

King II Mine

Federal Coal Lease COC-62920 Modification and Federal Mine
Permit CO-0106A Revision and Renewal

Mining Plan Modification and Significant Permit Revision

Finding of No Significant Impact

La Plata County, Colorado

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**United States Department of the Interior
Office of Surface Mining Reclamation and Enforcement
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Introduction

The Office of Surface Mining Reclamation and Enforcement (OSMRE) Western Region determined that a modification to Federal Coal Lease COC-62920 at GCC Energy, LLC (GCC), King II Mine, would require a Federal Mining Plan Decision Document (MPDD) and Federal Mine Permit (CO-0106A) Revision and Renewal. Under the National Environmental Policy Act (NEPA) of 1969, as amended, OSMRE and the Bureau of Land Management's (BLM) are completing an environmental assessment (EA) as joint-lead agencies, to analyze the environmental effects of the modification to Federal Coal Lease (COC-62920) and Federal Mine Permit (CO-0106A) Revision and Renewal. BLM gave the EA the following tracking number DOI-BLM-CO-S010-2011-0074-EA. GCC currently operates the King II Mine, which is an underground room-and-pillar coal mine located in Hesperus, La Plata County, Colorado. GCC has been mining at the King II Mine since 2007. The King II Mine is made up of federal coal lease, private coal lease, and state coal lease; however, a majority of the coal production at the mine comes from Federal Coal Lease COC-62920.

The King II Coal Mine is an underground, "room-and-pillar" type coal mine with surface facilities that cover approximately 25 acres, and underground mining operation that cover approximately 565 acres, as of July 2015. GCC has submitted an application to the BLM for a lease modification to COC-62920, which if approved would expand the area of that lease by 950.55 acres. Most of the land encompassed by both the existing lease COC-62920 and the proposed lease modification area are "split-estate" lands where the federal government has retained ownership of the subsurface coal (and other minerals), but has disposed of the surface estate. The Ute Mountain Ute Indian Tribe owns much of the split-estate surface in this area. While the split-estate surface owned by the Ute Mountain Ute Indian Tribe is not within a designated Indian Reservation, it does meet the definition of "Indian Lands" as defined by SMCRA, and as a result, the primary regulator of coal mining operations pursuant to SMCRA for those lands is the OSMRE. Of the 950.55 acre lease addition, 590.55 acres are on surface lands owned by the Ute Mountain Ute Tribe.

Statement of Environmental Significance

OSMRE determined that the proposed federal lease modification to add 590.55 acres of un-leased federal coal under privately owned surface land at the King II Mine and revision to federal mine permit CO-0106A and permit renewal would not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the NEPA. Pursuant to 30 Code of Federal Regulations (CFR) Part 746, OSMRE is recommending selection and approval of the Proposed Action Alternative. The undersigned person has determined that approval of a federal mining plan modification authorizing the continuation of mining operations for approximately 4.66 million tons of recoverable federal coal reserves would not have a significant impact on the quality of the human environment under section 102(2)(C) of the NEPA, 42 USC 4332(2)(C).

Reasons for a Finding of No Significant Impact

The purpose of the action is established by the Mineral Leasing Act of 1920 (MLA) and SMCRA, which requires the evaluation of GCC's Permit Revision Application Package (PAP) submitted by GCC to the CDRMS and OSMRE. Before GCC may conduct underground mining and reclamation operations within the Federal Coal Lease COC-62920 modification area, and as proposed Federal Mine Permit CO-0106A revision application, federal approval of the mining plan modification and Permit Revision Application Package must be granted. Per 30 CFR, Part 746, OSMRE is the agency responsible for making a recommendation to the Assistant Secretary for Land and Minerals Management (ASLM) to approve, disapprove, or approve with conditions the proposed mining plan modification. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions. The need for the action is to provide the opportunity for GCC to exercise its valid existing rights granted under Federal Coal Lease COC-62920 to extract coal from GCC's leased federal coal under the MLA. The Proposed Action is to approve the mining of the coal within Federal Coal Lease COC-62920 and contribute to continued operations of recoverable federal coal reserves.

The Proposed Action would modify the mining plan and revise the federal permit to authorize mining of a probable maximum of approximately 4.66 million tons of federal coal. No additional surface disturbance within the mine permit boundary is planned. The Proposed Action would extend mining at King II Mine for approximately seven years. The Proposed Action includes the associated improvements for County Road 120 under GCC's Land Use Permit and Road Improvement Agreement.

