to taking final action on the matters or publicly announcing decisions. While we are placing special emphasis on the following items, they do not constitute an exhaustive list of actions requiring review by ASLM. Continue to forward, through DTS, those actions for which your bureau has routinely sought ASLM review and surname, but you need not utilize the S.O. 3395 memo template going forward.

- Draft or Final Resource Management Plans (RMPs)
- Records of Decision
- Coal leasing proposals or plans
- Lease sale notices
- Mining operations plans
- RS 2477 matters
- Land sales or exchanges
- National Environmental Policy Act analysis for final agency action, related to pending litigation, and/or in high priority or high conflict areas where it may impact:
  - High priority sage grouse habitat
  - State, Tribal or Federally identified wildlife migration corridors
  - Lands with wilderness characteristics
  - Lands with special designations

- Where there is consideration of a special management designation in a draft RMP or RMP Amendment that has been issued
- Reinstatement of terminated oil and gas leases
- Extension of Applications for Permit to Drill
- Lease suspensions
- Applications for royalty relief

Reminder: For those matters that have been submitted in accordance with S.O. 3395, but for which you have not received the final ASLM decision, you may not proceed without approval from ASLM. Please also provide early notification on items that are Administration priorities, for example, renewable energy projects or other climate related milestones, “30 by ‘30” initiatives, or actions related to racial equity, environmental justice, or Covid-19, as well as early notification on items that are of high local, state, or regional interest.

# Exhibit 2





CESSATION ORDER

Cessation			
Order No.	<b>CO-2020-001</b>	<b>Mine:</b>	<b>West Elk Mine</b>
Permit No.:	<b>C-1980-007</b>	<b>County:</b>	<b>Delta, Gunnison</b>
Type of Mine:	<b>Underground</b>	<b>Permittee:</b>	<b>Mountain Coal Company, LLC</b>
Operator (If		<b>Mail</b>	<b>5174 Highway 133</b>
Other than	<b>Mountain Coal Company, LLC</b>	<b>Address:</b>	<b>Somerset, CO 81434</b>
Permittee):			
Mail Address:		<b>Date/Time</b>	
	<b>5174 Highway 133</b>	<b>of</b>	<b>June 10, 2020</b>
	<b>Somerset, CO 81434</b>	<b>Inspection:</b>	
Inspector:	<b>Leigh Simmons</b>	<b>Served by:</b>	<b>James Stark</b>
Person Served:	<b>Weston Norris</b>		

*(Signature of Authorized Representative of the  
 Division of Reclamation, Mining and Safety)*

\_\_\_\_\_  
*(Signature of Person Served)*

\_\_\_\_\_  
*(Please Print Name and Title)*

CERTIFIED MAIL NO.

Date and Time of Service:

The Division of Reclamation, Mining and Safety has conducted an inspection of the above mine, has made the findings stated in the attached schedule and hereby finds, for good cause shown, that a Cessation Order must be issued with respect to each of the conditions, practices, or violations listed in the attached schedule. This Order constitutes a separate Cessation Order for each condition, practice, or violation listed.

In accordance with Section 34-33-123 of the Colorado Surface Coal Mining Reclamation Act, you are ordered to CEASE IMMEDIATELY the operations described in the attached schedule and to perform the affirmative obligations (if applicable) described in the attached schedule within the designated time for abatement. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe manner in compliance with applicable laws and regulations.

The undersigned finds that cessation of mining is \_\_\_\_ is not X expressly, or in practical effect, required by this Notice. For this purpose, "mining" means extracting coal from the earth or from a waste pile and transporting it within or from the mine site.

This Order shall remain in effect until the condition, practice, or violation has been abated, or until it is modified, terminated or vacated in writing by an authorized representative of the Division, or by the Mined Land Reclamation Board.

1. **Expiration Date of Notice - Informal Hearing at Site.** If this Order requires cessation of mining, expressly or in practical effect (but not otherwise), it will expire automatically 30 days after service upon you, unless, within that time, (a) an informal hearing on the cessation has been held at or near the site, or (b) the operator has waived the holding of such a hearing. The informal hearing will be presided over by representatives of the Division other than the representative who issued the Order. Temporary relief from the Order may be requested at such hearing. Your right to a formal review is not affected by any waiver on your part of an informal hearing.
2. **Formal Review and Temporary Relief.** The Operator has the legal right to a review of this Order or Violation in a formal public hearing before the Colorado Mined Land Reclamation Board. You may apply for review by submitting a Request for Review within 90 days of the issuance of this Order. The Request for Review must be submitted to:

Mined Land Reclamation Board  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

If you request a formal hearing, you may request temporary relief from this Order, pending hearing, but the filing of a request for review does not operate as a stay of any Order or Notice. Procedures in this regard are found in C.R.S. 1973, 34-33-124.

