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From: Pete Hess
To: April Abate
CC: Jim Smith
Date: 5/14/2009 9:57 AM
Subject: Task ID # 3264
Attachments: PHH3264.doc

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c/007/0011
#3264
Q*

April...

PHH3264 has been saved into O / Draft.

The proposed agreement contained in Appendix IV-5 needs to be looked at by our AG.

I've asked the Permittee to provide information indicating that L.A. Miller, Officer of A.N.R. Inc., is the authorized Attorney-in-Fact with authority to sign such agreements.

The provided information in Chapters 2, 4, and 8 is not clear, and it conflicts with the proposed "Agreement".

I don't think we will have a problem approving the "Agreement" between the landowner and HCC, but by this time, I think we need to be exceptionally careful with how we deal with HCC.

I'm not sure if we are holding up HCC permit applications, due to the Federal Court Bankruptcy proceedings @ Bear Canyon. That's another good question for management and the AG's Office.

PHH3264 is attached as well.

Project Initiation: April 15, 2009

Project Completion: May 13, 2009

TO: Internal File

THRU: Ms. April Abate, Environmental Scientist II / Reclamation Hydro / Team Lead
Jim Smith, Permit Supervisor / Task Manager

FROM: Peter Hess, Environmental Scientist III / Bond Assessment / Engineering

RE: **Chapter 8 Update Including (Proposed) Bond Estimate and Road(s) Agreement**
, Hiawatha Coal Company, Hiawatha Mine Complex, C/007/011, Task ID # 3264

SUMMARY:

Task ID # 3217, Chapter 8 Update, including Bond Estimate and Road Agreement was submitted by the Permittee on February 12, 2009. Prior to the completion of the Division's review of that application, a new submittal was made and received by the Division on April 14, 2009. The Division assigned a new Task ID number for tracking purposes of # 3264.

This tech memo will address the proposed revisions to Chapter 2, Soils, Chapter 4, Land Use and Chapter 8, Bonding.

TECHNICAL ANALYSIS

RECLAMATION PLAN

ROAD SYSTEMS AND OTHER TRANSPORTATION FACILITIES

Regulatory Reference: 30 CFR Sec. 701.5, 784.24, 817.150, 817.151; R645-100-200, -301-513, -301-521, -301-527, -301-534, -301-537, -301-732.

Analysis:

Reclamation

Page 2-45, paragraph one of the Task ID # 3264 application discusses Reclamation of Roads . "The roads in Middle Fork and North Fork *will not be totally reclaimed* but will be left in place to support the post mining land use as

discussed in Chapter IV. The South Fork and Middle Fork roads, comprising 11.6 acres, ***will be reclaimed*** as per the road agreement with ANR, located in appendix IV-5.” These two statements contradict each other and only partially agree with the “Agreement”, which the applicant identifies as Appendix IV-5.

Appendix IV-5 “Agreement” is the document existing between Hiawatha Coal Company and A.N.R. Inc. and discusses what Hiawatha Coal Company may and may not do on the privately owned (A.N.R. surface ownership) areas of South Fork and Middle Fork roads.

Stipulation #5 of the “Agreement” states that “all upgrades to any portion of any roads used by Hiawatha, the town of Hiawatha, the property owner or his agents...will remain in place post mining. These upgrades may include, but are not limited to road base, asphalt, concrete, and drainage controls”.

Stipulation #6 contains the following; “A.N.R. reserves the right to require Hiawatha Coal to leave, post-mining, any additional portions or all portions of any private road owned by A.N.R. and located within the Hiawatha Mine permit area, as defined by any plan held by the Office of Surface Mining or the Division of Oil, Gas, and Mining, at A.N.R.’s discretion.”

An analysis of Exhibit IV-1, SURFACE OWNERSHIP with Exhibit IV-3, Mine Permit Area (as currently approved in the MRP) indicates that the entire length of the South Fork (left fork), Middle Fork and North Fork (right fork) off of Middle Fork roads lie on surface owned by A.N.R., Inc.

The Agreement was signed by the parties representing A.N.R., Inc. (Mr. L.A. Miller, Officer) and Hiawatha Coal Company (E. Finley, Officer) on January 27, 2009.

Page 4-11, section **R645-301-412 RECLAMATION PLAN**, section **412.100 POST-MINING LAND USE PLAN**, paragraph three contains the following; “...the access roads leading to the mine sites will be reclaimed “as per the road agreement and will be left in place to support these activities.” This text also conflicts with the Appendix IV-5.