The No Action Alternative would not approve the mining plan modification or federal mine permit significant revision and renewal. The 4.66 million tons of federal coal would be bypassed and the life of mine would not be extended for an additional seven years. Production would end with depletion of the existing recoverable reserves currently approved. Reclamation operations would commence and continue until GCC's obligations for reclamation under SMCRA and the federal lease terms were met.

The EA considers a reasonable range of alternatives and in conjunction with the previously completed NEPA reviews and discloses the potential environmental effects. These reviews provide sufficient evidence and support for a FONSI.

The EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all Council of Environmental Quality regulations implementing NEPA (40 CFR 1500-1508), and other program requirements. This independent review included OSMRE's evaluation of all environmental issues analyzed in the EA, including those identified in comments received from the public during scoping. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that the public involvement requirements of NEPA have been met. OSMRE conducted public outreach and received comments from January 6, 2017 through

February 5, 2017. Additionally, a public comment period on the EA took place from June 9, 2017 to July 10, 2017.

This finding is based on determining the significance as defined by the context and intensity found in 40 CFR 1508.27 of effects from the Proposed Action.

- a) Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human and national), the affected region, the affected interests, and the locality. Significance varies with the setting of the Proposed Action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

The Proposed Action would meet demand for coal and continue mine operations through at least 2023 by:

- Securing a federal mining plan modification approval authorizing mining of leased federal coal; and,
- Continuing to mine, process, and ship (via rail and truck) coal to customers in need of coal.

Approval of the Proposed Action is a site-specific action that would not cause any additional acres of disturbance. Under the No Action Alternative, production would end with depletion of the existing approved recoverable reserves as early as 2019 and reclamation would commence. The effects of the action have been analyzed at the local and regional scale.

- b) Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

OSMRE has considered the 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse.

Beneficial and adverse impacts from the Proposed Action are described in the EA. The BLM and OSMRE's analysis of the Proposed Action identified no significant impacts. Operations at the nearby King I Mine revealed minor subsidence averaging between 50 – 100 feet in length and 0.25 – 0.5 feet in width. Monitoring of these features by GCC contractors determined that they are self-healing within two seasons and have not expanded in size. Fewer than six of these subsidence features have been identified since GCC began mining in 2004 in King I and King II. Effects from subsidence are not expected to impact wildlife habitat, cultural resources, surface water, and groundwater.

Additional particulate matter, gaseous emissions, and hazardous air pollutants would be emitted for the additional mine life, but at minor levels similar to those currently experienced and within permitted limits (EA Section 3.1). Based on the maximum average daily coal truck trips

allowable under the La Plata County Road Improvement Agreement, approximately 1,067,040 tons per year (tons/yr) can be delivered to markets in the southwestern U.S. via the Gallup rail hub. Of the total, approximately 181,000 tons/yr. are delivered to two GCC-owned and operated cement plants in Pueblo, Colorado (105,000 tons/yr.) and in Tijeras, New Mexico (76,000 tons/yr.) where the coal is used as a fuel source in the cement manufacturing process. Small coal volumes are sold to the Durango & Silverton Narrow Gauge Railroad (3,600 tons/yr.), the Cumbres and Toltec Scenic Railroad in Chama, New Mexico (1,500 tons/yr.), and locally (7,000 tons/yr.) for home heating. The remaining approximately 873,940 tons is delivered by rail to GCC-owned cement plants in northern Mexico (240,000 tons/yr.) and to variable buyers in Arizona and Texas (depending on markets, alternative fuels, and coal supply). Estimated annual greenhouse gases (GHGs) at King II Mine would be approximately 14.8 million tons of carbon dioxide-equivalent per year (EA Section 3.2).

Stipulations included in the lease reduce potential short- and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered species, cultural resources, visual resources, and soils. Additionally, the air permit includes measures to reduce impacts on air quality.

The Proposed Action would result in minor economic impacts (EA Section 3.15). The extension of mining operations would also extend the annual payroll, local expenditures, and taxes and royalty payments for approximately seven years.

None of the environmental effects from the Proposed Action discussed in the EA are considered to be significant.