3. **Mandatory Minimum Penalties.** C.R.S. 1973, 34-33-123(8)(1) requires that a mandatory minimum penalty of \$750.00 or more must be assessed for each day during which the violation(s) continues beyond the abatement period set forth in this Order or in any Notice of Violation.

If you willfully and knowingly fail or refuse to comply with this Order, you will be subject to criminal prosecution and will, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than one year, or both.

4. **Effect on Permit.** In addition, if it is determined that a pattern of violations exists, and that the violations were caused by unwarranted failure to comply, or were willful, your permit may be suspended or revoked.

C.R.S. 1973, 34-33-123(8) provides for imposition of civil penalties of up to \$5,000.00 for each violation listed in the schedule and provides that each day of continuing violation may be deemed a separate violation.



Cessation Order No.: **CO-2020-001**

Nature of Condition, Practice, or Violation:

**On April 24, 2020 the United States Court of Appeals for the Tenth Circuit issued a mandate ordering the United States District Court for the District of Colorado to vacate the North Fork Exception to the Colorado Roadless Rule. On June 15, 2020 the United States District Court for the District of Colorado entered an order vacating the North Fork Exception to the Colorado Roadless Rule, 81 Fed. Reg. 91,811 (Dec. 19, 2016). Notwithstanding BLM coal leases C-1362 and COC-67232, after reviewing the relevant facts and Orders from the 10th Circuit and the United State District Court, the Division has determined that Mountain Coal has failed to maintain its legal right to enter the Sunset Roadless area at the West Elk Mine. Mountain Coal must immediately cease all surface disturbing activities in longwall panels LWSS-1, LWSS-2, LWSS-3, and LWSS-4 at the West Elk Mine. If Mountain Coal is currently conducting any surface disturbing activities, it must immediately stop and stabilize the area(s) to prevent any off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act. The Division further determines that a condition of significant imminent environmental harm exists.**

ACT, REGULATION, OR PERMIT PROVISION(S) VIOLATED:

ACT SECTION(S): **C.R.S. 34-33-110(2)(j) and 34-33-114(2)(f)**

REGULATIONSECTION(S): **Rules 2.03.6 and 2.07.2**

PERMIT SECTION(S): **Permit Section 2.03 and Exhibit 4**

Portion of the Operation to which Order applies:

**This order applies to all surface disturbing activities in the Sunset Roadless area, including longwall panels LWSS-1, LWSS-2, LWSS-3, and LWSS-4, except as expressly permitted herein. Mountain Coal may access and continue current operations in longwall panel LWSS-1 and may conduct maintenance and surface stabilization activities in longwall panel LWSS-1 to prevent any off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act. Mountain Coal may conduct ground stabilization activities in longwall panels LWSS-2, LWSS-3, and LWSS-4.**

Findings - (Check the appropriate blank):

- The condition, practice, or violation is creating an imminent danger to the health or safety of the public.
- The condition, practice or violation is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources.
- The Permittee or Operator has failed to abate violation(s) No. \_\_\_\_\_ included in Notice of Violation No. \_\_\_\_\_ within the time for abatement originally fixed or subsequently extended.

Operation(s) to be Ceased Immediately:

1. All surface disturbing activities in the Sunset Roadless area must cease immediately, except as expressly permitted herein.
2. All travel on roads and drill pads constructed in longwall panels LWSS-2, LWSS-3, and LWSS-4 that are within the Sunset Roadless Area.
3. All equipment must be removed from the Sunset Roadless area unless it is actively being used for surface stabilizing activities and maintenance to prevent offsite impacts.
4. Mountain Coal may continue to access the roads and drill pads in longwall panel LWSS-1 and conduct surface stabilization and maintenance activities as necessary. No new construction activities are permitted in LWSS-1.
5. Mountain Coal may conduct ground stabilization activities in longwall panels LWSS-2, LWSS-3, and LWSS-4 to prevent offsite impacts pursuant to the Colorado Surface Coal Mining Reclamation Act.