Information provided in TABLE VIII-2 (Chapter 8, page 8-5) gives equipment production rates for ripping pavement and backfilling roads. Page 8-7 (also TABLE VIII-2) lists under the column titled “PROJECT”, “haul pavement from Middle Fork to Slurry pond #1”. Thus, it appears that the Permittee intends to reclaim the access road in Middle Fork. If the Permittee intends to at least partially reclaim the Middle Fork road by removing the surfacing material, the Permittee must either

- a) bond for transportation and off-site disposal of the asphalt material, or

- b) obtain a permit from the Utah Division of Solid and Hazardous Waste to dispose of the asphalt material within the Hiawatha Mine Complex permit area.

The information contained in Chapters 2, 4, and 8 conflicts in several places with each other and does not agree with the text contained in Appendix IV-5. Therefore, the Permittee's MRP appears to be conflicting with the information in Appendix IV-5.

Retention

The proposed text revisions described above, as well as the "approved" text, conflict not only with each other, but with the "Agreement" which appears to be in place between A.N.R., Inc., and Hiawatha Coal Company.

As the submitted Appendix IV-5 was not agreed to until January 27, 2009, the Division needs to make a finding as to whether or not it will accept the document relative to meeting the reclamation requirements of R645-301-542.600, or release the Permittee from certain reclamation requirements relative to these roads.

Carbon County currently zones the surface of the Mine Permit Area and adjacent surface lands for recreation, forestry, and grazing (as well as mining). The road use agreement (Appendix IV-5) stipulates that all "upgrades (road base, asphalt, concrete, drainage controls) remain in place post-mining".

The Permittee states on Page 4-11 that "access to the roads in the permit area is controlled by a gate at the end of State Highway 122, (at the RR crossing). The traffic on the road is expected to be light during the spring, summer and fall seasons. No traffic is expected during the winter season". Since access is controlled with a gate, all activities in the upper areas within and adjacent to the permit area will be controlled by Hiawatha Coal Company (assuming DOGM approval of the "Agreement"). The roads in Middle Fork and South Fork are not public roads and the liabilities associated with public roads are not applicable.

Page 4-13 states the following;"the roads are necessary to support these uses and will therefore be left in place as per the road agreement with the land owner."

The Permittee needs to provide adequate justification to the Division as to why

- 1) all under road culverts should be retained (**R645-301-542.620**); and
- 2) removing or otherwise disposing of road-surfacing materials is not necessary, and
- 3) the retention of road surfacing materials is necessary.

- 4) the surfaced roads are compatible with the post mining land use and revegetation requirements (**R645-301-542.640**).
- 5) If road surfacing material is to be removed, the Permittee must discuss and bond for proper disposal of the asphalt volume.

Findings:

The Task ID # 3264 application is deficient.

In accordance with the requirements of :

R645-301-121.200. The permit application will be clear and concise. The information provided in Chapters 2, 4 and 8 is contradictory not only to each other but also to information provided in the proposed “Agreement” contained as Appendix IV-5.

R645-301-542.600, Roads,

- 1) the Permittee **must clarify and / or revise** Chapters 2, Chapter 4 and Chapter 8 of the MRP such that they are in agreement with one another as well as with the information provided in the “Agreement” / Appendix IV-5. The Division must know to what extent the reclamation of the South Fork, North Fork and Middle Fork roads will occur.
- 2) The Permittee must provide verification to the Division that the “Agreement” relative to the South, Middle and North Fork roads within the Hiawatha Mine Permit Area between Hiawatha Coal Company and A.N.R., Inc., is a legal, binding document. The “Agreement” must be notarized by a notary not employed by Hiawatha Coal Company, or A.N.R., Inc., or its affiliates.
- 3) A.N.R., Inc., through the Permittee, must provide verification to the Division that Mr. L. A. Miller, Officer A.N.R. Incorporated, is an Attorney-In-Fact for A.N.R., Inc., with authorization to sign legal agreements such as surface and /or road use agreements.
- 4) The Permittee needs to provide adequate justification to the Division as to why
 - a) all under road culverts should be retained (**R645-301-542.620**); and
 - 6) removing or otherwise disposing of road-surfacing materials is not necessary, (**R645-301-542.640**), and
 - 7) the retention of the asphalted road surface is necessary.
 - 8) the surfaced roads are compatible with the post mining land use and revegetation requirements (**R645-301-542.630**).

