

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, AL KLEIN 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.

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**TRAPPER MINING INC.'S NOTICE OF  
CORRECTION OF STATEMENT OF LAW AND FACT**

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Upon receipt of this Court's May 8, 2015 Order and Final Judgment (ECF Nos. 78 and 79), which declared the Office of Surface Mining Reclamation and Enforcement's (OSMRE) 2009 mine plan modification for the Trapper Mine to violate the National Environmental Policy Act (NEPA), undersigned counsel began their analysis to determine how the Court's Order would affect Trapper

Mining Inc.'s (Trapper) future mining activities under Permit Revision-07 (PR-07), which is currently pending final approval from the State of Colorado Division of Reclamation, Mining, and Safety (DRMS). *See* April 24, 2015 Hearing Transcript at 50:18-51:23 (references to PR-07).

Through an analysis of the proposed geographic location of PR-07, undersigned counsel have learned facts that render Trapper's affirmative defense of mootness no longer applicable. Specifically, the mootness argument raised in Trapper's Response Brief (ECF No. 58 at 14-16) and at the hearing on April 24, 2015 was based on a misunderstanding that the scope of DRMS' approval for Permit Revision-06 (PR-06) and the scope of OSMRE's approval for the 2009 mine plan modification approval were one and the same, covering identical geographic locations and Federal coal. It also appears to undersigned counsel that the Court relied on Trapper's misunderstanding and resulting mootness argument in its May 8, 2015 Order. Accordingly, Trapper withdraws its affirmative defense of mootness.

The 2009 mine plan modification area covers the entirety of two Federal leases (Federal Lease Nos. C-079641 and C-07519). The mining already conducted under PR-06 was on 312 acres within these two Federal leases. It remains factually accurate that, at the time of the hearing, 96% of the Federal coal authorized to be removed under PR-06 had been removed and that the remaining

4% either would not be removed or would be removed under the future PR-07 permit approval. *See* April 24, 2015 Hearing Transcript at 49:7-50:24. However, while OSMRE's 2009 mine plan modification approved mining on the 312 acres within the PR-06 permit area, the 2009 mine plan's coverage of the two Federal leases resulted in the approval of additional Federal coal reserves that were available for mining outside of the PR-06 application area.

In its May 8, 2015 Order, the Court found that vacatur of the 2009 mine plan modification was not necessary because “[w]hatever federal coal remains will not be mined before a new permit revision is approved.” ECF 78 at 30, ¶ 2. Trapper is now seeking DRMS approval of PR-07 and undersigned counsel have now learned that the geographic location proposed to be mined under PR-07 during the next five-year permit term is entirely within Federal Leases C-079641 and C-07519. As such, vacatur of the 2009 mine plan modification would effectively prevent mining pursuant to the DRMS' forthcoming approval of PR-07 and cause a shutdown of operations at the Trapper Mine.

Undersigned counsel have conferred with OSMRE, counsel for OSMRE, counsel for Plaintiff WildEarth Guardians, and with DRMS regarding the factual circumstances outlined above and the contents of this filing. Based on these communications, undersigned counsel understand that counsel for OSMRE and Plaintiff are willing to meet and confer with Trapper to discuss potential resolution

of the newly understood circumstances. Without waiving any appeal rights, Trapper supports OSMRE conducting remedial NEPA analysis for the Trapper Mine, consistent with the Court's May 8, 2015 Order, following OSMRE's completion of the remedial NEPA analysis for the Colowyo Mine.

Trapper will submit a status report to the Court in 14 days to apprise the Court of the status of the discussions between the parties.

DATED: July 1, 2015.

Respectfully submitted,

*/s/ Paul M. Seby*

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**ATTORNEYS FOR DEFENDANT-  
INTERVENOR  
TRAPPER MINING INC.**

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of July, 2015, a copy of the foregoing TRAPPER MINING INC.'S NOTICE OF CORRECTION OF STATEMENT OF LAW AND FACT 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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