STEPS NECESSARY TO ABATE VIOLATION (REMEDIAL ACTION):

Abatement Step Description

#	Description
1	Notwithstanding BLM leases C-1362 and COC-67232, Mountain Coal must provide the Division with detailed information regarding its assertion that it maintains legal right of entry to the Sunset Roadless area and why it is not in direct conflict with the District Court order vacating the North Fork Exception to the Colorado Roadless Rule.

TIME FOR ABATEMENT (NOT MORE THAN 90 DAYS):

ON OR BEFORE last abatement due date

Abatement Step #	Due Date
1	September 14, 2020

Affirmative Obligation(s) to Abate Imminent Danger or Harm, if Applicable\*:

Mountain Coal must immediately cease all surface disturbing activities in the Sunset Roadless area at the West Elk Mine. Mountain Coal may conduct surface stabilization activities as necessary to prevent off-site impacts pursuant to the Colorado Surface Coal Mining Reclamation Act.

\* If imminent danger to public health and safety or imminent environmental harm is found to exist.

# Exhibit 3

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**October 29, 2020**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

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HIGH COUNTRY CONSERVATION  
ADVOCATES; WILDEARTH  
GUARDIANS; CENTER FOR  
BIOLOGICAL DIVERSITY; SIERRA  
CLUB; WILDERNESS WORKSHOP,

Plaintiffs - Appellants,

v.

UNITED STATES FOREST SERVICE;  
UNITED STATES DEPARTMENT OF  
AGRICULTURE; DANIEL JIRON, in his  
official capacity as Acting Under Secretary  
of Agriculture for Natural Resources and  
Environment, U.S. Department of  
Agriculture; SCOTT ARMENTROUT, in  
his official capacity as Supervisor of the  
Grand Mesa Uncompahgre, and Gunnison  
National Forests; UNITED STATES  
DEPARTMENT OF INTERIOR;  
BUREAU OF LAND MANAGEMENT;  
KATHERINE MACGREGOR, in her  
official capacity as Deputy Assistant  
Secretary, Land and Minerals  
Management, U.S. Department of Interior,

Defendants - Appellees,

and

MOUNTAIN COAL COMPANY, LLC,

Defendant Intervenor - Appellee.

No. 20-1358  
(D.C. No. 1:17-CV-03025-PAB)  
(D. Colo.)

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**ORDER**

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Before **BRISCOE, KELLY**, and **LUCERO**, Circuit Judges.

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Appellants filed an Emergency Motion for Injunction Pending Appeal on October 5, 2020. We ordered Appellees to respond to the motion and entered a temporary stay to facilitate our consideration of the motion and responses. Having now considered the motion and responses in light of the governing standard, *see Nken v. Holder*, 556 U.S. 418, 434 (2009), we vacate the temporary stay and grant the Emergency Motion for Injunction Pending Appeal. Pending our consideration of the appeal, we enjoin Appellee Mountain Coal Company “from imminently bulldozing additional drilling pads on [the road constructed after issuance of this court’s April 24, 2020, mandate in No. 18-1374] and drilling methane ventilation boreholes in preparation for coal mining in the Sunset Roadless Area.” Mot. at 3.

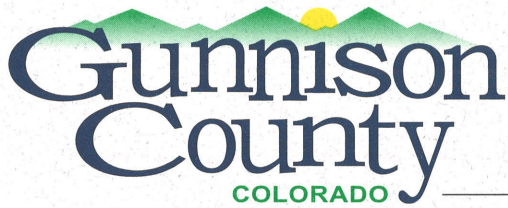
Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk



# Exhibit 4



**Gunnison County Board of County Commissioners**

Phone: (970) 641-0248 • Fax: (970) 641-3061

Email: [bocc@gunnisoncounty.org](mailto:bocc@gunnisoncounty.org) • [www.GunnisonCounty.org](http://www.GunnisonCounty.org)

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July 13, 2020

Colorado Mined Land Reclamation Board

Ginny Brannon, Director

Colorado Division of Reclamation, Mining and Safety

1313 Sherman Street

Denver, Colorado 80203

[Ginny.brannon@state.co.us](mailto:Ginny.brannon@state.co.us)

cc: [chad.stewart@usda.gov](mailto:chad.stewart@usda.gov)

Re: Sunset Roadless Area; Gunnison National Forest

Dear Board and Ms. Brannon,

The Board of County Commissioners of Gunnison County, Colorado provides this correspondence regarding the construction by Mountain Coal Company of approximately one mile of new road and two new methane well pads in the Sunset Roadless Area of the Gunnison National Forest. This work was performed in spite of a ruling from the 10<sup>th</sup> Circuit Court of Appeals vacating the North Fork Exception from the Roadless Rule that applies to the Sunset Roadless Area.

