



Castle Mountain Coalition

PO Box 1244 Chickaloon, AK 99674

Promoting ecological integrity, economic sustainability, and quality of life in the Matanuska River Watershed

April 2, 2020

Russell Kirkham
Division of Mining, Land, and Water
550 West 7th Ave, Suite 920
Anchorage, AK 99501-3577
coalprogram@alaska.gov

Re: Wishbone Hill Permit Renewals 01-89-796 and 02-89-796

Dear Mr. Kirkham:

Castle Mountain Coalition (CMC) submits these comments in opposition to the renewal of the Wishbone Hill permits. CMC is an entirely volunteer-based community organization based in the Matanuska Valley with members primarily in Chickaloon, Sutton, and Palmer.

A coal mining company does not have an unlimited right to renew its mining permits. And, according to its own website, the Department of Natural Resources (DNR) has an obligation to protect society and the environments from the adverse effects of coal mining operations. This means that DNR must stop finding ways to rubber stamp the applications of the Usibelli Coal Mine, Inc. (UCM) to renew its mining permits for the Wishbone Hill site. It is time to take seriously the external costs of coal mining. Do your job.

Actions on site must precede permit renewals

The Surface Mining Control and Reclamation Act (SMCRA) contains specific provisions to prevent successive renewals when no mining has occurred. The U.S. District Court for the District of Alaska held that under SMCRA a permit terminates automatically if mining does not commence within three years of the issuance of the permit unless a proper extension of time is granted.¹ This is consistent with State of Alaska law, AS 27.21.070(b):

A permit terminates if a permittee does not begin surface coal mining operations under the permit within three years after the permit is issued.

That's pretty darn plain language. The applicant does not fall into any category that would require them to need an extension.

Why would a provision restricting renewals be included in SMCRA? The provision is to prevent permits from existing in perpetuity with no mining in sight. Without such a provision, successive renewals would allow a company to tie up the land for years without mining, waiting for a time when mining would be

¹ US District Court for the District of Alaska, case no. 3:15-cf-43-SLG

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economically viable. It could then open a mine even if the environmental and social conditions were far different than they were when the permit was issued. SMCRA and Alaska law forbids exactly what has happened for years at Wishbone Hill.

The State contends that no SMCRA violation occurred in the prior renewals of the WBH permits because extensions were granted retroactively even though not much written documentation could be found to support extensions. Despite that, we urge the DNR to consider seriously whether yet another renewal of an old permit is justified when virtually no mining (except a pioneer road) has ever occurred nor apparently is any mining planned. It is not as if renewal of the permits is necessary to protect an expensive, ongoing operation.

Before issuing the permit, we ask that DNR provide to the public a list of activities that UCM has conducted at the Wishbone Hill site in the past three years that would qualify them for a permit renewal. To our knowledge, no activity at all has occurred on the site since the last permit was issued in 2015. By DNR's own admission, no activity has occurred since September 2013 – over six years ago.² Therefore by DNR's own regulations, the applicants cannot have their permit renewed.

The federal Office of Surface Mining Reclamation and Environment (OSMRE) stated that, when the 2015 permit renewal was contested:

“DNR notes in the DNR 2018 Decision, it instituted procedures in 2014 to avoid repetition of the circumstances of this matter.”³

Specifically how is DNR now avoiding a repetition of the earlier mistake? It appears to us that it is making exactly the same mistake.

Times and values have changed

It is time to recognize that the permits are very old and times have changed. It is time to take SMCRA seriously and not seek out ways to avoid its requirements in order to benefit a mining company. Instead, it is time to give serious consideration to the well-being of the citizens of this area, not just to the mining company.

We acknowledge that a valid permit was issued in 1991, ending in 1996. It is possible that in 1991, when the permits were issued, coal mining was not so obviously wrong as it is now. At the time, it was not universally known that the burning of coal was a major contributor to our changing climate. Today, we all know the danger coal poses to the climate. It is no longer acceptable to renew coal mining permits.

