

November 24, 2021

Mr. Chad Stewart, Forest Supervisor
Grand Mesa, Uncompahgre and Gunnison National Forest
2250 South Main Street
Delta, CO 81416

RE: Comments on Draft Revised Land Management Plan and Draft EIS

Dear Mr. Stewart,

Mountain Coal Company, LLC (MCC) appreciates the opportunity to comment on the Draft Revised Land Management Plan and Draft EIS. Please consider the following information and comments.

General Information:

The West Elk Mine is an underground coal mine and is currently the only operating coal mine within the Grand Mesa, Uncompahgre and Gunnison National Forest (GMUG). MCC has been in operation for nearly 40 years and continues to mine the super-compliant thermal coal resources of the Somerset coalfield within its current leases. Additional coal leases to the east may be pursued in the meantime, extending the mine's operating life. While coal markets have declined over the past six to eight years, there has been improvement in the past year and MCC has increased staffing and projects its mining operations will continue to provide high paying jobs, support of local businesses and communities, and help local economies with payments of taxes and royalties.

MCC is aware that the roadless character of an area was originally one of the criteria for identifying lands for proposed wilderness designation, but with the 2001 Roadless Area Conservation Rule and the subsequent Colorado Roadless Rule (CRR), that "criterion" was changed into a separate new, designation. Roadless designation does not have as many limitations of use as in a Wilderness Area, but has many restrictions, including forbidding road building and rebuilding within Colorado Roadless Areas (CRA). In turn, this restriction curtails the ability of coal operations to conduct exploration drilling of the known coalfields within CRAs to obtain sufficient data to meet the Bureau of Land Management's (BLM) data adequacy requirements. Consequently, large tracts are effectively foreclosed to coal leasing. Similarly, access to the surface of an underground mine within CRAs for necessary support facilities, such as ventilation boreholes, is precluded. As a result, most known coalfields within CRAs were essentially removed from the coal resource inventory and thus prevented the maximum economic recovery

(also required by the BLM) of those coal resources and the loss of any potential revenues that would have been generated.

With CRAs surrounding all three North Fork mines operating at the time the CRR was being developed, years of negotiations were undertaken to attempt to allow these existing mines to continue operations in adjacent potentially mineable federal coal resources within CRAs. The result was the addition of more than 400,000 acres of additional CRAs within Colorado and exceptions for ski areas and for the North Fork Coal Mining Area (NFCMA) adjacent to two of the three existing mines in 2012. Much litigation ensued. As of June 2020, the NFCMA exception was invalidated and further road access by MCC in the Sunset CRA portion of the NFCMA exception is limited.

Comments on the Draft Revised Land Management Plan that do not require changes in the text:

- MCC agrees that the GMUG's mineral resources, including coal in the Somerset coalfield, contributes to the national security and energy supply, local economies and West Elk Mine *does* (not "may") generate royalty and tax revenue to the U.S. Treasury, State and local governments. Royalty rate reductions that an operation may apply for do not mean that no royalties are paid, but that (if approved) a reduced royalty is paid for those areas of coal resources that require substantial additional investment (not the entire lease), for example, to be able to mine those coal resources. Without the royalty rate reduction, those resources may be deemed uneconomic and therefore will not be mined resulting in *zero* royalties.
- While it is stated that the intent of the Colorado Roadless Rule was not to establish "de facto wilderness designations", the practical effect of CRAs is similar to a wilderness designation, at least as related to coal exploration and mining.
- Regarding Area P4-71: Raven Mesa/ Flat Irons, MCC agrees that the wilderness character of this area is low and should be made available for coal leasing, despite its designation as a CRA.
- For the P4-71 area, it is said to be within the 19,500 acre NFCMA and as such we would agree that this area would be extremely difficult to manage this area as Wilderness.
- As above, the Area P8: Lower Lamborn, we'd agree that this area would be extremely difficult to manage to preserve its wilderness characteristics, including the Sunset CRA where underground mining is actively occurring.

Comments on Appendix 10 – Coal Screening and Unsuitability Analysis

- Re: Screen 1 – West Elk Mine is the only remaining active mine in the Somerset Coal field and intends to remain active as long as the federal coal resources are available and markets are viable.
- MCC agrees that the Somerset coalfield had the highest development potential within the GMUG, because the West Elk Mine is the only surviving operating coal mine.
- While it is true that local production has declined in recent years due to market conditions, the past year has shown improvement, both nationally and in export for West Elk Mine. As such, although two mines have closed or

- been idled, it is not appropriate to say that coal mining on the GMUG is on its way out.
- The potential additional coal resource area (in addition to that already leased) has been identified as about 59,300 acres within the planning area. With most of the unsuitability criteria exempting underground mining (like at West Elk Mine) and that very little of the coal resources within the GMUG are deemed minable by surface mining, it is unclear how any of the alternatives would exclude any of the coal resource acres.
 - Screen 3: Identification of Multiple Land Use Directions:
 - Appendix 10 states that 8,650 of the 19,500 acre NCFA is “unacceptable” for leasing. The explanation provided states: “please note the North Fork Coal Mining Exception is larger than what is included here as this analysis considers operability and other factors brought forward by the Bureau of Land Management.”