The Board of County Commissioners understands that the Division of Reclamation, Mining and Safety (DRMS) issued a cessation order on June 18, 2020 requiring Mountain Coal to stop surface disturbance activities in the Sunset Roadless Area immediately. And that this cessation order is being appealed to the Colorado Mined Land Reclamation Board.

While the Board of County Commissioners has regulated and has generally been supportive for many years of legal mineral extraction and oil and gas operations on federal lands





**Gunnison County Board of County Commissioners**

Phone: (970) 641-0248 • Fax: (970) 641-3061

Email: [bocc@gunnisoncounty.org](mailto:bocc@gunnisoncounty.org) • [www.GunnisonCounty.org](http://www.GunnisonCounty.org)

---

in the North Fork of the Gunnison River, the Board of County Commissioners does not condone activity found to be illegal by the 10<sup>th</sup> Circuit Court of Appeals.

The Board of County Commissioners also understands that there is further and on-going litigation in the United States District Court for the District of Colorado on this matter.

The Board of County Commissioners respectfully requests that DRMS keep the cessation order in place unless or until the disturbed area is reclaimed, the federal court determines that the work is authorized in the Sunset Roadless area, and Mountain Coal has obtained a legal right of entry, consistent with all applicable regulatory requirements.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jonathan Houck", is written over a horizontal line. The signature is stylized and somewhat abstract.

Jonathan Houck

Chairperson

Board of County Commissioners

200 E. Virginia Ave.

Gunnison, Colorado 81230

# Exhibit 5

[https://www.gjsentinel.com/news/west-elk-coal-mine-faces-fine-after-cave-in-impacts-creek/article\\_873c6b98-414b-11eb-a04f-0f952772714e.html](https://www.gjsentinel.com/news/west-elk-coal-mine-faces-fine-after-cave-in-impacts-creek/article_873c6b98-414b-11eb-a04f-0f952772714e.html)

## West Elk coal mine faces fine after cave-in impacts creek

By By DENNIS WEBB Dennis.Webb@gjsentinel.com

Dec 22, 2020

The West Elk coal mine in the North Fork Valley faces a proposed \$3,500 fine in connection with an October incident in which a mine roof collapsed just 30 feet underground and created a hole at the surface, resulting in a creek draining into the mine for a short time.

The state Division of Reclamation, Mining and Safety notified Mountain Coal Co., a subsidiary of Arch Resources, of the proposed civil penalty Dec. 14. Mountain Coal can request a review of the penalty within 10 days of receiving the notification.

The surface subsidence occurred Oct. 13 during development of the western-most main entry to the west of a future longwall coal panel underground, according to a Dec. 2 response letter Mountain Coal sent to the state after receiving a notice of violation. The subsidence occurred on private land.

According to an Oct. 23 DRMS inspection report, the incident occurred under South Prong Creek, resulting in a hole about 40 feet across. Water from the creek flowed into the mine workings at rates of up to 160 gallons a minute.

Coal mine staff responded immediately, setting up pumps and a temporary streamflow diversion that night, the inspection report says.

Crews filled the hole and installed a 6- to 8-inch-thick cap of bentonite clay, and a contractor drilled holes into the filled hole and injected grout in them to further reduce the permeability of the material used to fill the hole. An Oct. 30 permit was issued to allow for design of the creek's restoration.

DRMS said in its fine notice Dec. 14, "This violation was a result of negligence given the lack of diligence and reasonable care to predict and control subsidence in a manner that would protect South Prong Creek given the shallow depth of the overburden where the im



Overburden refers to the earth lying between an underground mine and the surface. DRMS said in its notice of violation that documents related to subsidence in an approved permit application packet included references from experts who assumed a typical overburden depth of 400 to 2,100 feet where the mining is to be conducted.

The notice said, “The actual depth of cover at the location where subsidence occurred under South Prong Creek was an order of magnitude less than the minimum depth of cover contemplated by the authors of the approved subsidence evaluation study ... .”

