

Apr. 26, 2012 -- Property Transaction Proposal Division of Parks and Wildlife

Bosque del Oso State Wildlife Area -- New Elk Coal Company Lease Amendment

Las Animas County

29,940 acres

25 miles west of Trinidad

Section 33-1-105 (3)(a), C.R.S. states:

In the event that the [Parks and Wildlife] Commission plans to acquire the fee title to any real property or to acquire an easement for a period to exceed 25 years or at a cost to exceed \$100,000 or to enter into any lease agreement for the use of real property for a period to exceed 25 years or at a cost to exceed \$100,000, or to sell or otherwise dispose of the fee title to any real property which has a market value in excess of \$100,000, the Commission shall first submit a report to the Capital Development Committee [CDC] which outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations which may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state which will result from such acquisition. The CDC shall review the reports submitted by the Commission and make recommendations to the Commission concerning the proposed land transaction within 30 days from the day on which the report is received. The Commission shall not complete such transactions without considering the recommendations of the CDC, if such recommendations are timely made.

The required report is attached. CDC staff questions about the report are listed below.

Action Required

Recommend support for an amendment to the New Elk Coal Company lease of coal mineral rights beneath the Bosque del Oso State Wildlife Area to add 14,387 acres to the lease, for a total lease of 29,940 acres.

CDC Staff Questions

1. Approximately how much money has the lease arrangement generated for the division to date? (Response provided on April 23, 2012.)

The current contract, which includes 15,552.8 acres under lease, has generated a total of \$622,669.60. Based on the existing lease the division generates, at a minimum, \$124,422.40/year. This is based on the following terms:

Annual Rent @ \$3.00/Acre x 15,552.8 Acres = \$46,658.40/year

Annual Advanced Minimum Royalty @ \$5.00/acre x 15,552.8 Acres = \$77,764.00/year.

2. How much money is projected to be generated on an annual basis by the lease in future years with the inclusion of the additional acreage? (Response provided on April 23, 2012.)

The New Elk Coal Company, LLC has requested the division to amend the contract to lease the remaining 14,387 acres under the terms and conditions of the current lease. Based on the existing contract terms, the additional acres will generate, at a minimum, approximately \$115,098 annually over the existing lease agreement (see below).

Annual Rent @ \$3.00/Acre x 14,387 Acres = \$43,161/year

Annual Advanced Minimum Royalty @ \$5.00/acre x 14,387 Acres = \$71,935/year

Annual projected revenue, including royalties, can be affected by numerous factors: coal quality, negotiated market price, and cost of removing the coal which is influenced by a variety of factors. Currently, royalties are calculated at 8.5 percent or 8 percent, depending on where the coal is being mined. The new acres would most likely be subject to the existing lease agreement including the existing 8 percent royalty. The following two standard deductions are applied to gross sales and royalties are affected by them:

a) Wash deduction-\$2.50/ST (based on Aug. 11 contract sale); and

b) Haulage deduction-\$3.20/ST (based on Aug. 11 sale) are applied.

The division may receive royalty payments above the minimum rent and advanced minimum royalty payments, but this will be based on the factors outlined above.

THE FOLLOWING ARE THE STAFF QUESTIONS AND DIVISION RESPONSES FROM THE ORIGINAL 2008 LEASE PROPOSAL, PROVIDED FOR BACKGROUND PURPOSES:

Apr. 26, 2012 -- Property Transaction Proposal
Division of Parks and Wildlife

Bosque del Oso State Wildlife Area -- New Elk Coal Company Lease Amendment

Las Animas County

29,940 acres

25 miles west of Trinidad

2. How does the public currently use the Bosque del Oso State Wildlife Area? Do you anticipate that public usage will be impacted by the coal mining operation?

The 30,000 acre Bosque del Oso State Wildlife Area provides the public opportunities for big and small game hunting, stream fishing, and for watching wildlife.

DOW does not anticipate any impact to the public usage of the state wildlife area because all mining of the division's coal will be done by the underground mining technique known in the industry as "room and pillar mining."

3. How will wildlife habitat be impacted by the coal mining operation?

There will be no impact to the wildlife habitat of the Bosque del Oso State Wildlife Area because of the underground mining technique that will be used.