In 1991, the mine would have affected far fewer people than it would now. The Mat-Su Borough is the fastest growing area in Alaska with about 110,000 residents, almost three times as many as in 1991. Most of those residents would in one way or another be affected by this mine. All of us are residents of the Mat-Su Borough, and some of us live along Buffalo Mine Road, one of the areas expected to be most impacted.

The proposed mine is squarely within or adjacent to residential areas. It lies between the residential areas off 58 Mile Road and the rapidly growing community around Buffalo Mine Road where some homes are

² DNR “Preliminary Findings of Fact”, Renewal of Surface Coal Mine Permits, Wishbone Hill Mine, Permit Numbers 01-89-796 and 02-89-796. Accessed March 8th 2020 at:

<http://dnr.alaska.gov/mlw/mining/coal/wishbone/pdf/wbh-prelim-findings-02102020.pdf>

³ US Department of Interior letter to Trustees for Alaska and Earthjustice, July 24, 2019. Accessed March 8 2020 at: <http://dnr.alaska.gov/mlw/mining/coal/wishbone/>

within a quarter mile of the lease area and well over one hundred are within a mile of the mine boundary. In 2018, the population estimate for Buffalo Mine Soapstone was 1,013 individuals.⁴ For the Sutton-Alpine area, in which the mine lies, the population estimate for 2018 was 1,046. Farm Loop is nearby with an estimated population in 2018 of 1,300. Further, the proposed mine is only 5 air miles from Palmer.

It is hard to imagine how a coal mine could operate in this area without doing extensive damage to the quality of life of thousands of people. Maybe that wasn't obvious in 1991, but it is now, and it illustrates exactly why it is wrong to grant endless renewals of permits and why SMCRA sets limitations on renewals.

The Matanuska Valley residents are not the only ones that will be impacted. Susitna Valley residents will also likely feel the impacts of the Wishbone Hill coal mine, should it become active. Usibelli still has not said specifically how coal from the mine would be transported. The very worst route is also the most likely: trucking it from the mine site to Port Mackenzie. Any route to the port will pass through Wasilla and on to Knik-Goose Bay (KGB) road. KGB is already the most dangerous road in the state. It runs through the Knik/Fairview community where the population was estimated to be 19,420 in 2018. It would be completely irresponsible to allow over 70 coal trucks per day to travel KGB and through a city with already hectic traffic. Other communities such as Fishhook and Lakes would also be impacted by truck traffic. When the permit was granted in 1991, Port Mackenzie did not exist. The passage of time creates new problems and a decision on whether to renew a permit must recognize that fact.

Economics have changed

What do we need this coal for? Coal is no longer a cheap way to fuel power plants. In the Mat-Su Borough, the cheapest power is from the Willow solar farm, followed by Bradley Lake hydro-electric.⁵ Additionally, 70% of Matanuska Electric Association (MEA) rate-payers have said they want more renewable energy in the electric grid, and many are generating their own power through solar and feeding it back into the grid through net-metering.⁶ This is a clear message from the community that they want to move away from fossil fuels.

Usibelli claims their coal is "clean". Technology to remove particulates, sulfur (which causes acid rain when it enters the air) and nitrogen oxides, technology does not exist to easily remove carbon dioxide from power plants. The federal government and industry have conducted research in this area, capturing carbon dioxide from power plants, for decades without good commercial success. The idea of "clean coal" once meant coal that was low in sulfur or from which sulfur could be removed. It is dishonest to state that because we have the technology to remove sulfur, we have the technology to remove carbon dioxide inexpensively. We don't. The technology that exists is much too expensive to apply.⁷

If we want local power with stable prices, we need to continue to go in the direction that MEA is already discussing: more solar farms, more small hydro micro-grids.