Mountain Coal said in its response that the reference of 400 to 2,100 feet pertained to the longwall mining and wasn’t intended to encompass the development work “where the unforeseen roof collapse and subsidence anomaly occurred.”

It said subsidence in the course of such development work has never previously occurred at West Elk Mine “and is extremely rare for underground coal mines,” and its actions in doing that work “were consistent with the permit terms and industry standards.”

“In addition there was no material disruption of the hydrological balance,” Mountain Coal said, adding that streamflows into the mine lasted about eight hours.

It is asking that the notice of violation be vacated. It also said it is committed to addressing the development work’s newly revealed subsidence vulnerability, “particularly under perennial streams,” and will submit an updated subsidence evaluation by a Dec. 30 state deadline.

The incident comes as Mountain Coal is working to expand the mine’s underground operations beneath a national forest roadless area, which requires drilling surface boreholes for venting methane.

On Oct. 29, the 10th Circuit Court of Appeals enjoined Mountain Coal from bulldozing more drilling pads on a road it built this year in the roadless area and drilling boreholes there while the court considers a pending appeal associated with that work.

Allison Melton, an attorney with the Center for Biological Diversity, called the proposed state fine “puny” and said it “isn’t even a drop in the bucket compared to the irreversible damage caused by Mountain Coal, part of one of the largest coal mining companies in the country.”

“This company’s negligence opened up a gaping hole in the Earth and decimated this pristine creek,” she said. “The Forest Service and other agencies were supposed to take a hard look at potential damage from this mine’s expansion, but they’ve failed miserably and this is the sad result.”

---

**Dennis Webb**



# Exhibit 6



Kathleen G. Welt  
Environmental Engineer III  
[kwelt@archrsc.com](mailto:kwelt@archrsc.com)  
Phone: 970.929.2238

**Mountain Coal Company, LLC**  
A subsidiary of Arch Resources, Inc  
West Elk Mine  
5174 Highway 133  
Somerset, CO 81434

RECEIVED

JAN 11 2021

DIVISION OF RECLAMATION  
MINING AND SAFETY

January 06, 2021

Mr. Leigh D. Simmons  
Colorado Division of Reclamation, Mining and Safety  
Office of Mined Land Reclamation  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

**Re: Mountain Coal Company, LLC, West Elk Mine; Permit No. C-1980-007;  
NOV CV 2020-001 Civil Penalty Payment**

Dear Mr. Simmons:

Enclosed is a check in the amount of \$3,500.00 for the civil penalty assessed against Mountain Coal Company, LLC in regard to NOV CV 2020-001.

Please contact me at (970) 929-2238 or by e-mail should you have questions regarding this submittal.

Sincerely,

Kathleen G. Welt,  
Environmental Engineer III

cc: Weston Norris - MCC  
Jessica Wilczek - MCC



**COLORADO**  
**Division of Reclamation,  
Mining and Safety**  
Department of Natural Resources

1313 Sherman St. Room 215 Denver, CO 80203  
P (303) 866-3567 F (303) 832-8106  
<https://colorado.gov/drms>

**NOTICE OF PROPOSED AMOUNT OF CIVIL PENALTY  
REQUEST FOR CONFERENCE**

NOV/CO NO.: CV-2020-001

MINE:	<b>West Elk Mine</b>	DATE ISSUED:	<b>November 17, 2020</b>
PERMIT NO.:	<b>C-1980-007</b>	TYPE OF MINE:	<b>Underground/Federal</b>
OPERATOR/PERMITTEE:	<b>Mountain Coal Company, LLC</b>	COUNTY:	<b>Delta, Gunnison</b>
ATTENTION:	<b>Weston Norris</b>	ADDRESS:	<b>5174 Highway 133 Somerset, CO 81434</b>

TO OPERATOR:

You are hereby notified, pursuant to C.R.S. 34-33-123(8)(b), that the Division of Reclamation, Mining and Safety ("the Division") of the Department of Natural Resources, State of Colorado, proposes to assess a civil penalty against you in the amount of \$3,500.00.

If you wish to request a conference at which the proposed penalty may be reviewed, you may do so by indicating on, and returning to the Division, the attached page of this notice. Your request should be completed in the space provided and returned to the Division within ten days after your receipt of this notice.

If you fail to request such conference within ten days after service of this notice, the Division will fix the penalty at \$3,500.00, based upon the factors referred to in C.R.S. 34-33-123(8)(a).