The only surface disturbance would be from the construction of intake and exhaust airshafts if necessary. This construction disturbance would be minimal in area, it would be at a few locations that would require the division's concurrence, any construction would be limited only to time periods allowed by the division and any soil disturbance would be reclaimed according to standards imposed by the division.

4. Staff understands that the lease will automatically continue after the primary term for as long as coal is produced in paying quantities. Is there an estimated length of duration for the lease and/or mining operations?

The lease does include a "hold by production" provision which is standard for the mining industry. This provision allows for the lease to continue after the primary term as long as coal is being produced in paying quantities, which is defined as the amount of production necessary to generate production royalties equal to or greater than the annual advance minimum royalty payment required in the lease.

The duration of the lease is based completely on the rate of production, which is entirely a function of the market demand for the coal being mined. Therefore, because no one can predict what the market demand for the coal being mined will be decades from now, an estimate of the duration of the lease is not practical.

5. For what purpose(s) will the new revenue be used by the division?

To the effect that the funds would be used to manage and enhance the wildlife, wildlife habitat and wildlife recreation resources in the state, pursuant to 33-1-101, C.R.S.

Capital Development Committee

April, 2012—Property Transaction Proposal

Department of Natural Resources
Division of Parks and Wildlife

| | | | |
|---------------------------------------|---|--|-----|
| Action Required | Pursuant to C.R.S. 33-1-105(3)(a) and C.R.S. 33-10-107(2) recommend to the Colorado Parks and Wildlife Commission support for the Division of Parks and Wildlife's proposal to amend the coal mining lease at Bosque del Oso SWA to add an additional 14,387 acres. | | |
| General Information | | | |
| Name | Bosque del Oso SWA - New Elk Coal Company Lease Amendment | | |
| Number of acres | 14,387 | | |
| Location | 25 miles west of Trinidad | | |
| County | Las Animas | | |
| Costs / Source of Funding | | | |
| Purchase Price | N/A | Funding Source* | N/A |
| | Spending authority has already been approved for this project in the Long Bill | | |
| | Fiscal Year | | N/A |
| | Line Item | | N/A |
| | Appropriation | | N/A |
| | Remaining Unexpended Balance | | N/A |
| Annual Monitoring and Operation Costs | \$0.00 Real Estate Proposal for the original 2008 lease estimated annual auditing and collection expenses of \$15,000; additional leased land might result in some additional expense. | The annual operations costs will come from the Wildlife Management Line Item under the Division Operations Group in the Long Bill. | |
| Development Costs | \$0.00 | | |

Summary of Proposal

To amend the current 2008 coal mining lease between Colorado Parks and Wildlife (CPW) and New Elk Coal to add an additional 14,387 acres to the lease. Bosque del Oso SWA is 29,940 acres. The existing New Elk Coal lease (March 2008) covers 15,553 acres. New Elk Coal has requested CPW amend the contract to lease the remaining 14,387 acres under the terms and conditions of the current lease, which include an 8% royalty. New Elk Coal has begun to commercially produce coal and a reserve analysis has determined that the company could begin extracting coal under the new acreage as early as fall 2012. The existing contract is for a term of

20 years subject to extensions for as long as coal is being produced in paying quantities. The amendment for additional acreage would run concurrent with the term of the existing lease.

Division of Wildlife (DOW) and New Elk Coal Company negotiated a 20-year lease agreement in 2008 on 15,553 acres of coal reserves under the SWA. All coal processing is off-site of the SWA and the total surface disturbance is limited to two airshafts that may be built at the south end of the SWA. Two pre-existing ventilation shafts were refurbished during the re-opening of the mine. Mine safety conditions will dictate whether additional ventilation shafts will be required but they are not anticipated at this time. There are also state-required water monitoring wells on the surface roughly following the route of the underground mineshafts.