As a sign of how uneconomic coal is, there has been no export market since 2010 – *no coal has been exported from Alaska for ten years*. Globally, the demand for coal is decreasing or, where demand still

⁴ Population figures are from live.laborstats.alaska.gov

⁵ Personal conversation, MEA Board of Directors, October 2019

⁶ Personal conversation, MEA Board of Directors, October 2019; also 2018 MEA Annual Report (<https://www.mea.coop/wp-content/uploads/2019/04/2018MEAAnnualReport.pdf>)

⁷ <https://www.scientificamerican.com/article/will-carbon-capture-and-storage-ever-work/>;

<https://www.energy.gov/fe/science-innovation/carbon-capture-and-storage-research/carbon-capture-rd>

exists (Indonesia, India), it is being mined locally. For example, the UK has committed to closing all coal-fired power plants by 2025 and already has more than enough in stockpiles to fuel through then, and coal companies throughout the US have gone bankrupt in the last few years.

With the residents of the Mat-Su Borough moving away from coal, and no export market, Usibelli's market appears to remain a few military installations and Fairbanks. The mines they currently operate are sufficient to continue supporting this market.

Baseline data is very old

We have a reasonable expectation that UCM will have complied with requirements for baseline data. In 2012, DNR wrote a letter that said, in part:

“After careful review of the permit renewal application and the approved operation and reclamation plan...DNR has concluded that additional baseline information...is required...

...increase in residential and recreational use of the area and restoration of Moose Creek...may have caused changes to the hydrologic condition...In addition...we found that there have been significant changes in regional precipitations curves used to determine water balance, sediment loading and sediment and drainage control designs...” (Brent Goodrum of DNR to Rob Brown of UCM, letter of August 2 2012)

The letter required the installation of six new groundwater monitoring wells in the wash-plant area, south of the mine area to monitor water quality in overburden and bedrock, and between mine areas and Moose Creek in alluvium and bedrock.

- Have these groundwater wells been installed? Have they been monitored? Where is the water quality data?
- Are there annual reports documenting activity that the public can review?
- If these wells have not been installed and annual reports not submitted, then how can the permit be continually renewed without this information? This appears to directly violate a prerequisite that DNR required for permit renewal.

We have not seen any new data. If it has been provided, it is very difficult to find – as we downloaded the 2014 Project Data on the DNR Wishbone Hill Permit Renewal website and did not find any new data. This included reviewing Part C Chapter IV (Hydrogeology) and Table 3-1, Table 3-6, and Addendum. We found regurgitation of 1988-1990 data with a very occasional data point from 2008 or 2009 – nothing newer, and no mention of new groundwater wells installed. We note that Table 3-6, comparing federal “drinking water standards” to groundwater water quality uses outdated standards, and also shows that water quality exceeds aquatic life standards for copper, iron, and manganese.

DNR's “Preliminary Findings” state that the “*renewal request is complete contains all information required by 11 AAC 90 and is sufficient for this office to make a decision.*” Yet it relies on an application package submitted in 2014, which is essentially from 2009 with a very few updates.⁸ Worse, the most critical baseline data – that of understanding hydrogeology– was collected in 1988-1990.⁹ The Wishbone Hill area is a dynamic one of glacial till that experiences relatively frequent earthquakes and ground movement. Aquifers may have changed depth, flow rates, and water quality. At what point must this data be re-collected or confirmed to be current before it is no longer reasonable for a company to receive rubber-stamped permit renewals?

⁸ Accessed March 8 2020 at: <http://dnr.alaska.gov/mlw/mining/coal/wishbone/>

⁹ Permit Application package, Part C Environmental Resources Information, Chapter IV

We note that the permit application package (2014) Part C, Chapter V, page V-1 states that “*In October 2008, surface water studies and monitoring programs were reinitiated and are currently ongoing.*”

- When did these studies stop? Why is there no updated baseline since the 2009 submission?

