

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-00518-RBJ

WILDEARTH GUARDIANS,

Plaintiff,

v.

UNITED STATES OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT, DAVID BERRY,¹ in his official capacity as Western
Regional Director of the Office of Surface Mining, Reclamation, and Enforcement,
Denver, Colorado, and SALLY JEWEL, in her official capacity as Secretary of the
United States Department of the Interior,

Federal Defendants,

And

TRAPPER MINING INC. AND COLOWYO COAL COMPANY, L.P.,

Defendant-Intervenors.

JOINT PROPOSED REMEDY

The Office of Surface Mining Reclamation and Enforcement (“OSMRE”),
Trapper Mining Inc. (“Trapper”), and WildEarth Guardians (“WildEarth”) submit
this Joint Proposed Remedy and respectfully request that the Court approve it as an
Order of the Court.

¹ Pursuant to Fed. R. Civ. P. 25(d), David Berry is automatically substituted for Al Klein as Director of the Western Region of the Office of Surface Mining Reclamation and Enforcement, Denver, Colorado.

I. Introduction

On May 8, 2015, the Court issued an Order finding that OSMRE violated the National Environmental Policy Act (“NEPA”) when it approved Trapper’s 2009 mine plan modification. ECF No. 78 at 30. Although the Court issued this declaratory relief, the Court did not vacate Trapper’s 2009 mine plan modification on mootness grounds. *Id.*

Since the Court issued its Order, Trapper filed a Notice of Correction of Statement of Law and Fact on July 1, 2015 withdrawing its affirmative defense of mootness. ECF No. 91 at 2. Trapper’s July 1, 2015 Notice informed the Court that counsel for Trapper, OSMRE, and WildEarth Guardians had agreed to meet and confer in an effort to reach an agreement on a remedy, in light of Trapper’s circumstance, consistent with the Court’s May 8 Order. *Id.* at 3-4.

Over the past several weeks, counsel for all parties have engaged in discussions to reach an agreed remedy and implementation schedule for the Court’s consideration.

II. The Proposed Remedy

1. OSMRE agrees to conduct a new NEPA analysis, consistent with the Court’s May 8, 2015 Order, for Trapper’s 2009 mine plan modification covering two Federal Leases (Nos. C-079641 and C-07519).

2. Keeping with the intent of NEPA, OSMRE's NEPA analysis will be prospective and will analyze the reasonably foreseeable environmental impacts of currently proposed and future mining activities within Federal Coal Leases C-079641 and C-07519, as well as the past, present, and reasonably foreseeable impacts of any other actions or activities as may be appropriate or required by NEPA.

3. Trapper will facilitate an expeditious NEPA analysis by OSMRE.

4. OSMRE will complete an environmental assessment, including all public participation components, on or before April 30, 2016.

5. During the pendency of OSMRE's NEPA analysis, Trapper will abide by certain on-the-ground restrictions on Trapper's mining activities. Specifically, Trapper's mining activities within the two Federal Leases will be restricted as follows:

- a. Mining activities will only occur on lands permitted, as of July 1, 2015, by the Colorado Division of Reclamation Mining and Safety ("CDRMS");
- b. Within the permitted area, mining will only occur on lands already classified as "disturbed" (see area labeled "Current Actual Disturbance Limit" in Figure 1 below); and

c. Within the “disturbed” area, no coal removal will take place east of the “Coal Removal Limit” line shown in Figure 1 below.

6. By way of further explanation, as of July 1, 2015, Trapper’s mining operations are authorized by CDRMS Permit Renewal-06 (“RN-06”) and OSMRE’s 2009 mining plan modification. RN-06 was issued by CDRMS for the five year period 2013-2017.

7. The Permit Revision-07 (“PR-07”) application was prepared and submitted primarily to increase the permit boundary to the east and to slightly modify the disturbed area in RN-06.

8. PR-07 is still pending CDRMS approval.

9. Trapper is currently authorized to continue operations under RN-06 without approval of PR-07.

10. This proposal shall not apply to or have any effect on Trapper’s mining or reclamation activities on State, County, Private, or other Federal leases.