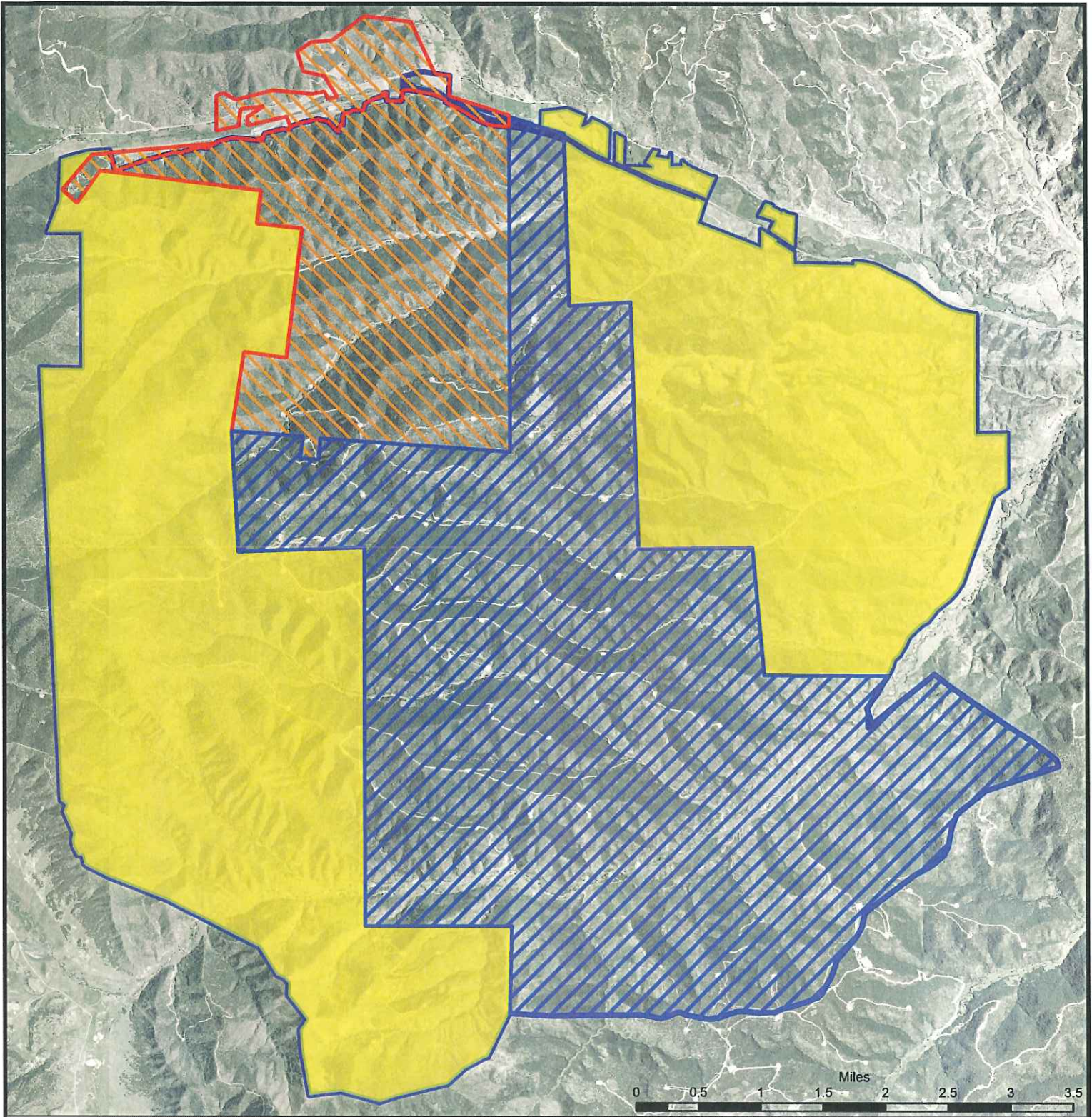
According to a review of the first map referenced below, the Property lies outside the scope of regions of known or potential geothermal resources. Also, according to a review of the second map referenced below, the Property lies outside the Central Solar Power and the Wind Resource Generation Development areas.

Geothermal: November, 2003 US Department of Energy, Office of Energy Efficiency and Renewable Energy, Geothermal Technologies Program.



Wind and Solar: A map entitled “SB07-91 Renewable Resource Generation Development Areas” from “Renewable Energy Development Structure,” a report of the Colorado Governor’s Energy Office dated December 2009.