Page V-6 states “*Three continuous stream flow monitoring stations, numbered 1, 4, and 5 on Figure 3-1 and Plate V- 1, were established on the mine site in August, 1988, and are still operational today. Two stations were located on Moose Creek, and a third was located on Buffalo Creek.*”

- Are these still operational? If not, when did they end? Where is the updated data? The permit application Part A does not make it at all clear that they are accepting recycled information with no updates.

We note that Part C did include a 2012 addendum that acknowledges Buffalo Creek is now on the anadromous waters catalogue.

- Has any work been done to document fish in Moose Creek or Buffalo Creek in the past 8 years?

This all gives the impression that work was done primarily in preparation for the 1991 permit, and a small flurry of work was conducted in 2009 again in preparation for a permit, and no baseline has been done since. These are not people that are preparing to mine.

The need for a new permit application

These three arguments – lack of activity on site, risks to thousands of people that did not exist in 1991, and contributing to climate change – are foundational reasons to not automatically renew the mining permit. Should the mining company decide it is serious about mining, it must submit a NEW application for a permit to mine. This would require a permit to assess the situation as it is currently, not the situation as it was thirty years ago.

It is true that DNR is charged with permitting mining operations. But it has a corresponding and more important obligation to safeguard the environment and society. In the past the scale has tipped toward the mining company. Now DNR must recognize that in the real world the balance is shifting. The Borough is growing rapidly; climate change is upon us; coal is a known culprit in climate change. What might have seemed acceptable in 1991 is destructive and irresponsible now. DNR has an obligation and the authority to protect the future, not the past. The Wishbone Hill permits must not be renewed.

Coal is our past, not our future!

Signed, with support of the full CMC Board,

Judy Donnegan, Board Member CMC

Kendra Zamzow, Board Member CMC

Specific comments related to Part A: Applicant and Mine Site Identification, Rev 2020

General comment:

It would be helpful if pages were numbered to easily see which pages refer to permit 01-89-796 and which refer to permit 02-89-796.

Section A: Application and mine site identification

Why is the permit fee and bond amount for permit 02-89-796 allowed to be included in permit 01-89-796? The surface estate owners for 01-89-796 are DNR and Usibelli; the surface estate owners for 02-9-796 are the Mat-Su Borough and Usibelli. Subsurface estate owners for 01-89-796 are DNR and Cook Inlet Region, Inc while subsurface estate owners for 02-89-796 are DNR and Bureau of Land Management.

Section B: Compliance information

(B)(2)(a). This asks if a “state mining permit suspended or revoked in the last five years?” The applicant answered “No” for both applications 01-89-796 and 02-89-796. Records show that on September 24th, 2013, the company requested a suspension of operations “ pending renewal of the ASCMCRA permits 01-89-796 and 02-89-796”. DNR renewed the permit on October 26, 2015.¹⁰ Yet no activity occurred on the site, even after the permit renewal. Please explain the connection between suspending a permit and suspending operations, and at what point a suspension in operations would cause a permit to be suspended, revoked, or an application for renewal denied.

Section C: Cultural and historic information and man-made features

C(1)(b). The applicant has not included the new Jonesville Public Use Area on the maps in the application.

C(1)(c). The applicant answered N/A regarding a map showing areas within or adjacent to the proposed permit area that contains units of the National System of Trails. Is the Eska Falls trail recognized on the National System of Trails?

Section D: Protection of public parks and historic places

D(14)(a). The applicant refers to Section 17.0 regarding measures to minimize impacts to public parks. Please ensure that Section 17.0 discusses the Jonesville Public Use Area.

Exhibit A-1 and A-2

Exhibit A-1 (pages A-14 to A-15) map for permit 01- has a WBH 2009 update stamp and the map was made in 2009. Exhibit A-2 (page A-19-A-20) map for permit 02- has a WBH 2020 stamp but the map was made in 2008. Please confirm that these maps represent land owners in 2020. Please also make sure the list of owners of record for adjacent areas is also current as of 2020.

¹⁰ CMC continues to contest that the permit was renewed illegally.