

OXBOW MINING, LLC



3737 Hwy 133 P.O. Box 535 Somerset, Colorado 81434 USA Tel (970)929-5122 Fax
(970)929-5177

November 16, 2006

NEPA Modernization (CE)
Attn: Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place, NW
Washington, D.C. 20503

Dear Associate Director for NEPA Oversight:

Oxbow Mining, LLC. appreciates the opportunity to comment on modernization of the implementation of NEPA and make the NEPA process more effective and efficient. In particular, we are interested in providing the following comments relative to using "Categorical Exclusions" (CE's) under NEPA.

Oxbow Mining, LLC operates the Elk Creek Mine, an underground coal mine located near Somerset, Colorado. The Elk Creek mine produces approximately 6.5 million tons of super compliant coal per year with an employment of approximately 305 employees. The Elk Creek Mine produces coal, using modern long-wall mining methods, from both Federal and private coal leases located on lands managed by the Bureau of Land Management and U.S. Forest Service. Oxbow Mining, LLC. (Oxbow) is uniquely qualified to comment on the issues related to the mining of Federal coal on mixed surface and mineral estate lands managed by two different Federal agencies.

As a coal operator and coal lessee on federal lands, Oxbow supports and encourages the use of CE's to eliminate the need for unnecessary paperwork for categories of actions under NEPA that do not warrant preparation of an environmental impact statement (EIS) or environmental assessment (EA). Our comments and suggestions are as follows:

Expand the Use of CE's - Oxbow supports expanding the use of CE's and encourages unambiguous criteria for the use of CE's. The following is a list of example activities which should be evaluated as CE's.

- Existing projects that simply need permit or authorization renewals.
- Activities that are non-significant and temporary. For example, coal exploration on federal lands (under the Surface Mine Control and Reclamation Act of 1977, "SMCRA") are temporary activities that are regulated by both state and federal agencies, double bonded and reclaimed to meet the requirements of the post-exploration land use.

- Minor activities conducted in areas otherwise previously analyzed by NEPA EIS or EA's. For example, activities located on federal coal leases for underground coal mining. Where proposed activities involve minor surface activities for mine methane drainage and temporary roads that are otherwise permitted, bonded, reclaimed with oversight by federal/state mining regulatory agencies should be approved by CE's. This procedure reduces redundant or duplicative NEPA analysis on the same piece of real estate.
- Projects with minor disturbance, such as less than two miles of temporary roads, less than ten acres of annual temporary disturbance, etc. would be considered as CE's.
- Projects under multiple agency jurisdiction, such as coal activities that are temporary, bonded and eventually reclaimed etc. under multiple state and federal statutes and oversight should be given consideration as CE's under just one agency. For example, to avoid duplicative permitting, where coal mine activities occur on a federal coal lease with both BLM and USFS lands, permitting should be handled only by the BLM. The BLM is charged with sole oversight on coal recovery, regardless of surface management, and the same consideration should be given for oversight of surface activities.
- Re-disturbance of previous projects should only require a CE. For example, a reclaimed coal exploration disturbance could be proposed for later re-disturbance for a methane drainage project for an active underground mining operation installed for miner safety. Such a re-disturbance of the same real estate should be reviewed as a CE.

Proper Weighting of Public Input – More consideration should be given to substantive input from locally affected agencies, organizations and individuals. Decision making should not be skewed by organized letter writing campaigns. Decisions should be based upon the quality and substance of comments rather than merely the quantity of comments.

Establish CE Review and Approval Timelines - Specific timelines for CE's should be established. Review and approval timelines of such minor activities should be minimal and decision memorandum should be issued within a minimal timeframe.

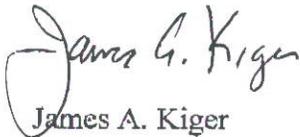
CE Record of Decision - The record of decision for CE's should be in "Full Force and Effect" on the agency approval date instead of waiting for 30 day comment periods and additional appeal periods. Such comment and appeal periods add needless and costly delays in the review of minor project activities. Such delays are inconsistent with the nature and purpose of CE's as a mechanism to reduce needless paperwork and waste valuable agency resources for minor activities.

Cumulative Impact Evaluation - Coal mining surface disturbance activities are generally temporary and eventually reclaimed. Cumulative impact analysis consideration of CE's for temporary coal mining related surface disturbance should be provided great latitude and proper weight.

Emergency Situations – CE's for emergency situations related to coal miner safety, rescue activities, etc. should clearly be provided by Rule.

Oxbow Mining appreciates the opportunity to comment on the review of NEPA and the important efforts to improve the implementation of CE's. Please contact me at 970-929-5806 if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "James A. Kiger". The signature is written in a cursive style with a large initial "J".

James A. Kiger
Environmental Coordinator

Xc: James T. Cooper, Oxbow
files