Attachments:

- Map
- Concurrence letters

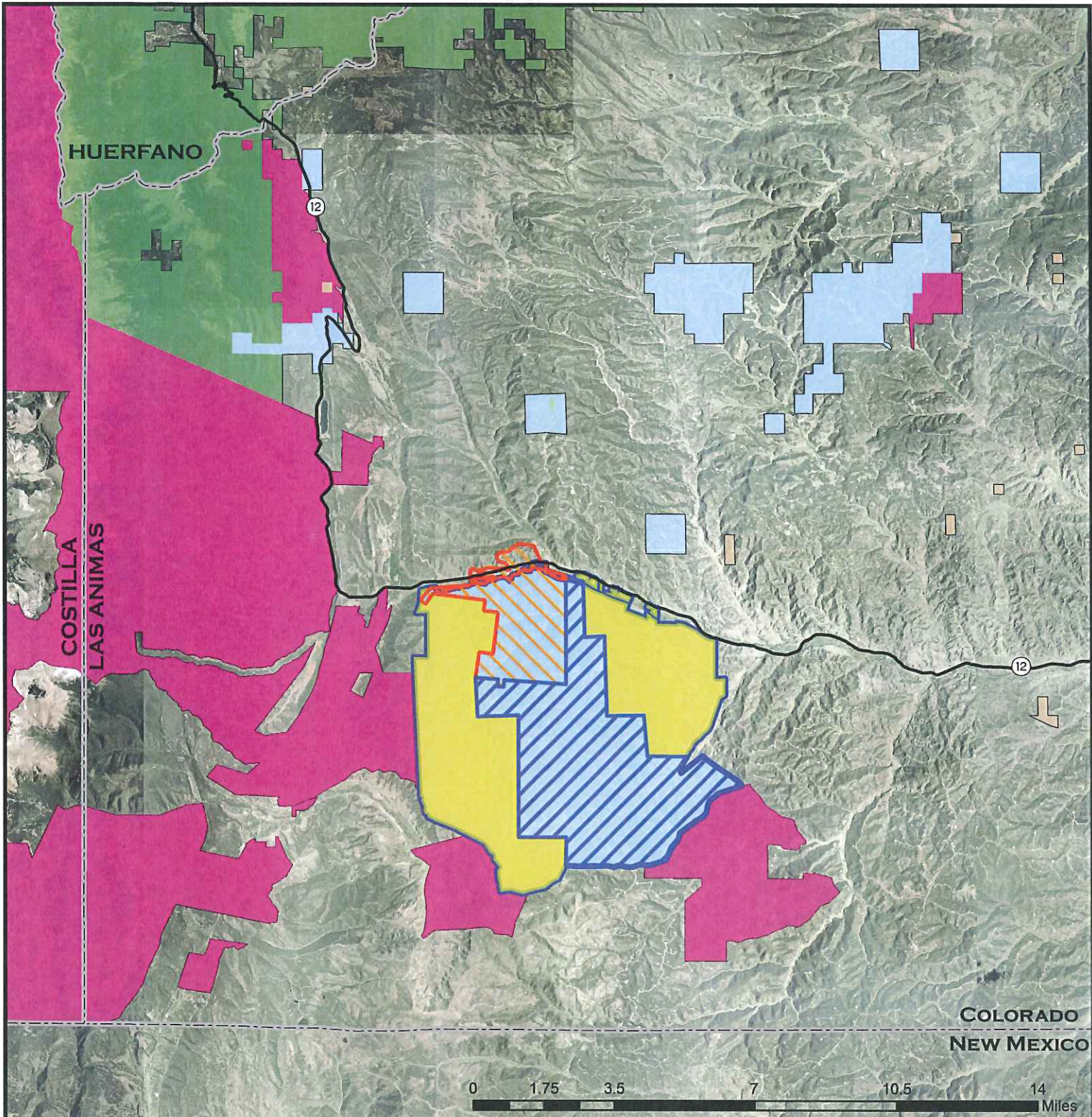


**Bosque del Oso SWA --
New Elk Coal Company Lease Amendment
Las Animas County
12-006-SE**

-  New Elk Coal Company - 1997 permit
-  New Elk 2008 Lease Area
-  Proposed 2012 Lease Amendment
-  Bosque del Oso SWA



Property and Lease Boundaries are the best approximations that can be made in this area. Area is a Land Grant and is not surveyed.