DIVISION OF RECLAMATION, MINING AND SAFETY

By: 

December 14, 2020

Date: \_\_\_\_\_

Name: Jared Ebert

Title: Assessment Officer

**DIVISION OF RECLAMATION, MINING AND SAFETY**

**CERTIFICATE OF SERVICE**

Permit No. C-1980-007

NOV No. CV-2020-001

I hereby certify that I served a copy of the foregoing NOTICE OF PROPOSED CIVIL PENALTY on Mountain Coal Company, LLC by depositing a true copy thereof, first class postage prepaid, in the United States mail, to the operator at the address above, on December 15, 2020.

Certified Mail No.: 7019 2280 0001 8254 8456

Return Receipt Requested



\_\_\_\_\_  
Signature of Person Served if Personal Service

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

Name: Jared Ebert

Title: Assessment Officer

**REQUEST FOR CONFERENCE**

The operator above described hereby requests an assessment or settlement conference as permitted by C.R.S. 34-33-123(8).

Mountain Coal Company, LLC

Operator

By

\_\_\_\_\_  
(Signature)

Date

\_\_\_\_\_



**Proposed Civil Penalty Assessment**  
**Mountain Coal Company / West Elk Mine**  
**Violation No. CV-2020-001 (Issued November 17, 2020)**  
**Date of Proposed Assessment: December 14, 2020**

Material reviewed: DRMS CV-2020-001 document, DRMS October 23, 2020 Inspection Report, Section 2.05.6 of the C-1980-007 permit application package, Mountain Coal Company's response to NOV CV-2020-001 received on December 2, 2020. Coal Program Director Jim Stark requested a Proposed Penalty Assessment on November 17, 2020.

**Rule 5.04.5(3)(a) – History of Previous Violations**

No notice of violations have been issued within one year of the issuance date for CV-2020-001. A cessation order (CO-2020-001) was served to Mountain Coal Company, LLC (MCC) on June 18, 2020 and was subsequently modified on September 17, 2020. The cessation order was issued independent of a notice of violation. Therefore no penalty will be assessed for this provision.

**Penalty assessed: \$0**

**Rule 5.04.5(3)(b) – Seriousness**

Due to insufficient subsidence predictions and projected overburden thickness included in the permit application package, subsidence was not properly controlled during development mining under South Prong Creek where overburden depth was shallow. As a result, water from the creek flowed into the mine workings. The duration of impact lasted from the afternoon of Monday, October 13, 2020 to the following morning. Stream flow was reported to have been successfully diverted around the subsidence hole by the morning of Tuesday, October 14, 2020. MCC asserts flows from the stream into the mine occurred for about eight hours and that no material disruption of the hydrologic balance occurred.

The probability of the occurrence of the event which a violated standard is designed to prevent is higher in this instance due to the shallow nature of the overburden at the location of the incident. However the duration of water loss from the creek was short and the extent of the potential and actual damage in terms of area and impact on the public environment was small.

**Penalty assessed: \$500.00**

**Rule 5.04.5(3)(c) – Fault**

This violation was a result of negligence given the lack of diligence and reasonable care to predict and control subsidence in a manner protective of South Prong Creek given the shallow depth of the overburden where the impact occurred.

**Penalty assessed: \$500.00**

**Rule 5.04.5(3)(d) – Good faith in achieving compliance**

One abatement step was required to be completed by December 1, 2020 for CV-2020-001. MCC must submit a technical revision to: (1) reconcile the mine plan with the subsidence survey and include the information in an updated subsidence control plan as required by 2.05.6(6)(i); (2) update predictions of probable hydrologic consequences as necessary. To date, this abatement step remains outstanding and MCC requested and was given approval of an extension of the abatement due date to December 31, 2020.

MCC took immediate action to divert South Prong Creek around the subsidence hole. MCC has promptly submitted two minor revisions (MR450 and MR452) to permit the disturbance associated with repairing the damage at South Prong Creek within three days of informing the Division of the incident. MCC has submitted a technical revision (TR148) on October 30, 2020 to permit the design of the restoration of South Prong Creek. Given these prompt good faith actions, the Division will subtract a portion of the penalty.