BONDING AND INSURANCE REQUIREMENTS

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

Analysis:

General

The Permittee has submitted a summary of reclamation costs, as well as revised cost estimates for the remaining demolition, earthwork and revegetation work for the tipple area, North Fork Area and South and Middle Fork areas. Also provided are Table VIII-1, Unit Cost Reference (page 4) and Table VIII-2, Equipment Production Estimates, (page 5).

Form of Bond

As of March 31, 2009, Hiawatha Coal Company had a irrevocable letter of credit issued through JP Morgan Chase Bank (\$2,273,464) and a Bank of Utah Treasury Security (\$ 167,000) payable to the Division to cover the remaining reclamation for the Hiawatha Mine Complex. (total amount = \$ 2,440,464).

The Division informed Hiawatha Coal Company on April 23, 2009 that the JP Morgan Letter of Credit was due to expire on June 15, 2009, and that same must be renewed or replaced at least 30 days before expiration (May 15, 2009). To date (5/13/2009), the letter of credit has not been renewed.

Information provided on page 8-1, section **R645-301-820 REQUIREMENT TO FILE A BOND** contains some incorrect information which needs to be corrected (i.e., the amount of \$ 167,000 is a posted security issued by the Bank of Utah, and not a U.S. Treasury security).

Determination of Bond Amount

The Division released a Phase I dollar amount for reclamation completed on slurry cells #5 and #4, part of the tipple area, as well as certain small area exemptions on January 13, 2009 (\$ 564,536). The currently approved bond amount for the Hiawatha Mine Complex is \$ 2,440,464.

The \$ 564,536 dollars released as Phase I monies included a reduction in demolition cost at Hiawatha of \$ 122, 196, a reduction in earthwork costs of \$ 309, 216, and a reduction in revegetation costs of \$ 133,124. Reclamation activities included demolition of numerous structures adjacent to the tippel area and removal of the North Fork pipeline. \$ 478,833 remains in Phase I to complete demolition and backfilling and grading (\$ 333,328 remains for demolition).

The Permittee must clarify for the Division to what extent each of the roads above the old Savage truck shop will be reclaimed, and whether the retention of these roads will support the approved post-mining land use for the Mine permit area and its adjacent lands.

If the Division approves the road use "Agreement" contained in Chapter IV-5, Hiawatha Coal Company will not be required to remove the asphalt pavement, backfill the road, or re-vegetate the 12 acres associated with these access routes.

The Permittee must provide information as to what will be done with the following facility pads in South and Middle Forks, if the access roads are allowed to remain as part of the post-mining land use;

- 1) the truck loading loop and coal storage pad in South Fork
- 2) the King 6 facilities pad
- 3) the truck loading loop, and loading facility above the coal storage pit (gallery belt installation)
- 4) the King 4 and King 5 facilities pad.

The proposed bond calculations submitted as Chapter 8, Task ID # 3264 have been determined as accurately reflecting the costs associated with reclaiming the remaining facilities at the Hiawatha Mine Complex. However, in accordance with the requirements of :

R645-301-800 et al. The Permittee must bond for the transportation and proper disposal (in accordance with the requirements of R315-315, Environmental Quality, Solid and Hazardous Waste) of road surfacing material (asphalt) from the Middle Fork road, if that is their intent relative to reclamation.

Terms and Conditions for Liability Insurance

The general liability insurance for the Hiawatha Mine Complex, C/007/011 is renewed every January for the pending year. All requirements mandated within R645-301-890 are met by the annual policy renewal. The complete inspections conducted quarterly verify that this insurance is adequate.

Findings:

The application is deficient.

In accordance with the requirements of :

R645-301-121.200. The permit application will be clear and concise. The information provided in Chapters 2, 4 and 8 is contradictory not only to each other but also to information provided in the proposed "Agreement" contained as Appendix IV-5.

R645-301-800 et al. The Permittee must bond for the transportation and proper disposal (in accordance with the requirements of R315-315, Environmental Quality, Solid and Hazardous Waste) of road surfacing material (asphalt) from the Middle Fork road, if that is their intent relative to reclamation.

A recommendation for approval can not be given until the Permittee addresses the aforementioned deficiencies.