**Surrounding Area Property Ownership
 Bosque del Oso SWA -- New Elk Coal Company Lease Amendment
 Las Animas County
 12-006-SE**

- | | | | |
|--|------------------------------------|--|---------------------------|
| | New Elk Coal Company - 1997 permit | | Private |
| | New Elk 2008 Lease Area | | State |
| | Proposed 2012 Lease Amendment | | Bureau of Land Management |
| | Bosque del Oso SWA | | US Forest Service |
| | | | Conservation Easements |

Property and Lease Boundaries are the best approximations that can be made in this area. Area is a Land Grant and is not surveyed.





COLORADO PARKS AND WILDLIFE
600 Reservoir Road, Pueblo, CO 81005
(719) 561-5300 • FAX (719) 561-5321
wildlife.state.co.us • parks.state.co.us



April 10, 2012

Colorado Representative Wes McKinley
200 E. Colfax Avenue
Denver, CO 80203

Dear Representative McKinley;

In 2008 Colorado Parks and Wildlife (CPW) negotiated a lease to mine coal under 15,000 acres on the Bosque del Oso State Wildlife Area in Western Las Animas County. New Elk Coal Company, LLC (NECC) has recently approached CPW to lease the coal under the remaining 15,000 acres on the Bosque del Oso State Wildlife Area.

It is the policy of the Parks and Wildlife Commission that CPW owned lands may be leased for the extraction of the mineral resources when such leases and operations are compatible with the purpose for which the State Wildlife Area was originally acquired. In negotiating this lease, the (then) Division of Wildlife weighed the costs and benefits of energy-related development on the State Wildlife Area relative to impacts on the quality of habitat, wildlife populations, or recreational uses for which the property was originally acquired.

New Elk Coal Company, LLC (NECC) has provided a mining operation plan to the state. According to that plan, the mining operation will utilize the existing underground workings and extend these into new coal reserves. All coal will be transported by underground conveyor to the New Elk surface facilities which lie off of the State Wildlife Area. No open-pit mining or transport of coal will be allowed over the surface of the property.

Three portals with corresponding air shafts are located at the New Elk production facility owned by NECC. Two additional airshafts currently located on the State Wildlife Area will be rehabilitated and a chain link fence built to prevent ingress by wildlife and people.

In constructing the facility, NECC and CPW have endeavored to minimize the construction footprint and protect the aesthetic values of the property through the use of visual set-backs and the best technology available to limit the aboveground facilities. Access roads are currently available and NECC will reclaim disturbed sites as reasonably possible upon the completion of construction.

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Perricone • Jim Pribyl • John Singletary
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield
Ex Officio Members: Mike King and John Salazar

Colorado Parks and Wildlife is required to present this proposal to the Capital Development Committee and to secure letters of concurrence from county commissioners as well as the appropriate state Senator and Representative. If you concur with the Colorado Parks and Wildlife's lease, please sign this letter on the line provided.

If you have further questions, please feel free to contact me at (719) 561-5300. Thank you for your time and consideration.

Sincerely,

Michael Trujillo
Area Wildlife Manager

Signed:



State Representative Wes McKinley – District 64

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April 10, 2012

Colorado State Senator Kevin Grantham
200 E. Colfax Avenue
Denver, CO 80203

Dear Senator Grantham,

In 2008 Colorado Parks and Wildlife (CPW) negotiated a lease to mine coal under 15,000 acres on the Bosque del Oso State Wildlife Area in Western Las Animas County. New Elk Coal Company, LLC (NECC) has recently approached CPW to lease the coal under the remaining 15,000 acres on the Bosque del Oso State Wildlife Area.