Draft Rev. Management Plan at 282. There does not appear to be any further explanation of the cited “operability and other factors”. As presently stated, this is an arbitrary and unlawful basis to deem acreage otherwise available for leasing in the NCFA as unsuitable for leasing, for several reasons. First, there is no explanation of the operability and other factors and to what acreage the various factors were applied. Second, “operability” is not a lawful factor for an unsuitability determination. There are specific regulatory criteria for an unsuitability assessment, which the Forest considered point-by-point in the preceding section. Operability is not among these criteria (let alone “other factors.”). Third, operability is not appropriate as an unsuitability criterion as a general matter. The Unsuitability criteria focus on inherent characteristics of the *land* that are incompatible with coal mining (surface or underground unless an exception like the underground mining exception at 43 C.F.R. 3461.1 applies). In contrast, an “operability factor” apparently reflects the BLM’s present, unexplained assessment that current forms of mining do not work well with other unexplained characteristics of the affected acreage. At best, this is duplicative of other regulatory criteria. At worst, it prejudices the future state of mining technologies and applications. These determinations must be left to site-specific analyses in the context of specific lease applications. In practice, if acreage is designated as unsuitable in the Forest Management Plan, a lease application associated with that acreage will be rejected out of hand as being incompatible with the Plan, foreclosing processing of the application.

To give a concrete example, it may be that the “operability” factor is an attempt to reflect the vacatur of the NFCMA Exception. But vacatur of the NFCMA merely imposes a restriction on roadbuilding, not leasing. As recently demonstrated at the West Elk Mine, there may be areas in the NFCMA where leasing and mining can be conducted even without construction of temporary roads. Consequently, neither the Forest nor BLM should reflexively translate vacatur of the NFCMA Exception into a new, de facto unsuitability criterion.

For these reasons, MCC requests that any acreage deemed unsuitable for the aforementioned “operability and other factors” be restored to availability in the Forest Management Plan and associated Tables and Appendices. If there are operability or

other concerns with this acreage, those can and should be addressed in the context of specific lease applications, rather than at the screening level.

In addition, MCC requests that it be provided the supporting documentation and reasoning for the proposed “operability and other factors” designations. Even if the Forest agrees with MCC’s requested change to the document, understanding the Forest’s and BLM’s reasoning in proposing these factors will assist MCC in evaluating future lease applications.

Comments on Draft EIS:

- Page 16 - MCC agrees that all alternatives must adhere to the principles of the multiple use and sustained yield act.
- Page 21 - MCC supports Alternative C – Active Management Emphasis: To provide the most management flexibility for current and future multiple uses is the only alternative that makes sense for a sustainable, healthy Forest. Limiting or restricting more of the Forest from essential management is a recipe for more issues with wildfire, disease, and other catastrophic events.
- Page 25 - Regarding climate change, it is not appropriate to claim that the use of fossil fuels increases climate change potential, but that active vegetation management to sustain a carbon sink is “debated”. A healthy forest, that is well-managed, is less susceptible to wildfire and insect/ disease issues. A dead and/or burned forest does not provide a carbon sink. Forest health is essential to the climate change scenario.
- Page 233 - Clarify what the bases are for the statement that greenhouse gases and criteria air pollutants are expected to increase over the next 10 to 20 years. With one operating coal mine on the GMUG how was this determined.
- Page 233 - MCC is aware that local ozone monitoring has shown compliance with ozone standards, even with an operating local coal mine and oil and gas operations. What is the basis for stating that criteria pollutants and GHGs will be increasing?
- Page 236 - MCC agrees that smoke from wildfires and prescribed burning needs to be entered into the equation for estimating emissions of GHGs, not just dumping the blame on one coal mine and oil & gas operations. Managing healthy forests to avoid catastrophic wildfire is an important objective..
- Page 282 - As explained above, it is confusing as to where the 8,650 acres of the North Fork Coal Mining Area Exception left after adjustment for “operability and other factors” are located and how these acres were calculated. The Final EIS must explain the Forest’s reasoning and data/methods, even if this adjustment is removed from the Plan as requested by MCC.
- Page 282 - The DEIS states that there is “no plan” to repromulgate the NFCMA but does not explain why that is or whether that is a final determination. The FEIS should explain the Forest’s reasoning.
- Page 298 - While there have been mine closures and layoffs that have been impactful to the local economy, it would be even more impactful, not less, to lose the last coal mine in the North Fork Valley and its high paying jobs and royalty and tax revenues, among other community benefits.

- Page 301 - Where do the figures come from stating that mineral production (including oil & gas and coal contributes 59 jobs and \$4 million in labor income. These numbers appear to be very low.
- Page 324 - MCC agrees that coal will be a valued part of the Nation's energy mix until at least 2050.
- Page 324 - Geologic hazards are said to be amplified by extreme weather events due to climate change. What are kind of events within the GMUG would this include?
- Page 325 - The EIS states that numerous comments were received from the public regarding oil & gas and coal development. It needs to be made clear that it does not matter how many comments were received on any issue. NEPA should not be swayed by "votes", i.e. the number of comments.
- Page 327 - The EIS states that coal leasing, development and production is expected to continue to decline during the plan period. As stated earlier, MCC has seen an increase in demand in the past year and believes that this demand is sustainable.
- Page 329 - The EIS also states that coal production and use in power generation is expected to decline globally during the 15 year planning period to meet climate change threshold goals. What is the basis for statement?

Again, MCC appreciates the opportunity to comment, and looks forward to participating in the future Forest Planning processes.

Sincerely,



Weston Norris
General Manager