**Penalty Subtracted: \$750**

**Rule 5.04.6 - Number of Days**

The Division may assess a separate civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date fixed for abatement of a violation. In determining whether to make such an assessment, the Division may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. Notice of Violation CV-2020-001 was served to MCC on November 17, 2020. The date for abatement of the violation cited in the Notice of Violation was fixed at December 1, 2020 and then extended to December 31, 2020. Therefore the number of days for this Proposed Assessment will be for the period from the Notice of Violation service date to the initial required abatement date, a total of 14 days.

**The number of days is proposed at 14.**

**Total penalty assessed per day of violation: \$250.00**

**The total proposed civil penalty assessment for this NOV is therefore set at \$3,500.00**



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Permit # C-1980-007

Violation # CV-2020-001

notice of proposed amount of civil penalty

JLE/LDS/AHH

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 5174 Highway 133  
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DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF RECLAMATION, MINING & SAFETY  
1313 SHERMAN STREET, SUITE 215  
DENVER, CO 80203-2243**

Permit # C-1980-007  
Violation # CV-2020-001  
notice of proposed amount of civil penalty  
JLE/LDS/AHH

# Exhibit 7

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THE POLITICS AND BUSINESS OF CLIMATE CHANGE

---

**FINANCE:**

**Arch Coal paid execs \$8M in bonuses on eve of bankruptcy**

Benjamin Hulac and Dylan Brown, E&E reporters

*Published: Wednesday, March 16, 2016*

Arch Coal Inc. paid its top executives more than \$8 million in bonuses the business day before the company filed for bankruptcy in January, according to U.S. Bankruptcy Court for the Eastern District of Missouri filings published last week.

Securities and Exchange Commission records also show that 12 company insiders exercised or converted about 88,000 "phantom stocks" -- a type of financial derivative used to incentivize employees -- worth more than \$70,000 that same Friday, Jan. 8, 2016.

On the following Monday, Jan. 11, Arch announced it had filed for bankruptcy protection.

Arch declined several written and telephone requests for comment about financial transactions made as the company stood on the brink of bankruptcy.

No agency has accused the company of wrongdoing in making the payments or in connection with the phantom stock activity. Several experts, however, said the timing of the payments and the activity by company officials so shortly before Arch filed for bankruptcy raises questions.

The most notable transactions Arch made in the days before filing for Chapter 11 bankruptcy protection, according to court and SEC filings, were payments of \$8.12 million in bonuses to seven of its corporate officers, including its CEO, chief financial officer and president.

Chairman and CEO John Eaves received \$2.78 million the Friday before the bankruptcy announcement. Arch President and Chief Operating Officer Paul Lang received \$1.75 million that same day, while Chief Financial Officer and Treasurer John Drexler received \$1.17 million.

Allen Kelley, vice president of human resources; Deck Slone, senior vice president of strategy and public policy; Kenneth Cochran, senior vice president of operations; Lang; and Robert Jones, general counsel, also received payments ranging from \$164,666 to \$868,398.

The bonuses were paid on a regular schedule unconnected to the bankruptcy date and were approved by Arch well before the bankruptcy filing, according to a person familiar with the company's current payment practices.

The bonuses were divided into two sections: those associated with a 2013-15 long-term incentive plan and those paid as part of an annual bonus plan, according to the same person, who spoke on the condition of anonymity, citing Arch's ongoing bankruptcy proceedings. Approvals of each plan date back to 2013 and February 2015, respectively, they explained.

Still, some financial experts said they are concerned by the timing of bonus payments and phantom share transactions.

**Expert questions 'bizarre,' 'suspicious' timing**

Gary Hufbauer, a senior fellow at the Peterson Institute for International Economics, said the bonus payments "could be very likely voided by a bankruptcy court."

Bankruptcy courts scrutinize a company's financial transactions and payments made during the 90 days before that firm filed for protection. Hufbauer called the \$8.12 million on the eve of bankruptcy "really suspicious."

"So I would suspect that would be pretty hotly contested" by other creditors, he said of the \$8.12 million in payouts, describing the situation as a "bizarre set of facts."

Of the 12 insiders named in transactions with phantom stock, 10 were board members and the remaining two were Drexler, the CFO, and Cochran, senior vice president of operations.

Overall, the Jan. 8 transactions covered 87,783 phantom shares either exercised or converted for \$72,859.89, according to SEC filings, which each list a name of a director or corporate officer, corresponding to a number of phantom shares.