It is the policy of the Parks and Wildlife Commission that CPW owned lands may be leased for the extraction of the mineral resources when such leases and operations are compatible with the purpose for which the State Wildlife Area was originally acquired. In negotiating this lease, the (then) Division of Wildlife weighed the costs and benefits of energy-related development on the State Wildlife Area relative to impacts on the quality of habitat, wildlife populations, or recreational uses for which the property was originally acquired.

New Elk Coal Company, LLC (NECC) has provided a mining operation plan to the state. According to that plan, the mining operation will utilize the existing underground workings and extend these into new coal reserves. All coal will be transported by underground conveyor to the New Elk surface facilities which lie off of the State Wildlife Area. No open-pit mining or transport of coal will be allowed over the surface of the property.

Three portals with corresponding air shafts are located at the New Elk production facility owned by NECC. Two additional airshafts currently located on the State Wildlife Area will be rehabilitated and a chain link fence built to prevent ingress by wildlife and people.

In constructing the facility, NECC and CPW have endeavored to minimize the construction footprint and protect the aesthetic values of the property through the use of visual set-backs and the best technology available to limit the aboveground facilities. Access roads are currently available and NECC will reclaim disturbed sites as reasonably possible upon the completion of construction.

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Colorado Parks and Wildlife is required to present this proposal to the Capital Development Committee and to secure letters of concurrence from county commissioners as well as the appropriate state Senator and Representative. If you concur with the Colorado Parks and Wildlife's lease, please sign this letter on the line provided.

If you have further questions, please feel free to contact me at (719) 561-5300. Thank you for your time and consideration.

Sincerely,

Michael Trujillo
Area Wildlife Manager

Signed:



State Senator Kevin Grantham – District 2

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April 3, 2012

Las Animas Board of County Commissioners
Las Animas County Courthouse
200 E. 1st Street, Room 207
Trinidad, CO 81082-3047

Dear Commissioners;

In 2008 the Colorado Parks and Wildlife (CPW) negotiated a lease to mine coal under 15,000 acres on the Bosque del Oso State Wildlife Area in Western Las Animas County. New Elk Coal Company, LLC (NECC) has approached CPW to lease the coal under the remaining 15,000 acres on the Bosque del Oso State Wildlife Area.

It is the policy of the Parks and Wildlife Commission that Parks and Wildlife owned lands may be leased for the extraction of the mineral resources when such leases and operations are compatible with the purpose for which the State Wildlife Area was originally acquired. In negotiating this lease, the Division of Wildlife weighed the costs and benefits of energy-related development on the State Wildlife Area relative to impacts on the quality of habitat, wildlife populations, or recreational uses for which the property was originally acquired.

New Elk Coal Company, LLC (NECC) has provided a mining operation plan to the State on its mining activities. The mining operation will utilize the existing underground workings and extend these into new coal reserves. All coal will be transported by underground conveyor to the New Elk surface facilities which lie off of the State Wildlife Area. No open-pit mining or transport of coal will be allowed over the surface of the property.

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In constructing the facility, NECC and CPW has endeavored to minimize the construction footprint and protect the aesthetic values of the property by the use of visual set-backs and using the best technology available to limit the aboveground facilities. Access roads are currently available and NECC will reclaim disturbed sites as reasonably possible upon the completion of construction.

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Mine Safety and Health Administration regulations require that a 300 foot diameter barrier coal pillar be left in place around any open gas well to provide protection for the gas well and also against the release of methane gas into the mine atmosphere. Room and pillar mining allows for leaving barrier pillars to protect Coal Bed Methane and other wells or facilities from the affects of underground mining.

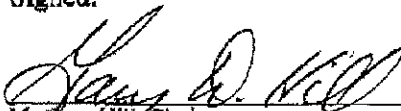

Colorado Parks and Wildlife is required to present this proposal to the Capital Development Committee and to secure letters of concurrence from the applicable Boards of Commissioners as well as the appropriate State Senator and Representative. If, as the Las Animas County Board of Commissioners, you concur with the Colorado Parks and Wildlife's lease, please sign this letter on the line provided.

If you have further questions, please feel free to contact me at (719) 561-5300. Thank you for your time and consideration.

Sincerely,

Michael Trujillo
Area Wildlife Resources

Signed:


Mr Gary Hill, Chair


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