RECOMMENDATION

The Task ID # 3264 application can not be approved at this time.

Agreement

This agreement made and entered in this 27 day of January 2009, by and between
A.N.R Inc. (A.N.R.) and Hiawatha Coal Company, a Utah Corporation, (Hiawatha Coal)

WHEREAS, there are existing private roads in Carbon County located in land owned by ANR in and around
the town of Hiawatha

WHEREAS, Hiawatha Coal requires use of said roads, and

WHEREAS, A.N.R. is the owner of the private portions of these roads,

NOW, THEREFORE, be it agreed as follows:

1. ANR grants unto Hiawatha the right to use those private roads owned by ANR which may be necessary or convenient for Hiawatha to conduct it's mining operations.
2. Hiawatha Coal will indemnify and defend A.N.R. for any damage caused, or loss incurred to or claim made by any public or private individual, firm, group, association, partnership or corporation as a result of any mining related activities conducted on the private roads.
3. Hiawatha Coal agrees to allow access to other property served by Middle Fork Road, and all other private roads owned by A.N.R. Said access shall be allowed to the owner of the property, their successor in interest or any other individual, firm, group, association, partnership or corporation who requires access due to their association with the owner or because the owner has granted permission to the individual, firm, group, association, partnership or corporation to go upon it's property. Hiawatha Coal will not withhold access due to the type of activity which the then owner or his agents, employees or invitees intend to or in fact conduct.
4. Hiawatha accepts the roads "as is" and agrees to keep and maintain the roads in as good a condition as on the day of this agreement. Ordinary wear and tear excepted. ANR shall have no obligation to keep or maintain the roads.
5. All upgrades to any portion of the Middle Fork road and any portion of any roads used by Hiawatha, the town of Hiawatha, the property owner, or his agents, as defined in item 2 of this agreement, will remain in place post-mining. These upgrades may include, but are not limited to road base, asphalt, concrete, and drainage controls.
6. A.N.R. reserves the right to require Hiawatha Coal to leave, post-mining, any additional portions or all portions of any private road owned by A.N.R. and located within the Hiawatha Mine permit area, as defined by any plan held by the Office of Surface Mining or the Division of Oil, Gas, and Mining, at A.N.R.'s discretion.

IN WITNESS WHEREOF, this agreement is executed the day and year above.

A.N.R. Incorporated

By *La Miller*
Officer A.N.R. Incorporated

IN WITNESS WHEREOF this agreement is executed at Huntington, Utah. Dated this 27 day of January
2008⁹

Hiawatha Coal Company

By *E. Finley*
Officer Hiawatha Coal

Reclamation of Roads

Canyon Roads

The roads in Middle Fork and North Fork will not be totally reclaimed but will be left in place to support the post mining land use as discussed in Chapter IV. The South Fork and Middle Fork roads, comprising of approximately 11.6 acres, will be reclaimed ~~to an unimproved condition by removing and disposing of the pavement, ripping the underlying surface and revegetating with plant species favorable to wildlife~~ as per the road agreement with ANR, located in appendix IV-5. The South Fork Road and its access through the warehouse and equipment yards are claimed by carbon county and will not be reclaimed. This are has been included in Exhibit II-4A under the exclusionary boundary. Existing drainage structures will be left in place ~~to serve a single lane road~~. The full width of the existing subgrades will be left as is and no regrading to approximate original contour is proposed. This will allow the width of the road to remain adequate for the post-mining land uses, of which timbering is one of the approved uses. Fertilizer, seed and mulch will be applied by hand broadcasting or by use of farm type equipment. Seed mixtures 1 or 2 will be used in the vicinity of Hiawatha and seed mixture No. 3 (less nursery grown stock) will be used at higher elevations. Mulch will be applied at the rate of 1.5 tons per acre and will be crimped into the soil by discing.

Access Road to Sediment Pond D003

A short unpaved access road exists between the preparation plant area and sediment pond D003 (see Exhibit II-4A). Only limited excavation was necessary to construct the road, therefore, it will be reclaimed by ripping the surface and revegetating the insitu soils. Fertilizer, seed and mulch will be applied by hand broadcasting or by use of farm type equipment. The soil is the same Haverdad series comprising substitute borrow areas B, C, and D. Seed mix No. 1 for sagebrush dominated borrow areas (described in Chapter III) will be used. Mulch will be applied at the rate of 1.5 tons per acre and will be crimped into the soil by discing.