2. *The degree to which the Proposed Action affects public health or safety.*

Effects from the Proposed Action that could affect health and safety are traffic, air quality, water quality, and noise. Impacts on Access and Transportation including those associated with the County Road 120 improvement are determined to be minor to moderate (EA Section 3.10). Air and water impacts of the Proposed Action are discussed in the EA in Sections 3.1 and 3.6. Impacts on air quality are minor (see 1 on page 4). Impacts on water would be negligible to minor. Impacts on noise would be negligible to minor (EA Section 3.11).

3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.*

There are no parklands, prime farmlands, wild and scenic rivers, wetlands, or ecologically critical areas within the project area (EA Section 1.10, 3.8, 3.14). Inventories of historic or cultural resources have been completed. Based on the results of these studies within the current lease and permit boundary, two sites have been identified to date as eligible for listing on the National Register of Historic Places (NRHP):

- Site 5LP9601, a historic homestead is potentially eligible for listing on the NRHP. The site has been avoided to date and is within the current lease and permit area.

- Site 5LP.10591.1, a historic road segment located in the survey area, has been identified as a non-supporting segment of NRHP-eligible resource 5LP.10591. The State Historic Preservation Office (SHPO) has concurred with this recommendation. The site has been avoided to date and is within the current lease and permit area.

No other significant cultural sites have been identified to date within the lease and permit boundary. One additional NRHP-eligible site was identified in the vicinity of a monitoring well location outside of the lease and permit boundary; however, the planned monitoring well site was relocated to avoid the cultural site. Subsidence that could be caused by underground mining is not anticipated to affect cultural resources. OSMRE used the consultation with the Colorado State Historical Preservation Office completed by BLM under the state protocol agreement to fulfill their requirements under Section 106 of the National Historic Preservation Act (EA Section 3.13).

4. *The degree to which the impacts on the quality of the human environment are likely to be highly controversial.*

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4)—whether or not to prepare a detailed environmental impact statement—“controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term “highly controversial” refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

Federal approvals of the mining plan decision document and Permit Revision Application Package have been made in the area for several decades.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

There are no effects on the human environment that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future consideration.

This decision is not precedent setting. The issues considered in the EA were developed within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated.

7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts—which include connected actions regardless of land ownership.*

The EA evaluated the possible issues in context of past, present, and reasonably foreseeable actions, including the King II Mine operation, the transport of coal from the mine, the combustion of that coal, and ranching, recreation and other mines in the cumulative effects analysis area. The indirect GHGs from coal combustion mined annually from the King II Mine were disclosed in the EA (EA Section 4.3.1). There were no significant cumulative effects identified.

8. *The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.*

Inventories of historic or cultural resources have been completed, which identified three potentially-eligible NHRP sites within or adjacent to the lease modification boundary (see 3 on page 5). Subsidence that could be caused by underground is not anticipated to affect cultural resources. OSMRE used the consultation with the Colorado State Historical Preservation Office completed by BLM under the state protocol agreement to fulfill their requirements under Section 106 of the National Historic Preservation Act (EA Section 3.13).

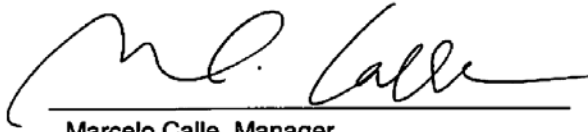
9. *The degree to which an action may adversely affect a threatened or endangered species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.*

The Proposed Action is expected to have “no effect” on 12 of the 14 federally listed species considered in the effects analysis, as there are no surface-disturbing activities proposed in or near suitable habitat for these species.

OSMRE prepared a Biological Assessment and that has undergone Informal Section 7 consultation with the USFWS related to the Proposed Action. The USFWS issued a “may affect, not likely to adversely affect” determination for two listed species—the greenback cutthroat trout and the Rio Grande silvery minnow. The USFWS issued this determination because, under the Proposed Action, GCC will continue to use coal for combustion at its Tijeras Cement Plant in Bernalillo County, New Mexico, which releases small amounts of mercury (Hg) into the Rio Grande River. The USFWS determined that the Proposed Action is not likely to adversely affect the two species because the small amount of mercury released into the Rio Grande will not likely cause injury or impairment of the species.

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.

The Proposed Action would not violate any known federal, state, local, or tribal law or requirement imposed for the protection of the environment. The Proposed Action is consistent with applicable plans, policies, and programs.



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1 / 4 / 2018

Date