For example, a [form](#) filed Jan. 12 but dated four days before lists David Freudenthal, the former Democratic governor of Wyoming, and shows that 2,757 shares worth \$2,288.31 were disposed of.

"It seems strange that you would have such a coincidence," said Thaya Brook Knight, associate director of financial regulation studies at the Cato Institute, referring to the short window between the Friday transactions and the Monday morning bankruptcy declaration.

### Deferred compensation

She said companies commonly draft agreements about phantom stock -- a type of compensation plan typically offered to insiders that pays out based on the performance of real shares. The document outlining a company's phantom stock agreement is what a court would have to examine to determine if wrongdoing had been committed, according to Knight. That agreement would also likely detail when and how phantom stock payments are permitted to occur, she added.

"With so little data, it's hard to really say that this or that happened," said Knight, who reviewed SEC documents of Arch's insider transactions at the request of *ClimateWire*.

"But if the executives had a choice in when the payout was made, that may make the transactions something of a red flag," she said.

Arch made the transactions on behalf of its executives, and the phantom stocks involved deferred compensation, said the anonymous official with direct knowledge of Arch payment policies.

Deferred compensation is the portion of the salary an employee opts to receive at a later date in order to save on taxes. The practice is allowed so long as the compensation is not guaranteed, or "unsecured." Otherwise, it would be taxed.

The company held deferred compensation in a distinct fund, the source said. When the Department of Justice requested that the company move toward more conservative investments in preparation for bankruptcy, the company moved the phantom stocks, the person said.

Generally, insider trading involves someone, often a corporate executive inside a company, buying or selling an investment based on non-public information that would likely affect the performance of that investment if it were shared with the public.

However, Arch's pre-bankruptcy transactions don't appear to have involved investors on the open market. Rather, the phantom stock activities seem to have been made between Arch and its insiders, experts said.

### Losing billions, golf club payments

Hemmed in by falling coal prices globally, cheap natural gas from U.S. hydraulic fracturing and looming environmental regulations, Arch is struggling financially.

The company reported yesterday a net loss of more than \$2.9 billion for 2015, compared to a \$558 million loss for the same period in 2014. The difference is a decline of more than 400 percent.

Arch has lost more money than it has taken in every year since 2012.

In financial statements filed yesterday, Arch called U.S. EPA's Clean Power Plan a "sweeping" regulation.

"If the Clean Power Plan ultimately is upheld in its current form, it is projected to significantly curtail the construction of new coal-fired power plants and have a materially adverse impact on the demand for coal nationally," the company said in a section of its latest annual report about climate change.

Court documents also show Arch made two other payments on the business day before it sought bankruptcy protection.

One was a \$12,540 payment to the Algonquin Golf Club in St. Louis, where the firm is headquartered, and the other a \$10,680 payment to the Belleive Country Club, also in St. Louis.

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# Exhibit 8

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

136 State Capitol  
Denver, Colorado 80203  
Phone (303) 866-2471  
Fax (303) 866-2003



John W. Hickenlooper  
Governor

August 10, 2012

Mr. Lonny R. Bagley, Deputy State Director for Energy, Lands & Minerals  
U. S. Bureau of Land Management, Colorado State Office  
2850 Youngfield Street  
Lakewood, CO 80215-7093

Dear Mr. Bagley:

On behalf of the State of Colorado, I am writing to confirm our support for a royalty rate reduction for federal coal leases COC 1362 and COC 67232, for the Mountain Coal Company, LLC, West Elk Mine. The royalty rate reduction would be from 8 to 5 percent in areas where the E-seam split is six inches or greater in thickness. If production from this federal coal seam does not occur at this time, local employment and revenues will be impacted, along with royalty revenues to federal and state governments, and severance tax revenues to state and local governments.

I understand that the royalty rate reduction will be for a period of five years, retroactive to February 1, 2010. The estimated loss in revenues to the State of Colorado would be \$1,575,000 each year over the term of this reduction.

The State supports this request in order to encourage the greatest ultimate recovery of the resource and in the interest of conservation of the natural resources. We hope this loss in short-term revenue will assure the long-term economic viability of the operator, as well as the industry, in this major coal-producing region of Colorado.

If you have any further comments, please contact Ginny Brannon, Assistant Director for Water and Energy, in the Colorado Department of Natural Resources (303-866-3311).

Sincerely,

John W. Hickenlooper  
Governor

cc: Mike King, DNR Executive Director

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