11. This proposal and the new NEPA analysis will not affect Trapper’s right to appeal the Court’s May 8, 2015 Order and Judgment or any amended Order and Judgment.

12. OSMRE will provide to the parties monthly written status reports to apprise the parties of its progress with complying with the obligations set forth

above. The duty to provide reports will begin on October 1, 2015. Reports will be provided each month by the last day of the month.

13. Trapper will provide monthly written status reports certifying to the parties that mining is occurring in compliance with the limitations set forth above. The duty to provide reports will begin on October 1, 2015. Reports will be provided each month by the last day of the month. Trapper may utilize monthly CDRMS Inspection Reports for this purpose.

14. The figure below illustrates the parties' agreement on where Trapper's mining activities may occur pending OSMRE's NEPA analysis:

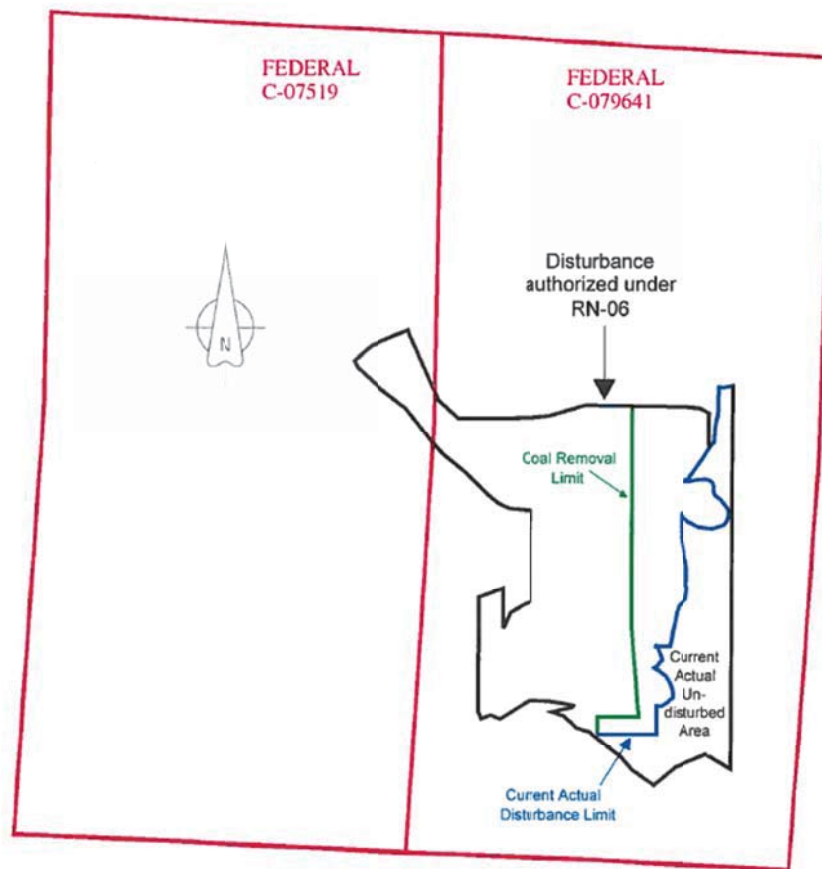


Figure 1 (created August 31, 2015).

15. This Joint Proposed Remedy does not require OSMRE to obligate funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other law or regulation.

III. Conclusion

All parties have reviewed and approve of this Joint Proposed Remedy. The parties respectfully request that the Court approve the parties' proposed remedy and implementation schedule as an Order of the Court.

DATED: September 10, 2015.

Respectfully submitted,

/s/ Paul M. Seby

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2015, a copy of the foregoing JOINT PROPOSED REMEDY was filed with the Court using the CM/ECF system which will send notification of the filing to all counsel of record who have registered to receive service under this system

/s/ Paul M. Seby_____

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