Truck Runaway Spur to Middle Fork Haul Road

The truck runaway spur is shown on Exhibit II-4A (RA-15). The only excavation required to construct the road was to blade off the vegetation, cut a runoff diversion ditch and install a 24 inch culvert. A mound of gravel (approximately 18 inches high) was placed down the center of the road to retard potential runaway vehicles. Reclamation will involve removing the culvert and gravel and regrading the diversion ditch. The surface of the disturbed area will then be ripped to a depth of 18 inches and the insitu soils revegetated. Fertilizer, seed and mulch will be applied by hand broadcasting or by use of farm type equipment. Seed mix No. 2 will be utilized. Mulch will be applied at the rate of 1.5 tons per acre and will be crimped into the soil by discing.

R645-301-412 RECLAMATION PLAN

412.100 POST-MINING LAND USE PLAN

After the recoverable coal reserves have been extracted and final reclamation accomplished it is expected and anticipated that the current status of the existing land use area will remain unchanged. Mining in this immediate area has been ongoing since the turn of the century without any significant disruptions to existing land use.

The permit area and surrounding lands are classified as recreation, forestry, grazing and mining lands under local county zoning ordinances.

Hiawatha Coal Company's post-mining land use plan is to reclaim the land such that ANR Company, the property owner, may utilize the land presently within the permit area for wildlife habitat, livestock grazing (ranching), forestry (logging) and outdoor recreation. Towards this end, the access roads leading to the mine sites will be reclaimed ~~to an unimproved basis~~ as per the road agreement and will be left in place to support these activities.

WILDLIFE HABITAT

The land within the permit area is already used as wildlife habitat and conforms with the existing land use, supports the recreational land use plan and has co-existed with the livestock grazing and forestry practices of the past. The roads will be used to allow wildlife population inspections, habitat condition evaluations and forage assistance in severe winters.

In response to U.S. Fuel's requests, the Division of Wildlife Resources commented on U.S. Fuel's post-mining land use plan on 2/14/84 and again on 4/12/92. In their 1984 letter DWR noted they would prefer that roads along with other surface facilities be reclaimed with habitat more suitable to wildlife. In their 1992 letter DWR did not comment on retention of roads but rather expressed concern about possible subsidence effects on wildlife habitat and loss of water resources.

DWR concerns about the degree of accessibility and use of the roads are addressed as follows. Access to the roads in the permit area is controlled by a gate at the end of State Highway 122. The traffic on the road is expected to be light during the spring, summer and fall seasons. No traffic is expected during the winter season.

In review of the post-mining land use plan, Carbon County has expressed concern about any possible road closures (see letter in Appendix IV-5). The county would like to retain all roads that provide access to otherwise inaccessible regions of the county. Access to historic and scenic areas provide recreation to county residents and enhance the local economy by attracting and holding out of state visitors.

In addition to the historic and scenic recreational use, the property is ideal for camping, hiking, horseback riding, wild life photography, and big game hunting. Although no developed campsites are planned, the roads provide access up the canyons to many natural camping areas. The roads also allow greater access to trailheads for the remaining activities. Except for the hunting season, the road traffic should be light.

412.110 The proposed post-mining land use will be achieved by regrading and revegetating mining related disturbed areas to support wildlife habitat, forestry, livestock grazing and outdoor recreation. The roads are necessary to support these uses and will therefore be left in place as per the road agreement with the land owner ~~but altered to an unimproved state.~~

412.120 Range and grazing is one of the proposed post-mining uses. The Soil Conservation Service, at the request of U. S. Fuel Company, compiled a grazing plan for the mine property area. this plan identifies five range types and addresses soils, vegetation and productivity. The plan is given in Appendix IV-3. The range site locations are shown on Exhibit IV-4.

412.130 No land use different from the pre-mining land use is proposed.

412.140 Consideration has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land use plans. Letters from U.S. Fuel describing the proposed post-mining land use plans and requesting comments, approvals or authorizations have been sent to the following Agencies:

- U. S. Forest Service
- Carbon County
- Emery County
- Southeastern Utah Association of Governments
- Utah Division of Water Rights
- Utah Division of State Lands and Forestry
- Utah Division of Wildlife Resources

Copies of letters sent and responses from those agencies which chose to respond are given in Appendix IV-5.